

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

IN THE MATTER OF:



Reg. No: 201252608
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: August 7, 2012
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on May 14, 2012. After due notice, a telephone hearing was held on August 7, 2012. The Claimant personally appeared and provided testimony.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant was no longer disabled and deny him review application for Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon medical improvement?

FINDINGS OF FACT

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

1. On April 13, 2011, the Medical Review Team (MRT) determined that the Claimant continued to be eligible for Medical Assistance (MA) due to disability.
2. On April 20, 2012, the Department initiated a review of the Claimant's continued eligibility to receive benefits and determine if there has been medical improvement.
3. On May 2, 2012, the Medical Review Team (MRT) determined that the Claimant no longer met the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA) based on medical improvement.

4. On May 9, 2012, the Department sent the Claimant notice that it would close him Medical Assistance (MA) and State Disability Assistance (SDA) benefits due to the determination of the Medical Review Team (MRT).
5. On May 14, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
6. On July 11, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P and SDA benefits.
7. The Claimant is a 48-year-old man whose birth date is [REDACTED]. Claimant is 6' tall and weighs 185 pounds. The Claimant is a high equivalent education. The Claimant is able to read and write and does have basic math skills.
8. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
9. The Claimant has past relevant work experience working in a warehouse where he was required to stock shelves, load trucks, and lift up to 20 pounds.
10. The Claimant alleges disability due to impaired vision, coronary artery disease, hypertension, seizures, and anxiety.
11. The objective medical evidence indicates that the Claimant suffers from respiratory impairments that are controlled with medication.
12. The objective medical evidence indicates that the Claimant suffers from seizures that are controlled with medication.
13. The objective medical evidence indicates that the Claimant suffers form anxiety that is controlled with medication.
14. The objective medical evidence indicates that the Claimant has been diagnosed with chronic obstructive pulmonary disease (COPD) with acute exacerbation due to smoking tobacco.
15. The objective medical evidence indicates that the Claimant is oriented with respect to person, place, and time.
16. The objective medical evidence indicates that the Claimant has been diagnosed with Type II A dysthymia, chronic anxiety, and alcohol abuse.
17. The objective medical evidence indicates that the Claimant has been diagnosed with grand mal seizures but is currently stable.

18. The objective medical evidence indicates that the Claimant has a history of noncompliance with his prescribed anxiety medications.
19. The objective medical evidence indicates that the Claimant's upper extremities are within normal limits with right sided weakness secondary to stroke.
20. The objective medical evidence indicates that the Claimant's lower extremities have right sided weakness secondary to stroke.
21. The objective medical evidence indicates that the Claimant has been diagnosed with mild decreased respiratory excursion secondary to chronic obstructive pulmonary disease (COPD).
22. The objective medical evidence indicates that the Claimant received inpatient treatment for alcohol intoxication on June 11, 2010, and was discharged on June 14, 2010.
23. The objective medical evidence indicates that the Claimant received inpatient treatment for alcohol intoxication on July 23, 2010, and was discharged on July 27, 2010.
24. The objective medical evidence indicates that the Claimant received inpatient treatment for alcohol abuse on March 11, 2011.
25. The objective medical evidence indicates that a chest x-ray revealed no acute cardiac or pulmonary abnormalities.
26. The objective medical evidence indicates that a transthoracic echo report indicated normal left ventricle size with normal systolic function, ejection fraction was estimated at 50% with mild global hypokinesis, chamber size is normal, valves are normal with mild mitral regurgitation, no pericardial effusion observed, and no obvious intracardiac shunt on color flow Doppler.
27. The objective medical evidence indicates that multi-planar multi-sequence magnetic resonance imaging of the Claimant's brain taken within 24 hours of a fall and seizure revealed right ethmoid and frontal sinus disease, inflammatory or demyelinating process, but negative for acute intracranial abnormality.
28. The objective medical evidence indicates that a computed tomography (CT) scan of the Claimant's spine revealed no acute abnormality except multilevel degenerative changes that were greatest at the C5-6 level.
29. The objective medical evidence indicates that a Wechsler Adult Intelligence Scale III (WAIS III) test indicates that the Claimant has a

verbal IQ of 75 (borderline), performance IQ of 84 (low average), and a full scale IQ of 77 (borderline).

30. The objective medical evidence indicates that the Claimant has been diagnosed with panic disorder, alcohol dependence, cognitive disorder, borderline intellectual functioning.
31. The objective medical evidence indicates that the Claimant has moderate symptoms or difficulty in social and occupational functioning.
32. The objective medical evidence indicates that the Claimant has mildly impaired capabilities to understand, retain, and follow simple instructions and perform simple tasks.
33. The objective medical evidence indicates that the Claimant has mild to moderately impaired abilities to interact appropriately and effectively with co-workers and supervisors, and to adapt to changes in the work setting.
34. The objective medical evidence indicates that the Claimant has a mild to moderately impaired capacity to do work related activities.
35. The objective medical evidence indicates that the Claimant has a history of atherosclerotic heart disease and angioplasty.
36. The objective medical evidence indicates that the Claimant is capable of light perception only in his right eye.
37. The Claimant testified that he smokes cigarettes.
38. The Claimant is capable of preparing meals and shopping for groceries.
39. The Claimant is capable of sweeping floors and washing dishes.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (Department) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905.

