

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No: 201255773
Issue No: 4031
Case No: [REDACTED]
Hearing Date: August 22, 2012
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on Wednesday, August 22, 2012. Claimant appeared and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Was recovered non-disability medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant's last SDA approval was on March 7, 2012.
2. On May 17, 2012, the DHS terminated the Claimant's SDA based on a recovered non-disability per BEM 261 with a hearing request on May 29, 2012.
3. Claimant was age 45, with a high school or more education, and unskilled work history as a [REDACTED], hardware retail salesman, [REDACTED], and **currently working** since August 1, 2012 as a [REDACTED] 3 days a week, 11 to 15 hours a week at minimum wage.
4. Claimant alleges continued disability due to a combination physical impairment (DHS Exhibit A, Page 318).

5. Medical reports since Claimant's last SDA approval state the Claimant on:
 - a. April 27, 2011, has **normal** abdominal body system; and that Claimant's condition is **stable** (DHS Exhibit A, Page 220).
 - b. April 29, 2011, has a clear chest with no cardiovascular murmur (DHS Exhibit A, Page 234).
 - c. January 24, 2012, his cardiovascular heart tones S1, S2, present and regular heart rhythm; no rub, murmurs, thrills or clicks; that there is no displacement of apical pulse; that there is no right ventricular impulse; that there are no thrills palpating in either left or right inner space; that he has a **normal** carotid artery pulse amplitude; that an abdominal aorta is free of bruit, size not palpably enlarge; that pulses are intact in the upper and lower extremities; that femoral arteries have a **normal** pulse amplitude and free of bruit; that he has a **normal** pedal pulse amplitude; that there is no edema or varicosities; that musculoskeletally (extremities) he has **normal** joint examination of the joints in the upper and lower extremities including **normal** range of motion of the joints of the upper and lower extremities, no joint pain or contracture, misalignment, asymmetry, crepitation, defects, tenderness, masses, effusions, joint tenderness, crepitation, contracture, dislocation, subluxation or laxity, and with **normal** stability; that he has no vertebrae body tenderness; that gait and station is **normal**; that muscle strength and tone are **normal**; that he has **no** muscle atrophy, or **abnormal movements** (DHS Exhibit A, Page 303).
6. SHRT report dated July 12, 2012, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 318).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Facts above are undisputed.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

The burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 460.912(a).

...To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decision to stop disability benefits are made objectively, neutrally and are fully documented, we use the federal regulations as a guideline and follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1. Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter? If you do, your disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If you do not, has there been a medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see Step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement.

(see Step 4 in paragraph (b)(5)(iv) of this section.)
20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(I) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related to your ability to do work, see Step 5 in paragraph (b)(5)(v) of this section. 20 CFR 416.994(b)(5)(iii).

Step 4. If we found in Step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at Step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If any of the first group of exceptions to medical improvement applies, see Step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to your ability to do work or if any of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see Sec. 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in Step 3 in paragraph (b)(5)(iii) of this section shows significant limitation to your ability to do basic work activities, see Step 6 in paragraph (b)(5)(iv) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work that you have done in the past. If you can do such work, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue. 20 CFR 416.994(b)(5)(vii).

At Step 1, continued eligibility is denied. The medical evidence of record does not establish Claimant's impairments meet/equal a Social Security listing.

At Step 2, the evidence of record does establish Claimant's medical improvement by a decrease in medical severity.

Multiple medical tests on January 24, 2012, shows **normal** or **no abnormal** findings. (See Findings of Facts 5a-c).

At Step 3, the evidence of record does establish the medical improvements related to Claimant's ability to perform basic work activities, as defined below.

Medical evidence of record established the part-time work as a book salesman 11- to 15 hours a week.

The medical evidence of record supports the Claimant's functional capacity of part-time work and the residual functional capacity for basic work activities.

Substantial work activities is work activities that involves doing significant physical activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before. ...20 CFR 416.972(a).

At Step 4, the evidence of record does establish medical improvement or medical improvement related to Claimant's ability to work. Therefore, disability is ended at Step 4.

At Step 5, the medical evidence of record established the Claimants physical impairments in combination do not significantly limit his ability to do basic work activities as discussed above. Therefore, Claimant is no longer disabled.

Therefore, recovered non-disability has been established by the competent, material and substantial evidence on the whole record

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that recovered non-disability has been medically established.

Accordingly, SDA termination **UPHELD**, and SO ORDERED.

/s/
William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 30, 2012

Date Mailed: October 31, 2012

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

WAS/tb

cc:

