


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

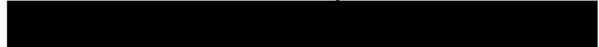
IN THE MATTER OF:



Reg. No.: 2011-52532
Issue Nos.: 2009, 4031
Case No.: 
Hearing Date: December 5, 2011
DHS County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION


This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and upon Claimant's request for a hearing. After due notice, a telephone hearing was held on December 5, 2011, in Detroit, MI. Claimant appeared and testified. The Department of Human Services (Department) was represented by .

ISSUE

Whether the Department terminated Claimant's Medical Assistance (MA-P) and State Disability Assistance (SDA) benefits in accordance with Department policy and procedure?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence and on the entire record, finds as material fact:

1. On November 17, 2010, the Department approved Claimant for MA-P, retroactive MA-P and SDA benefits.
2. On August 29, 2011, the Department's Medical Review Team (MRT) conducted a Medical Review of Continuing Eligibility for MA Disabled, which is required by Federal regulation 20 CFR 416.994, and terminated Claimant's benefits.
3. On September 12, 2011, Claimant submitted a request for hearing to the Department.
4. Claimant is thirty-three years old. His date of birth is .

5. Claimant completed tenth grade.
6. Claimant has employment experience as a welder and a machine operator.
7. Claimant's limitations have lasted for twelve months or more.
8. Claimant suffers from renal cell carcinoma, degenerative joint (disc) disease of the spine, and degenerative joint disease and a malfunctioning plate in his lower left extremity.
9. Claimant has significant limitations in physical activities involving sitting, standing, walking, bending, lifting, carrying, pulling and pushing.

CONCLUSIONS OF LAW

MA 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 administers MA-P pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance for disabled persons and is established by 2004 Michigan Public Acts (PA) 344. The Department administers SDA pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3151-400.3180. Department policies are found in BAM, BEM and RFT.

In order to receive MA benefits based upon disability or blindness, a claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20R 416.901). The Department, being authorized to make such disability determinations, uses the Federal SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also known as Medicaid, is a State of Michigan program designed to help public assistance claimants pay medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. (20 CFR 416.905).

Once an individual has been determined to be disabled for purposes of disability benefits, the individual's continued entitlement to benefits is 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.

If there is substantial evidence to find that the individual is disabled and not merely unable to engage in SGA, at that point the five-step judicial review ceases and the customer's benefits will be continued. 20 CFR 416.994(b)(5).

The first step to be considered is whether the claimant is performing SGA, which is defined in 20 CFR 416.920(b). If the customer is performing SGA, she or he is denied benefits. In this case, Claimant testified he is not working, so he is clearly not performing SGA. Although Step 1 alone does not mean Claimant is legally disabled, it does mean that Claimant has not been disqualified at Step 1 in the evaluation process.

Step 2 moves to whether the customer has an impairment that is listed in the Federal disability list, the Listing of Impairments. Appendix 1 of Subpart P, 20 CFR, Part 404.

In Step 2, the trier of fact must determine if the claimant's impairment (or combination of impairments) meets or equals the severity of an impairment listed in the Listing of Impairments. This Administrative Law Judge affirms the MRT's November 17, 2010, decision that Claimant's impairments are not in the Listing of Impairments, or equal to any listed impairments. Accordingly, the sequential evaluation process must continue. *Id.*

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). Medical improvement is any decrease in the medical severity of the customer's impairment(s) which was present at the time of the most recent favorable medical decision that the customer was 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 the impairment(s) (see 20 CFR 416.928).

Analyzing this case under the requirements of Step 3, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds that there is medical improvement. After being approved for benefits, Claimant, [REDACTED], underwent partial nephrectomy to remove a malignant renal mass. The surgery was successful and did result in a decrease of the medical severity of Claimant's condition. As medical improvement did occur, the Administrative Law Judge must proceed to Step 4 of the MA sequential analysis in an MA review case.

Step 4 requires the trier of fact to consider whether the medical improvement is related to the Claimant's ability to work. In this case, Claimant's treating physician, [REDACTED], in a disability note dated [REDACTED], diagnosed renal cell carcinoma, lower left extremity fracture and degenerative joint disease, and a spinal condition (although [REDACTED] note is not clear on this point, it appears he may be referring to degenerative disc disease).

[REDACTED] wrote that Claimant is unable to work because of the following limitations: inability to stand for any long period of time, inability to walk more than one block at a

time, inability to walk and stand during a work day for more than two hours, inability to sit at one time for more than fifteen minutes, inability to sit more than two hours in a work day, inability to conduct any lifting on a frequent as well as an occasional basis, inability to bend, stoop or perform activities requiring balance, and that claimant needs to elevate his legs frequently during an eight-hour work day.

Claimant's physician also stated Claimant was not capable of performing a sedentary low stress job on a 40-hour work week schedule and on a regular and sustained basis. Finally, ██████████ stated that Claimant had poor concentration and also suffered from confusion secondary to the medications he was taking.

Since the treating physician's disability note of ██████████, no doctor has released Claimant to return to work. Indeed, according to Claimant's credible and un rebutted testimony, he had an MRI on ██████████, he consulted with a surgeon, and was told he needs back and leg surgery but it could not be performed for one year from Claimant's renal surgery on ██████████.

The Administrative Law Judge herein finds that ██████████ medical evaluation is applicable to Claimant currently. In fact, Claimant is merely waiting for one year to pass in order to undergo additional surgery. In other words, Claimant is still unable to work as his limitations and abilities have not changed since before the ██████████, surgery.

It is found that ██████████ diagnosis is a multiple one, and while one piece of the problem improved and is in remission for the time being, Claimant still has a diagnosis which prevents him from working. The Step 4 analysis, therefore, is that Claimant's medical improvement is not related to his ability to work, and he remains disabled from work.

As the requirements of Step 4 have been met, and Claimant is determined to be disabled from work, the Administrative Law Judge must next consider Step 5. Step 5 presents a series of coverage exceptions. In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) applies. If the exceptions do not apply, Claimant's disability shall be found to be continuing, and he remains eligible for benefits. If the exceptions do apply, Claimant will be disqualified, and his benefits shall stop. 20 CFR 416.994(b)(5)(v).

Looking now at the exceptions the law provides, the exceptions are listed in two separate groups. The first group of exceptions is as follows:

1. *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).*
2. *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).*
3. *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as*

disabling as it was considered to be at the time of the most recent favorable decision.

4. *Substantial evidence demonstrates that any prior disability decision was in error.*

20 CFR 416.994(b)(3).

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of these four exceptions applies to Claimant's case.

The second group of exceptions applicable to individuals who have no medical improvement, found at 20 CFR 416.994(b)(4), is as follows:

1. *A prior determination or decision was fraudulently obtained.*
2. *You did not cooperate with us.*
3. *Claimant cannot be found.*
4. *Claimant failed to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.*

After careful review of the record, this Administrative Law Judge finds none of the above-mentioned exceptions applies to Claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that Claimant's disability for purposes of Medical Assistance and State Disability Assistance benefits should continue. The Department's termination of Claimant's MA and SDA benefits is hereby REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant continues to be medically disabled.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to reinstate and continue Claimant's MA and SDA benefits. A review of this case shall be set for no earlier than January, 2013.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 13, 2011

Date Mailed: December 13, 2011

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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

JL/pf

cc:

