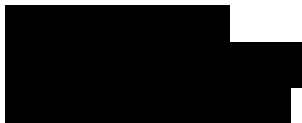


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2013-15246
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: April 2, 2013
Wayne-57 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 April 2, 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 September, 2011.
2. On September 1, 2011, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On November 16, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement and could perform prior work.
4. On November 27, 2012, the department caseworker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.
5. On December 4, 2012, claimant filed a request for a hearing to contest the department's negative action.

6. On February 5, 2013, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: per BEM 260, the SSA has administrative authority once a SSA determination is final. The medical evidence does not support that the claimant has a foot fracture, although the evidence does support that there is significant degenerative changes which would impair the claimant's to perform physical activities. The claimant's psychiatric impairments are noted to be marginally stable, page 34; positive for global developmental delays, page 10; and, moderate to marked limitations, page 17. The claimant has a significant history for non compliance with treatment. The claimant further has a history of less than gainful employment and a high school equivalent education. There is a history of drug and alcohol abuse (DAA) which is not material to this determination. The claimant states on page 75 that they smoke marijuana with occasional alcohol use but on page 81, they deny all DAA. Page 75 noted for severe ambulatory difficulties requiring an assistive device. The evidence is not sufficient to demonstrate that the findings of the SSA/ALJ factually in error at the date of their decision, nor that significant change has taken place from then to now to alter those findings. The totality of the evidence does not support that there are continuing severe limitations that would prevent the performance of sedentary exertional tasks of a simple and repetitive nature with only occasional interaction with the public, coworkers and supervisors. Additionally, the claimant would be limited to occasionally crawling, crouching, kneeling and crawling. The claimant also ought to avoid all use of moving machinery and exposure to unprotected heights. The medical evidence of record indicates that significant medical improvement has been evidenced (20C FR416.994) 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 limitations as detailed in the SSA/ALJ decision dated July 29, 2011. 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 (40 years old, a less than high school education and a history of less than gainful employment), continuing MA-P is denied, 20CFR416.920(e&g), using Vocational Rule 201.24 as a guide. Continuing SDA is denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Retroactive MA-P was not considered as part of this continuing MA-P and SDA only review. Listings 1.06 and 12.03/09 were considered in this determination.
7. Claimant is a 40-year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 170 pounds. Claimant attended the 6th grade and does not have a GED. Claimant testified he was in special

education and he is slow, but he can read and write somewhat and he can count money.

8. Claimant last worked 2008 for [REDACTED] as a cook. He was fired because he wouldn't cut his beard. Claimant was incarcerated from 1999-2006 and he testified that he had been supporting himself by selling drugs and stealing once he got out of prison.
9. Claimant was receiving Medicaid Assistance and State Disability Assistance benefits.
10. Claimant alleges as disabling impairments: left foot fracture, mental issues, paranoid schizophrenia, head injury, broken right foot as of March 18, 2013 when he was beat up and a dislike for female authority.

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 claimant has a significant history of non compliance with treatment. Claimant has a history of less than gainful employment and a less than high school equivalent education. There is history of drug and alcohol abuse. On page 75 claimant states he smokes marijuana with occasional alcohol use, but on page 81, he denies all drug and alcohol use. On page 75, claimant had a mild limp with/without use of a cane and on page 81, they are noted for severe ambulatory difficulties requiring an assistive device. The evidence is not sufficient to demonstrate that the findings of the Social Security Administration Law Judge factually erred on the date of his decision, nor that significant change has taken place from then to now to alter those findings. The totality of the evidence does not support that there are continuing severe limitations that would prevent the performance of sedentary exertional tasks of a simple and repetitive nature with only occasional interaction with the public, coworkers and supervisors. This Administrative Law Judge did consider the entire medical packet of 122 pages when making this determination.

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 [REDACTED] cook.

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 a younger individual, age 40, with a less than high school education and his history of less than gainful employment, who can perform sedentary work is not considered disabled and is denied using Vocational Rule 201.24 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

2013-15246/LYL

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:

