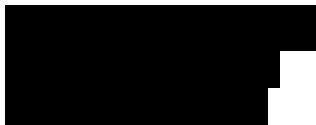


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201150342
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date:
November 22, 2011
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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, as did his sister.

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 and State Disability Assistance benefit recipient and his MA and SDA cases were scheduled for review in May 2011.
- (2) On May 16, 2011, Claimant filed the necessary paperwork to complete a redetermination for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On June 22, 2011, the Medical Review Team denied Claimant's application stating that Claimant had the capacity to perform other work. (Department Exhibit A, pages 115-116).

- (4) On July 1, 2011, the Department caseworker sent Claimant notice that his MA case and SDA would be closed based upon medical improvement to the extent that he would be capable of performing other work.
- (5) On July 22, 2011, Claimant filed a request for a hearing to contest the Department's negative action.
- (6) On October 13, 2011, the State Hearing Review Team again denied Claimant's Redetermination stating that Claimant is capable of performing a wide range of light unskilled work. The State Hearing Review Team commented that the Claimant's impairments do not meet/equal the intent or severity of a Social Security listing and that 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 high school education, MA-P is denied using Vocational Rule 202.14 as a guide. 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 June 1, 2010, Claimant underwent surgery for bilateral cerebral abscesses. He underwent a right parietal occipital craniectomy with I&D of abscess and a left temporal craniectomy with I&D of abscess with [REDACTED] (Department Exhibit A page 73).
- (8) Subsequent to his surgery, Claimant has been seen numerous times by Dr. Dennis, his family physician. On November 19, 2010, Claimant was seen by Dr. Dennis and complained of persistent headaches and memory loss. Claimant was seen again by Dr. Dennis on December 17, 2010 and again complained of headaches. He noted that Claimant had been prescribed medication as of his last appointment and that medication had not helped the headaches, in fact, the headaches had become worse at times. Dr. Dennis saw Claimant again on January 19, 2011 and on May 13, 2011. At each appointment, Claimant was noted as having chronic daily headaches despite different medications. It was noted that the headaches are worse upon exertion and it was also noted that Claimant has a constant ringing in his ears. [REDACTED] also noted in his medical examination report of May 13, 2011 that Claimant suffers from residual headaches and ringing in the ears since his brain surgery in 2010. (Department Exhibit A pages 79-86 and pages 103-104).
- (9) Claimant has also been seen several times by [REDACTED], the Claimant's Neurologist at [REDACTED]. Claimant was seen by [REDACTED] on December 28, 2010 and complained of persistent headaches and ringing in the ears. [REDACTED] noted that Claimant has been taking different medication for pain relief and that although Topamax had worked for a short time, his pain had increased recently. It was also noted that

Claimant was complaining of increased night sweats, fevers, and chills. Claimant was seen again by [REDACTED] on March 2, 2011 and on March 31, 2011. At both examinations, Claimant complained of persistent headaches. [REDACTED] noted that Claimant's headaches worsened upon coughing and lifting. He also noted that Claimant's headaches do not have classic migrainous features and that they are occasionally positional, in that the intensity will increase upon the Claimant assuming different positions. (Department Exhibit A pages 92-102).

- (9) Claimant was receiving Medicaid and State Disability Assistance at the time of his review.
- (10) Claimant alleges as disabling impairments brain abscess, constant headaches, and ringing in the ears.
- (11) Claimant is a 52 year old man whose birth date is [REDACTED]. Claimant is 5' 10" tall and weighs 170 pounds. Claimant is a high school graduate and has a history of medium to heavy, semiskilled to unskilled work.
- (12) Claimant last worked in 2010 as a logger.
- (13) As of the date of hearing, the Claimant had an appeal pending for Social Security Disability.

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 brain abscesses, constant headaches, and ringing in the ears. 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).

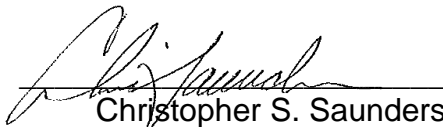
In this case, the agency has not met its burden of proof. The agency has provided no evidence that indicates Claimant's improvement relates to his ability to do basic work activities. In fact, the objective medical evidence tends to show that although Claimant's brain abscesses have been resolved surgically, Claimant still suffers from the same symptoms and pain that were present at the time of the original disability determination. 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.


Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 12/21/11

Date Mailed: 12/21/11

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 to:
Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CSS/hw

cc:

