

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

IN THE MATTER OF:



Reg. No.: 2012-14988
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: March 1, 2012
County: Lenawee County

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on March 1, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED] son from CMH.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On April 20, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly determined that Claimant was no longer disabled and denied 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 October 2010.

- (2) On October 1, 2010, Claimant filed a Redetermination for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On November 10, 2011, the Medical Review Team denied Claimant's application indicating that Claimant was capable of performing other work based on his non-exertional impairment. (Department Exhibit A, pages 4-5).
- (4) On November 23, 2011, the department caseworker sent Claimant notice that his MA case and SDA would be closed based upon his capacity to perform other work.
- (5) On December 1, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (6) On January 18, 2012, the State Hearing Review Team (SHRT) again denied Claimant's Redetermination indicating that Claimant retains the capacity to perform a wide range of unskilled work 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. SDA was denied per BEM 261 because the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (7) On September 15, 2010, Claimant went to his Medication review alone. His affect was anxious, but his thoughts were organized. He reported he spent 2 weeks in a temporary nursing home for IV antibiotics for cellulitis and he takes Percocet every two days. He reported his depression and anxiety are mainly stable but he is concerned about his medical problem. (Department Exhibit A, pp 40-42).
- (8) On December 10, 2010, Claimant attended his Medication review. Claimant came alone, his affect seemed euthymic and his thoughts were organized. He reported that he liked the Adult Foster Care (AFC) home and he was not taking Percocet. (Department Exhibit A, pp 34-37).
- (9) On February 8, 2011, Claimant saw his psychiatrist for a Medication Review. Claimant was accompanied by his AFC home manager. Claimant's affect appeared euthymic and his thoughts organized. He stated he was not taking any pain killers. His psychiatrist noted that Claimant's hallucinations and depression were stable. His sleep and anxiety were under control and he was to continue taking Paxil CR, Seroquel, and Ambien as prescribed. (Department Exhibit A, pp 29-33).

- (10) On June 14, 2011, Claimant arrived alone to see his psychiatrist. Claimant's affect was euthymic and his thoughts were organized. Claimant still had shaking in his body and hands which he claimed had been there for decades. Claimant reported that his depression and anxiety are mainly tolerable, and feels his paranoia is stable. Claimant was currently prescribed Ambien, Paxil, Serquel, Atenolol, Protonix, Metformin, Simvastatin, Lisinopril, Docusate Sodium, Isosorbide Mononitrate SR, Fluticansone, and an Albuterol Inhaler. (Department Exhibit A, pp 19-23).
- (11) On August 15, 2011, Claimant's psychiatrist noted that Claimant's psychiatric symptoms were stable and he had a history consistent with Depressive disorder with questionable psychotic features. He also indicated that Claimant had symptoms of Posttraumatic Stress Disorder. Claimant biologically denied any history of psychiatric illness, with a history or extensive medical illnesses increasing his anxiety. Claimant's psychiatrist also suggested that Claimant needed to see the neurologist for shakiness. (Department Exhibit A, p 18).
- (12) On January 11, 2012, Claimant's chest x-ray was compared to his chest x-ray from 8/18/11, which showed no focal airspace opacification to suggest pneumonia and no pleural effusion, pneumothorax, or pulmonary edema. Unchanged mild cardiomegaly. Redemonstration of bilateral glenohumeral joint osteoarthritis. Large amorphous areas of calcification/ossification were seen projecting over the right scapula. They may have represented bodies within the glenohumeral joint and were unchanged from the prior x-ray. Claimant had a history of cardiac disease with a heart catheterization on 3/17/09. He has angina and a history of diabetes being treated with oral medication and insulin. Also, he had a kidney stone with a stent in place. History of depression. A 12-Lead EKG interpretation showed conduction with a complete right bundle branch block and left anterior fascicular block. Claimant was administered respiratory interventions for wheezing. After procedure, breath sounds diminished. Claimant's discharge diagnosis was COPD flare and diabetic hyperglycemia.
- (13) On January 27, 2012, Claimant underwent a heart catheterization revealing non-obstructive coronary disease, less than 50%, with a mildly dilated aortic root. Claimant's echocardiogram showed his Global LV systolic function was likely low-normal. Grossly estimated ejection fraction between 50 and 55%. No obvious regional wall motion abnormalities were identified. The right ventricular systolic function appeared to be mild to moderately reduced. All four cardiac chambers appeared mildly dilated. There was trace to mild tricuspid regurgitation and aortic regurgitation. There was evidence of pericardial effusion. The myocardial perfusion imaging study showed abnormal myocardial perfusion imaging with a moderate sized area of anteroapical ischemia provoked with Lexiscan.

There was also at least a moderate increase in left ventricular end diastolic volume with at least mild global systolic left ventricular dysfunction.

- (14) On August 14, 2012, a psychiatrist performed a medical examination of Claimant on behalf of the department noting Claimant was diagnosed with major depression, recurrent, post traumatic stress disorder, and a psychotic disorder and checked the box on the form that he was improving. (Department Exhibit A, pp 11-12).
- (15) Claimant was receiving Medicaid and State Disability Assistance at the time of this review.
- (16) Claimant alleges as disabling impairments of coronary artery disease, hypertension, diabetes mellitus, chronic anemia, gastroesophageal reflux disease (GERD), gout, cardiac disease, chronic obstructive pulmonary disease (COPD), hyperlipidemia, depression, posttraumatic stress disorder, psychotic disorder, left renal genetic abnormality with pelvic kidney, left hydronephrosis, and right renal mass with urolithiasis post stenting.
- (17) Claimant is a 50-year-old man whose birth date is [REDACTED] Claimant is 5'3" tall and weighs 230 pounds. Claimant has a seventh grade education. Claimant is able to read and write and does have basic math skills.
- (18) Claimant last worked in 2006 as a dishwasher.

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 question 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 depression, a psychotic disorder and posttraumatic stress disorder. 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 stability on his psychiatric medications 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 department erred in proposing to close Claimant's MA and SDA cases based upon a finding of improvement at review.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, Claimant's next mandatory medical review scheduled in June, 2014 (unless he is approved eligible for Social Security disability benefits by that time). It is SO ORDERED.

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

Date Signed: 6/18/12

Date Mailed: 6/18/12

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

■ [REDACTED]