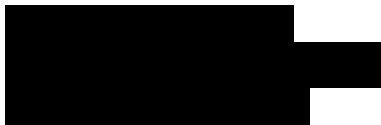


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2013-14772
Issue No: 4031
Case No: [REDACTED]
Hearing Date: March 14, 2013
Kent 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 March 14, 2013. 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 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 State Disability Assistance benefit recipient and his State Disability Assistance case was scheduled for review in September 1, 2012.
2. On October 16, 2012, claimant filed a review application for State Disability Assistance benefits alleging continued disability.
3. On November 13, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On November 15, 2012, the department caseworker sent claimant notice that his State Disability Assistance case would be cancelled based upon medical improvement.
5. On November 27, 2012, claimant filed a request for a hearing to contest the department's negative action.

6. On January 30, 2013, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: the findings are not consistent with a severely debilitating condition that would prevent the performance of gainful activities. The MRT determination of November 13, 2012 is supported in that while there may have been residual limitations associated with the recent onset of symptoms from notes around May, 2012, the totality of the evidence does not support that continuing limitations are present. It is reasonable that the claimant would be limited to the performance of at least light exertional tasks. The medical evidence of record indicates that significant medical improvement has been evidenced (20 CFR 416.994) and that the following now applies to this claim: the claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration listing. The medical evidence of record indicates that the claimant retains the capacity to perform at least light exertional tasks. The claimant has a history of less than gainful employment. As such, there is no past work for the claimant to perform, nor are there past work skills to transfer to other occupations. Therefore, based on the claimant's vocational profile (32 years old, an unknown level of education and a history of less than gainful employment), continuing SDA is denied, 20 CFR 416.920 (e&g)/BEM 261, using Vocational Rule 202.17 as a guide. MA-P and retroactive MA-P were not considered as part of this continuing SDA only review. Listings 1.04 and 11.14 were considered in this determination.
7. Claimant is a 32-year-old man whose birth date is [REDACTED]. Claimant is 5'10" tall and weighs 140 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
8. Claimant last worked February, 2012 at [REDACTED] as a sandwich artist. Claimant has also worked at [REDACTED] as an assistant store manager for 15 years.
9. Claimant was receiving State Disability Assistance.
10. Claimant alleges as disabling impairments: neuropathy, back pain, numbness in the feet, weakness in the knees and a broken hand which he broke approximately 4 weeks before the hearing.

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).

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 February, 2012.

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 a hospital note indicates that the impression was bilateral pars interarticular defects at L5 result in grade 1 anterolisthesis of L5 on S1. There is associated moderate degenerative disc disease at this level. Additionally, there is flattening of the neural foramina with some compression of the exiting L5 nerve roots, bilaterally. The spinal canal is widely patent (p 14). A May 15, 2012 hospital note indicates that claimant's blood pressure was 136/78, pulse 93, respiration 16, height 5'11", weight 140 lbs, BMI 19.53, oxygen saturation on room air 98%. The general appearance was that patient was alert oriented, anxious upon arrival,

vomiting in the room. The eye area, EOMI b/l, conjunctival normal. The HENT: oropharynx moist, not injected and without exudate. Cardiac: regular rate and rhythm, no murmurs. Pulmonary: CTA b/l, without wheezes, or crackles. No distress. GI: soft, no rebound, rigidity, or guarding noted. Extremities: no redness, swelling of joints noted. Full active range of motion of all extremities without tenderness. Back: no evidence of contusion bruising or midline step off. Complain of generalized lumbar and thoracic pain. Acute on chronic. Worsen with movement, vomiting. Skin: intact, dry and warm, without rash. Neurologic: strength 5/5 and equal b/l upper and lower extremities. Cerebellum ambulatory intact. Sensation intact b/l. No focal deficits. Vascula: radial pulses 2/4 b/l. Heme/Lymph: capillary refill less than 2 seconds. No bruising noted. Psychiatric: judgment normal. Mood normal (p 15). An MRI of the brain showed normal pre and post contrast MRI of the brain. There is no focal lesion. There is no evidence for demyelinating disease (p 91). A July 31, 2012 radiology procedure indicates that the impression was a fall and acute on chronic lumbar back pain. The impression was bilateral spondylolysis of L5 with spondylolisthesis at L5-S1 (p 53).

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.

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 CF R 416.960 through 416.969. 20 CF R 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 as an assistant store manager or a sandwich artist because of his back pain.

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 a younger individual (age 32), a light work history and a history of working as an assistant manager at McDonald's, continuing SDA is denied per 20CF R416.920 (e&g) using Vocational Rule 202.17 as a guide. Claimant can perform other work in the form of light work per 20 CF R 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.

2013-14772/LYL

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cc:

