

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-18853
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: April 16, 2013
Wayne-18 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 16, 2013. Claimant personally appeared and testified. The department was represented by Medical Contact Worker, [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 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 November 30, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On December 6, 2012, the department caseworker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.

5. On December 13, 2012, claimant filed a request for a hearing to contest the department's negative action.
6. On February 12, 2013, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: there are no objective findings from the previous approval to compare with current findings. The ALJ indicated the claimant was limited to less than sedentary work by the treating sources. The current records indicated the claimant had wheezing in all the treating sources. The current records indicated the claimant had wheezing in all lung fields in September, 2012. The claimant reported subjective limitations. There is no evidence of any significant neurological deficits. There is no evidence of atrophy or muscle wasting from lack of use. He is able to meet his own needs in the home. Based on the information that is available in file, the claimant appears to have improved in that he is able to meet his own needs in his home. Based on the previous reported limitations, he would not have been able to meet his own needs at home. The claimant appears to have medical improvement. 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, sedentary 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, limited education and history of semi-skilled/skilled work), MA-P is denied using Vocational Rule 201.25 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments no longer preclude work activity at the above stated level for 90 days.
7. Claimant is a 42-year-old man whose birth date is [REDACTED]. Claimant is 5'9" tall and weighs 185 pounds. Claimant attended the 9th grade and does not have a GED. Claimant is able to read and write somewhat and is able to count money but does not have very good basic math skills.
8. Claimant last worked in 1999 at the [REDACTED] in a factory. Claimant has also worked selling tools and fixing tools and spraying lawns.
9. Claimant alleges as disabling impairments: back injury, hypertension, glaucoma, loss of hearing, learning disability, depression, right knee problems, anxiety, asthma, and arthritis in the lower back.

10. Claimant was receiving Medicaid Assistance and State Disability Assistance benefits.

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 1999.

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 claimant testified on the record that he lives with his brother, in a house, and he is single with no children under 18 who live with him. Claimant receives State Disability Assistance as his only form of income and he receives Food Assistance Program benefits and Medical Assistance benefits. Claimant testified that he does have a driver's license and he only drives in the daytime because he has glaucoma. Claimant testified that he does microwave food and he does grocery shop 2 times per week and he vacuums and does laundry. Claimant testified that he does cut the grass sometimes and he watches television one hour per day. Claimant testified that he can stand for less than 5 minutes, he can sit for 30 minutes at a time and can walk 1 block. Claimant testified that he can shower and dress himself and tie his shoes but he cannot squat, bend at the waist or touch his toes. Claimant testified that his right knee gives out and that he has pain in his hands/arms and his legs/feet. Claimant testified that his level of pain, on a scale of 1- 10, without medication is a 10, and with medication is a 6. Claimant testified that the heaviest weight he can carry is 5 lbs and that he doesn't smoke, drink or do any drugs. Claimant testified that on a typical day he is up and down most of the night taking medication and he lays back down because he cannot get comfortable.

The ALJ decision dated August 11, 2011 indicated the claimant had been diagnosed with asthma, low back pain, hearing loss and arthritis of the lumbar spine and knees. Claimant had pain with routine activity. The treating source indicated the claimant had limitations on reaching, pushing, pulling, lifting and bending. The claimant was limited to occasionally lifting less than 5 lbs and standing no more than 2 hours in an 8 hour day. The claimant could not operate foot and leg controls. The claimant had no difficulties when manipulating fine objects but had severe limitations in walking and standing (p 57). On June 25, 2012, the claimant was 69" and 179 lbs. He had low back pain with pain that radiates to the right hip. The right knee aches and increases after sitting and standing. Sometimes his right knee gives out. Bilateral shoulder aches. Still has occasional numbness in the right upper extremity from the elbow to the hand (p 32). An August 20, 2012 medical examination report indicates that claimant was 69" tall and weighed 179 lbs. His blood pressure was 108/64 and he was right hand dominant (p 9). The clinical impression was that claimant was deteriorating and that he had anxiety, depression and could not concentrate. He had some speech problems due to a hearing impairment. He favored the right knee, had antalgic posture and limited lumbar flexion. In the abdominal area he had gastric reflux. The cardiovascular area was normal. The

respiratory area had wheezing in all fields. In general, he could climb steps, he had right knee pain and he had fatigue after 20 minutes of activity (p 10).

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 claimant is a 42 year old man, with a date of birth of September 20, 1970. He is 5'9" tall and weighs 185 lbs. He testified that he could carry 5 lbs and that he could sit for 30 minutes at a time and walk for 1 block. He did state that he did have pain. Claimant does have some lifting and standing restrictions in place. Claimant's treating source restricted claimant from lifting more than 5 lbs, which is no longer supported by the medical record. A DHS-49 form dated September 8, 2012 showed the claimant has asthma, low back pain with pain, hearing loss at birth-now tinnitus and arthritis of the lumbar spine and knees (p 9). He gets right knee pain and fatigue with greater than 20 minutes of climbing steps. He had wheezing in all lung fields. His cardiovascular examination was normal. He had gastric reflux. He favors the right knee with antalgic posture and limited lumbar flexion. His speech is affected by hearing loss. No other neurological abnormalities were noted. He had anxiety, depression and trouble with concentration. The claimant is able to meet his

own needs in the home (p 10). This Administrative Law Judge finds that claimant can perform a wide range of sedentary activities. Claimant does retain bilateral manual hand dexterity.

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 probably not perform his past work as a factory worker.

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 42, with a less than high school education and an unskilled work history, who is limited to sedentary work, is not considered disabled pursuant to Medical Vocational Rule 201.25 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.

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