

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-2448
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 16, 2013
Ionia 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 January 16, 2013. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] ([REDACTED] of [REDACTED] [REDACTED]). The department was represented by Assistant Attorney General [REDACTED] ([REDACTED]).

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 and State Disability Assistance benefit recipient and his Medical Assistance case was scheduled for review in September, 2012.
2. On September 1, 2012, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On September 17, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On September 21, 2012, the department caseworker sent claimant notice that his Medical Assistance and State Disability Assistance case would be cancelled based upon medical improvement.

5. On September 28, 2012, claimant filed a request for a hearing to contest the department's negative action.
6. On November 15, 2012, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommended decision: the claimant has limited range of motion of the neck and lumbar. The shoulder had normal range of motion. There was a sensation decrease in the bilateral arm. The MRI of the lumbar spine showed a small disc herniation. The MRI of the cervical spine showed bilateral spurring. The pulmonary function studies were within normal limits. As a result of the claimant combination of severe physical condition, he is restricted to performing light work. He retains the capacity to lift up to 20 lbs occasionally, 10 lbs frequently and stand and walk for 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 work. Therefore, based on the claimant's vocational profile (younger individual, 9th grade education, and light work history); MA-P is denied using Vocational Rule 202.11 as a guide. 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 January 16, 2013. 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 18, 2013 and January 25, 2013.
9. On March 11, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: claimant has a history of chronic obstructive pulmonary disease and degenerative disc disease. Despite the conditions, his lung function is adequate and he is ambulatory. He retains the capacity to perform light work. 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 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, MA-P is denied using Vocational Rule 202.10 as a guide. Retroactive MA-P was considered in this case and is also denied.
10. Claimant is a 50-year-old whose birth date is [REDACTED]. Claimant is 6' tall and weighs 218 pounds. Claimant attended the 9th grade and does

not have a GED. Claimant is able to read and write and does have basic math skills.

11. Claimant last worked in 2009 as a subcontractor. Claimant has also worked doing carpentry work, doing repair and maintenance and metal fabricating.
12. Claimant alleges as disabling impairments: chronic obstructive pulmonary disease, emphysema, degenerative disc disease, arthritis, carpal tunnel syndrome, seizures and a hole in the ear drum. Claimant testified that he has no mental impairments.

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 2009.

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 August 16, 2012 reported limited range of motion of the neck in all directions. The range of motion of the shoulder was within normal limits. There was no obvious deformity, dislocation, or swelling. He had limited range of motion of the lumbar. There was noted decreased sensation in the bilateral arm (p 33-34). An MRI of the lumbar spine on September 12, 2012 showed a small disc herniation at the L3-L4 and L4-L5 levels. The MRI of the cervical spine showed posterior spurring bilateral at the C6-C7 level. Posterior spurring bilateral at the C4-C5 and C5-C6. The pulmonary function studies were within normal limits (pages not numbered). A November 12, 2012 medical examination report indicates that his blood pressure was 124/72, pulse 80, temperature 97.2°, respiratory rate 16, height 72”, weight 216 lbs and BMI was 29.29 (p A1). He was oriented to person, place and time. He was well developed and well nourished and in no acute distress. His head was normocephalic and atraumatic. His right and left ear were normal externally. In the eyes, EOM was normal. Pupils are equal, round and reactive to light. Right eye exhibits no disc charge. Left eye exhibits no disc charge. The neck had normal range of motion. The neck was supple. No thyromegaly present. The cardiovascular area had normal rate and regular rhythm and normal heart sounds. No murmur heard. The pulmonary/chest effort was normal and breath sounds were normal. He has no wheezes and he has no rales. The abdomen was soft and bowel sounds are normal. There is no tenderness. The musculoskeletal area had normal range of motion. He exhibits no edema. He has no cervical adenopathy. He is alert and oriented to person, place and time. Coordination was normal in the neurological area. The skin was warm and dry. No rash noted. He is not diaphoretic. No erythema. No pallor. In the psychiatric area, his behavior was normal. Judgment and thought content was normal. He was assessed with back and neck pain (p A2). An October 12, 2012 medical examination report indicates that claimant did a room air test O₂ saturation and he was 96% walking the hall and he remained 96% and higher (p A4). His blood pressure was 148/80, pulse 74, temperature 96.2°, respiration 16 and weight was 218 lbs. He was assessed with stenosis of the cervical spine (A5). As well as degeneration of lumbar intervertebral disc and chronic obstructive pulmonary disease (A6). This Administrative

Law Judge did consider all of the approximately 300 pages of medical reports in the file when making this decision.

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 not probably perform his past work in carpentry or as a subcontractor.

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 functional 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 age 50, with a 9th grade education and light work history, MA-P is denied using Vocational Rule

202.11 as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and 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 proposed to cancel claimant's Medical Assistance and State Disability Assistance benefits based upon medical improvement.

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. PEM, Item 261, page 1. 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 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.

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 a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

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

Landis	<u>/s/</u> <hr/> Y. Lain Administrative Law Judge for Maura D. Corrigan, Director Department of Human Services
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Date Signed: March 21, 2013

Date Mailed: March 21, 2013

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.

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:

