

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201247243
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: June 26, 2012
Mason County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on Tuesday, June 26, 2012. Claimant appeared with his authorized [REDACTED]. The Department's witness was [REDACTED].

ISSUE

Was recovered non-disability medically established?

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's last MA-P/SDA approval was on December 2009.
2. On April 9, 2012 the Department of Human Services (DHS) proposed termination of Claimant's MA-P/SDA based on a recovered non-disability per BEM 260/261 with a hearing request on April 19, 2012.
3. Claimant was age 44, with high school education, and skilled handyman work history (Medical Packet, Page 45).
4. Claimant alleges continued disability due to a combination physical impairment.
5. Medical reports state the Claimant on:
 - a. December 21, 2011, had vision in right eye 20/25, left eye 20/20, both eyes 20/20 with glasses; the he presents in no distress; that

he shows no signs of imbalance or unusual gait; that his HEENT examination is within normal limits; that he had normal straight leg raising; and an intact sensory exam; that muscle testing had upper and lower extremities reveals them all to be symmetrical; that range of motion of the bilateral upper and lower extremities are all within normal limits and is fine and gross motor skills are intact; that balance test and neurologic exam are currently stable; that Romberg is negative; that his physical capabilities appear within normal limits; that head pain would not be keeping him working at least low to moderate exertional kind of duties; that it would be precautionary to advise that he work on ground floor and not be near or operate dangerous machinery (Medical Packet, Pages 46 and 47).

6. SHRT decision dated May 30, 2012 states the Claimant's impairments do not meet/equal a Social Security listed impairment (Medical Packet, Page 129).

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 MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Facts above are undisputed.

"Disability" is:

...the inability to do any substantial gainful activity 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 12 months.... 20 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your

past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The Claimant has the burden of proof to establish disability as defined above by the preponderance of the evidence of record and in accordance with the 5 step process below. 20 CFR 416.912(a).

...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 decision 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).

Step 1. Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter? If you do, your disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If you do not, has there been a medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see Step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (see Step 4 in paragraph (b)(5)(iv) of this section.) 20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related to your ability to do work, see Step 5 in paragraph (b)(5)(v) of this section. 20 CFR 416.994(b)(5)(iii).

Step 4. If we found in Step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at Step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If any of the first group of exceptions to medical improvement applies, see Step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to your ability to do work or if any of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see Sec. 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in Step 3 in paragraph (b)(5)(iii) of this section shows significant limitation to your ability to do basic work activities, see Step 6 in paragraph (b)(5)(iv) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work that you have done in the past. If you can do such work, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If

you cannot, disability will be found to continue. 20 CFR 416.994(b)(5)(vii).

At Step 1, continued eligibility is denied. The medical evidence of record does not establish Claimant's impairments meet/equal a Social Security listing.

At Step 2, the evidence of record does establish Claimant's medical improvement by a decrease in medical severity.

At Step 3, the evidence of record does establish the medical improvement was related to Claimant's ability to perform basic work activities, as defined below.

Severe/Non-Severe Impairment

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The medical reports of record are mostly examination, diagnostic and treatment reports. They do not provide medical assessments of Claimant's physical limitations relative to his functional capacity to perform basic work activities, as defined above. 20 CFR 416.913(c)(1) and (2). Stated differently, does the combination physical impairments impair the Claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

At Step 4, the evidence of record does establish medical improvement related to Claimant's ability to perform basic work activities. Therefore, disability is ended at Step 4.

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. BEM, Item 261, p. 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, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

Therefore, recovered non-disability has been established at Step 4 by the competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides recovered non-disability has been medically established.

Accordingly, proposed MA-P/SDA termination is **UPHELD**, AND SO ORDERED.

/s/

William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 27, 2012

Date Mailed: June 27, 2012

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.

201247243/WAS

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.

WAS/tb

cc:

