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

IN THE MATTER OF:

[redacted]

Reg. No: 2011-39458
Issue No: 2009; 4031
[redacted]
October 13, 2011
St. Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

## 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 October 13, 2011. 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 April 2011.

(2) On April 1, 2011, Claimant filed a Redetermination for Medical Assistance and State Disability Assistance benefits alleging continued disability.

(3) On May 18, 2011, the Medical Review Team denied Claimant's application stating that Claimant had medical improvement. (Department Exhibit A, pages 9-10).

(4) On June 1, 2011, the department caseworker sent Claimant notice that his MA case and SDA would be closed based upon medical improvement.

(5) On June 13, 2011, Claimant filed a request for a hearing to contest the department's negative action.

(6) On July 27, 2011, the State Hearing Review Team again denied Claimant's Redetermination stating that Claimant is capable of performing other work and could perform light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 204.00 and commented that 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. Therefore, based on the claimant's vocational profile of closely approaching advanced age with a limited education, MA-P is denied using Vocational Rule 204.00 as a guide. Retroactive MA-P was considered in this case. 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.

(7) On May 6, 2010, an assessment update was performed on Claimant and there was no change. It was noted that Claimant recognized [redacted] services were helping him and he wanted to stay sober and emotionally stable and he wanted to continue with [redacted] services. (Department Exhibits 43-47).

(8) On June 6, 2010, a primary assessment was made of Claimant at [redacted] and a treatment plan was prepared with a start date of June 29, 2010 and a target date of June 29, 2011. Claimant's first objective was to achieve his goal of stable moods by taking medications as prescribed and maintaining abstinence from alcohol. To achieve this, Claimant was to undergo a psychiatric evaluation and nursing assessment once a year, a medication review monthly and attend therapy once a week. Under Additional Issues, it was noted Claimant had a history of suicide attempts with a history of hospitalization. The Plan to Address these Issues included specifically addressing the suicide attempts. (Department Exhibits 34-42).

(9) On June 11, 2010, Claimant received his annual psychiatric evaluation at CMH. Claimant stated he was anxious, but overall he did not have any depression. His sleep has been better with Ambien. He has not had any panic attacks in three months. He continues to have some racing thoughts lately. He has not been hospitalized since June of 2009. He continues to be unemployed. He lives with his mother and denies drinking alcohol since June 14, 2009. He denies using any other drugs or abuse. He is taking his medications as prescribed. He denied any arguments or fights. He maintains his place. The doctor noted tremors in Claimant's hands and that he clenched his teeth at times. His affect was somewhat anxious. His thought form was normal and he denied psychotic features, suicidal or homicidal ideation. Claimant was instructed to continue

Ambien, Campral, Lamictal, and Neurontin as prescribed. The doctor decreased the Lexapro dosage because Claimant was complaining of racing thoughts and increased the dosage of Abilify. Diagnostic Impression: Axis I: Generalized Anxiety Disorder, Bipolar Disorder NOS and Alcohol Abuse, Axis III: Arthritis, status post surgery. (Department Exhibits 27-28).

(10) On July 14, 2010, a progress note from Claimant's counselor at CMH noted Claimant's present symptoms were mild anger, moderate anxiety, moderate depressed mood, mild disruption of thought process/content, mild family conflicts, mild hopelessness, mild irritability, mild mood swings, and mild worthlessness. The Current Assessment of Stability indicated Claimant was marginally stable with a GAF of 45. The Plan for Claimant was to continue with CMH services. (Department Exhibits 60-62).

(11) On July 27, 2010, a progress note from Claimant's counselor at CMH noted Claimant's present symptoms were moderate anxiety, mild depressed mood, mild irritability, mild mood swings, mild paranoia and mild worthlessness. The Current Assessment of Stability indicated Claimant was marginally stable with a GAF of 45. The Plan for Claimant was to continue with CMH services. (Department Exhibits 57-59).

(12) On August 30, 2010, a progress note from Claimant's counselor at CMH noted Claimant's present symptoms were moderate anger, severe anxiety, moderate depressed mood, moderate family conflicts, moderate irritability, moderate mood swings, severe panic attacks, and mild paranoia. The Current Assessment of Stability indicated Claimant was marginally stable with a GAF of 25. The Plan for Claimant was to continue with CMH services and pick up his new prescription of Ativan. (Department Exhibits 54-56).

(13) On September 9, 2010, Claimant attended his appointment at CMH. Claimant stated his anxiety had increased since the previous visit. He has difficulty maintaining sleep, but denied hearing voices or seeing things. He also denied suicidal or homicidal ideation. He stated he is getting along better with his parents and is continuing to attend therapy and is learning cognitive behavioral therapy, as well as stress reduction. Claimant's psychomotor activity was normal. He was cooperative and gave good eye contact. His speech was spontaneous, adequate and not pressured. He stated he was anxious. His affect was anxious, but overall calm and interacted pleasantly. His thought form was goal directed, relevant, coherent and logical. He denied any psychotic features. He also denied suicidal or homicidal ideation. Diagnosis: Axis I: Generalized Anxiety Disorder, Bipolar Disorder NOS and Alcohol Abuse, Axis III: Arthritis, status post surgery. Claimant was continued on Ambien, and Lexapro was increased as his anxiety level increased with the reduction in

the dose. Abilify, Campral, Lamictal, Neurontin and Ativan were continued at their current doses. (Department Exhibits 25-26).

(14) On September 13, 2010, a progress note from Claimant's counselor at CMH noted Claimant's present symptoms were mild anger, moderate anxiety, mild depressed mood, moderate disruption of thought process/content, mild family conflicts, mild hopelessness, moderate irritability, moderate mood swings, mild paranoia and mild worthlessness. The Current Assessment of Stability indicated Claimant was marginally stable with a GAF of 40. The Plan for Claimant was to continue with CMH services. (Department Exhibits 51-53).

(15) On November 17, 2010, a progress note from Claimant's counselor at CMH noted Claimant's present symptoms were mild anxiety, mild depression, mild irritability and mild family conflicts. The Current Assessment of Stability indicated Claimant was marginally stable with a GAF of 58. The Plan for Claimant was to continue with CMH services. (Department Exhibits 48-50).

(16) On December 6, 2010, Claimant attended his appointment at CMH and reported he has had some difficulty staying asleep, but is able to fall asleep with medications. He denies hearing voices or seeing things and denies suicidal or homicidal ideation. His mood is not as up and down as before and he is more even keel lately. His psychomotor activity is normal. He is cooperative and gives good eye contact. His speech is spontaneous, adequate and not pressured. His mood is even keel. His affect is calm. His thought form is goal directed, relevant, coherent and logical. Diagnosis: Axis I: Generalized Anxiety Disorder, Bipolar Disorder NOS and Alcohol Abuse, Axis III: Arthritis, status post surgery; Axis IV: Unemployed. Claimant was continued on his prescribed medications of Ativan, Lexapro, Abilify, Ambien, Campral, Lamictal and Neurontin. (Department Exhibits 23-24).

(17) On December 22, 2010, a formal progress review was completed by Claimant's counselor at CMH. The date of individual plan of service was created on June 17, 2010. Under Goal Status, the clinician noted that some objectives achieved, he was still experiencing psychiatric instability, he had financial problems and was working on objectives. Claimant's service/supports were effective while his condition was unchanged and he was generally unstable with frequent relapse. According to the clinician, Claimant believed his service/supports were effective and he was satisfied with the individual plan of service and satisfied with the provider. Recommendations counseling/motivational interviewing/SA psych/med services. (Department Exhibits 31-33).

(18) On March 2, 2011, Claimant was transferred to medical management at CMH. Claimant had begun counseling psychiatric medical services at CMH on March 5, 2009 and was discharged on March 2, 2011, to medical management, after reporting he was stable and functioning well in all areas. (Department Exhibits 29-30).

(19) On March 3, 2011, Claimant was seen at Community Mental Health (CMH). The doctor noted Claimant's psychomotor activity was normal, he was cooperative and kept good eye contact. His mood was okay and his affect was calm and smiling. His thought form was goal directed, relevant, coherent and logical. He denied hearing voices or seeing things. He also denied suicidal or homicidal ideation. Diagnosis: Axis I: Generalized Anxiety Disorder, Bipolar Disorder NOS and Alcohol Abuse, Axis III: Arthritis, multiple surgeries; Axis IV: Unemployed, lives with parents. Claimant was continued on his prescribed medications of Ativan, Lexapro, Abilify, Ambien, Campral, Lamictal and Neurontin. (Department Exhibits 21-22).

(20) Claimant was receiving Medicaid and State Disability Assistance at the time of this review.

(21) Claimant alleges as disabling impairments bipolar disorder, anxiety and sleep disorder, and acute degenerative disorder of the right shoulder.

(22) Claimant is a 45-year-old man whose birth date is [redacted]. Claimant is 5' 8" tall and weighs 170 pounds. Claimant is a high school graduate and is a Registered Nurse. Claimant is able to read and write and does have basis math skills.

(23) Claimant last worked in 2002 as a landscaper and prior to that he worked 13 years as a Registered Nurse.

## CONCLUSIONS OF LAW

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits; the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

> To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first questions asks:

> (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because he has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement.

> Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s). 20 CFR 416.994(b)(1)(i).
>
> If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must

> determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

The State Hearing Review Team upheld the denial of SDA and MA benefits on the basis that Claimant's medical condition has improved. Claimant was approved for SDA and MA benefits after being diagnosed with bipolar disorder, depression, anxiety, alcohol abuse, arthritis, and degenerative joint disease of bilateral shoulders. Pursuant to the federal regulations, at medical review, the agency has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The agency has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

In this case, the agency has not met its burden of proof. The agency has provided no evidence that indicates Claimant's improvement relates to his ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the agency's SDA and MA eligibility determination cannot be upheld at this time.

## DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the agency failed to establish that Claimant no longer meets the SDA or MA disability standard.

Accordingly, the agency's determination is REVERSED.

It is SO ORDERED.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/1/11

Date Mailed: 11/1/11

**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.

VLA/ds