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 decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. 20 CRR 416.994.

First, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

The Claimant's impairment failed to meet the listing for impaired vision under section 2.02 Loss of Visual Acuity because the objective medical evidence does not demonstrate that the Claimant has remaining vision in his better eye after best correction of 20/200 or less.

The Claimant's impairment failed to meet the listing for heart failure under section 4.02 Chronic heart failure because the objective medical evidence does not demonstrate systolic failure with an ejection fraction less than 30%, diastolic failure, a serious limitations of daily living activities, three or more episodes of congestive heart failure with the last 12 months, or the inability to perform an exercise stress test rated at 5 on the Metabolic Equivalent of Task (MET) scale. The objective medical evidence indicates that the Claimant has an estimated ejection fraction of 50%, the left ventricle is

normal in size, valves are normal with mild regurgitation, no pericardial effusion was observed, and there is no obvious intracardiac shunt on a color flow Doppler.

The Claimant's impairment failed to meet the listing for seizures under section 11.02 Epilepsy (grand mal seizures) because the objective medical evidence does not demonstrate daytime episodes (loss of consciousness and convulsive seizures) or nocturnal episodes manifesting residuals which interfere significantly with activity during the day. The objective medical evidence indicates that the Claimant suffers from seizures that are controlled with medication. The objective medical evidence indicates that the Claimant has been diagnosed with grand mal seizures but is stable. The objective medical evidence indicates that the Claimant has moderate symptoms or difficulty in social and occupational functioning.

The Claimant's impairment failed to meet the listing for anxiety under section 12.06 Anxiety-related disorders, because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of his activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of compensation. The objective medical evidence does not demonstrate that the Claimant is completely unable to function outside his home. The objective medical evidence indicates that the Claimant's anxiety is controlled with medication. The objective medical evidence indicates that the Claimant is oriented with respect to person, place, and time. The objective medical evidence indicates that the Claimant has a history of noncompliance with his anxiety medications.

The Claimant's impairment failed to meet the listing for alcohol abuse under section 12.09 Substance addiction disorders because the objective medical evidence does not establish the required level of severity for these disorders in any of the following:

- A. Organic mental disorders. Evaluate under 12.02.
- B. Depressive syndrome. Evaluate under 12.04.
- C. Anxiety disorders. Evaluate under 12.06.
- D. Personality disorders. Evaluate under 12.08.
- E. Peripheral neuropathies. Evaluate under 11.14.
- F. Liver damage. Evaluate under 5.05.
- G. Gastritis. Evaluate under 5.00.
- H. Pancreatitis. Evaluate under 5.08.
- I. Seizures. Evaluate under 11.02 or 11.03.

The Claimant's impairment failed to meet the listing for alcohol abuse under section 12.02 Organic mental disorders because the objective medical evidence does not support a finding that the Claimant suffers from marked restrictions of his daily living or social functioning. The objective medical evidence does not indicate repeated episodes of decompensation or that he lacks the ability to function outside a highly supportive environment.

The term repeated episodes of decompensation, each of extended duration in these listings means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks. The Claimant has a history of inpatient treatment for alcohol intoxication. The Claimant was discharged after showing improvement following treatment, and each of these episodes were of a duration less than 2 weeks each.

The Claimant's impairment failed to meet the listing for hypertension because the objective medical evidence does not demonstrate that the Claimant's impairments fit a listed impairment for another bodily system as a result of his hypertension. Because hypertension (high blood pressure) generally causes disability through its effects on other body systems, we will evaluate it by reference to the specific body system(s) affected (heart, brain, kidneys, or eyes) when we consider its effects under the listings. We will also consider any limitations imposed by your hypertension when we assess your residual functional capacity.

The medical evidence of the Claimant's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

Second, the Claimant's impairments are evaluated to determine whether there has been medical improvement as shown by a decrease in medical severity. Medical improvement is defined as any decrease in the medical severity of the impairment(s), which was present at the time of the most recent favorable medical decision that the Claimant was disabled or continues to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Claimant's impairment(s).

The objective medical evidence indicates that the Claimant suffers from respiratory impairments that are controlled with medication. The objective medical evidence indicates that the Claimant suffers from seizures that are controlled with medication. The objective medical evidence indicates that the Claimant suffers from anxiety that is controlled with medication. The objective medical evidence indicates that the Claimant has been diagnosed with chronic obstructive pulmonary disease (COPD) with acute exacerbation due to smoking tobacco. The objective medical evidence indicates that the Claimant has been diagnosed with grand mal seizures but is currently stable. The Claimant has a history of inpatient treatment for alcohol intoxication. The objective medical evidence indicates that the Claimant is fully oriented and has moderate symptoms in social and occupational functioning.

The objective medical evidence indicates that the Claimant has a history of noncompliance with his anxiety medication. In order to get benefits, you must follow treatment prescribed by your physician if this treatment can restore your ability to work. If you do not follow the prescribed treatment without a good reason, we will not find you to be disabled. 20 CFR § 416.930.

This Administrative Law Judge finds that there has been medical improvement as shown by a decrease in medical severity.

Third, the Claimant's medical improvement is evaluated to determine whether it is related to your ability to do work.

The objective medical evidence indicates that the Claimant has been diagnosed with Type II A dysthymia, chronic anxiety, and alcohol abuse. The objective medical evidence indicates that the Claimant has been diagnosed with grand mal seizures. The objective medical evidence indicates that the Claimant suffers from weakness in his upper and lower extremities secondary to stroke. The objective medical evidence indicates that the Claimant has been diagnosed with chronic obstructive pulmonary disease (COPD). The objective medical evidence indicates that the Claimant has a history of inpatient treatment for alcohol intoxication. The objective medical evidence indicates that the Claimant suffers from degenerative disc disease that is greatest at the C5-6 level. The objective medical evidence indicates that the Claimant has a verbal IQ of 75, a performance IQ of 84, and a full IQ of 77 on the Wechsler Adult Intelligence Scale III (WAIS III). The objective medical evidence indicates that the Claimant has moderate symptoms or difficulty in social and occupational functioning.

This Administrative Law Judge finds that the Claimant's improvement is related to his ability to perform work.

Fourth, the Claimant's impairments are evaluated to determine whether current impairments result in a severely restrictive physical or mental impairment.

The Claimant is a 48-year-old man that is 6' 0" tall and weighs 185 pounds.

The objective medical evidence indicates the following:

The Claimant suffers from respiratory impairments that are controlled with medication. The Claimant has been diagnosed with chronic obstructive pulmonary disease (COPD) with acute exacerbation due to tobacco use.

The Claimant suffers from seizures that are controlled with medication. The Claimant has been diagnosed with grand mal seizures but is currently stable. Multi-planar multi-sequence magnetic resonance imaging of the Claimant's brain was negative for acute intracranial abnormalities.

The Claimant suffers from anxiety that is controlled with medication. The Claimant has been diagnosed with Type II A dysthymia, chronic anxiety, and alcohol abuse. The Claimant has a history of noncompliance with prescribed anxiety medication. The Claimant is oriented with respect to person, place, and time. The Claimant has a verbal IQ of 75, a performance IQ of 84, and a full scale IQ of 77 on the WAIS III scale. The Claimant has been diagnosed with moderate symptoms in social and occupational functioning. The Claimant has a mildly impaired capability to understand, retain, and follow simple instructions and perform simple tasks. The Claimant has mild to moderately impaired abilities to interact appropriately and effectively with co-workers and supervisors. The Claimant has mild to moderately impaired abilities to do work related activities.

The Claimant has a history of inpatient treatment for alcohol intoxication.

The Claimant suffers from weakness in his upper and lower extremities secondary to stroke. A chest x-ray revealed no acute cardiac or pulmonary abnormalities. The Claimant has an estimated ejection fraction of 50%. The Claimant has a history of atherosclerotic heart disease and angioplasty.

The Claimant suffers from degenerative disc disease that is greatest at the C5-6 level.

The Claimant is capable of light perception only in his right eye.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that meets the severity and duration standard for MA-P and SDA purposes.

Fifth, the Claimant's impairments are evaluated to determine whether you can still do work you have done in the past.

After careful consideration of the entire record, this Administrative Law Judge finds that the Claimant has the residual functional capacity to perform sedentary work or light work as defined in 20 CFR 404.1567 and 416.967.

The Claimant has past relevant work experience working in a warehouse where he was required to stock shelves, load trucks, and lift up to 20 pounds. The Claimant's prior work fits the description of light work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is unable to perform work in which he has engaged in, in the past.

Sixth, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in him prior employment and that he is physically able to do light or sedentary tasks if demanded of him. The Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with him impairments for a period of 12 months. The Claimant's testimony as to him limitations indicates that he should be able to perform light or sedentary work.

Claimant is 48-years-old, a younger person, under age 50, with a high school equivalent education, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work or light work, and Medical Assistance (MA) and State Disability Assistance (SDA) is denied using Vocational Rule 20 CFR 202.20 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that him doctor has told him to quit. Claimant is not in compliance with him treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their

ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

The Department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM 261. Because the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either.

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that the Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it was acting in compliance with Department policy when it denied Claimant's continued disability and application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The Claimant should be able to perform sedentary or light work. The Department has established its case by a preponderance of the evidence. The Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the Department's decision is **AFFIRMED**.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 23, 2012

Date Mailed: August 23, 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 60 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

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