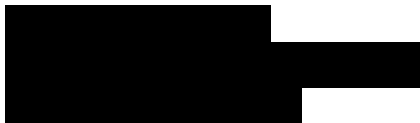


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2012-74479
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: December 5, 2012
Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on December 5, 2012. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer disabled and deny his 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. Claimant was a Medical Assistance benefit recipient and his Medical Assistance case was scheduled for review in August, 2012.
2. On August 1, 2012, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On August 15, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement and could perform other work pursuant to Medical Vocational Rule 202.20.
4. On August 21, 2012, the department case worker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.
5. On August 24, 2012, claimant filed a request for a hearing to contest the department's negative action.

6. On October 19, 2012, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommended decision: the claimant suffers from acid reflux disease which the esophagogastroscope confirmed. He has a history of sleep apnea with no treatment. He is a diabetic and there have been no reports of end organ damage. He has hearing loss in both ears and speech discrimination is within normal limits. An x-ray of the left knee shows patellar spurts. The lumbar x-ray was normal. However, he has a normal gait and station. The x-ray of the upper GI showed a small hiatal hernia. The medical evidence shows that he may be depressed at times. He is still able to remember, understand and communicate with others. He is able to carry on with his regular activities. As a result of the claimant combination of severe physical and mental condition, he is restricted to performing light unskilled work. He retains the capacity to lift up to 20 lbs occasionally, 10 lbs frequently and stand and walk up to 6 of 8 hours. Claimant is not engaging in substantial gainful activity at this time. Claimant's severe impairments do not meet or equal any listing. Despite the impairments, he retains the capacity to perform light unskilled work. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education, and light work history); MA-P is denied using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the information in file is inadequate to ascertain whether the claimant is or would be disabled for 90 days. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform light work.
7. The hearing was held on December 5, 2012. At the hearing, claimant waived the time periods and requested to submit additional medical information.
8. Additional medical information was received and sent to the State Hearing Review Team on January 2, 2013.
9. On February 11, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant has a history of gastroesophageal reflux disease but has not had any evidence of significant weight loss or malnutrition. He had an inguinal hernia in November, 2012 but his physical examination was otherwise unremarkable. His blood pressure was fairly well controlled and there was no evidence of heart disease. He had functional range of motion and normal strength in all his extremities. His mental status in December, 2012 showed he had no psychotic symptoms and no suicidal ideation. His mood was noted to be better. In November, 2012, his mood was dysthymic and his affect was full. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, light work. A finding about the capacity for prior work has

not been made. However, this information is not material because all potentially applicable medical-vocational guidelines would direct a finding of not disabled given the claimant's age, education and residual functional capacity. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education and history of unskilled/semi-skilled/skilled work), MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

10. Claimant is a 44-year-old whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 208 pounds.
11. Claimant last worked in 2008 at a nursing home as a floor care supervisor. Claimant has also worked in maintenance and as a custodian. Claimant stated he has had 42 jobs in the past 15 years.
12. Claimant alleges as disabling impairments: hiatal hernia, depression, bipolar disorder, diabetes mellitus, low back pain, right foot pain, sleep apnea, mood swings, anger/conflict isolation and memory problems.

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 or her claim for assistance has been denied. MAC R 400.903(1). 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 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 (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the claimant is not engaged in substantial gainful activity and has not worked since 2008.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

The objective medical evidence in the record indicates that the physical examination on February 17, 2012 reported normal gait and station (p 264). An x-ray of the lumbar on March 18, 2012 was normal (p 252). An x-ray of the left knee showed prominent patellar spurs (p 256). On January 3, 2012 an x-ray of the upper gastrointestinal (GI) showed a small hiatal hernia, otherwise unremarkable (p 208-209). On May 18, 2012 he underwent an esophagogastroscope which was positive for gastric reflux (p 258-260). He was diagnosed with sleep apnea and is not currently being treated (p 266). The diabetes is being treated with no signs of end organ damage. The hearing test on January 12, 2012 showed hearing loss in both ears. Speech discrimination was 96% in the left ear and 88% in the right ear (p 277). The mental status on May 11, 2012 noted his mood was still a bit depressed. There were no psychological symptoms and no suicidal thoughts (p 18). A mental health medication review note dated December 6, 2012 showed the claimant's diagnosis was major depression, recurrent, with psychotic features. His mood was better. He had no psychotic symptoms and no suicidal ideation. He had no hallucinations or paranoia. He mentioned some depressed mood at times (pages not numbered). On November 13, 2012, the claimant was 70.5" and 221.6 lbs with a BMI of 31.46. His blood pressure was 120/80. He had an inguinal hernia but his physical examination was otherwise unremarkable. He had stable, non-

antalgic gait with gross functional range of motion and normal strength of all extremities. His mood was dysthymic and his affect was full (pages not numbered).

At Step 2, claimant's impairments do not equal or meet the severity of an impairment listed in Appendix 1.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994(b)(5)(iii). 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). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In the instant case, this Administrative Law Judge finds that claimant does have medical improvement and his medical improvement is related to the claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that claimant's. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds claimant can perform at least sedentary work even with his impairments. This Administrative Law Judge finds that

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residual functional capacity based on all current impairments and consider whether the claimant can still do work he/she has done in the past. In this case, this Administrative Law Judge finds that claimant could probably perform his past work as a maintenance worker or custodian.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the claimant's vocational profile of 43 years old, 1 year of college and unskilled work, MA-P is denied using Vocational Rule 202. 20

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

LYL/las

cc:

