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

IN THE MATTER OF:

Reg. No.:	2012-49020
Issue Nos.:	2009, 4031
Case No.:	
Hearing Date:	August 6, 2012
County:	Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 August 6, 2012, from Detroit, MI. Claimant was represented by his . The Department of Human Services (Department) was represented by .

ISSUE

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 recipient of MA-P and SDA benefits.

2. On April 17, 2012, a medical review of claimant's disability status was conducted.

3. Claimant was found to have medically improved, and his MA-P and SDA benefits were placed into closure, because claimant was not considered disabled.

4. Medical evidence from the previous file was considered.

5. Claimant had originally applied for disability benefits on the basis of bipolar disorder and a giant cell tumor.

6. Claimant was approved for benefits on April 20, 2011.

7. The medical packet at the time of the initial approval consisted of records related to the giant cell tumor and bipolar disorder.

8. The most recent medical packet does not contain any records of bipolar disorder, or the improvement thereof.

9. New evidence consisted of a few treating source reports that indicated claimant was improving with regard to the giant cell tumor.

10. Claimant is 31 years old.

11. Claimant has a high school education.

12. Claimant is not currently working.

13. A physical status examination conducted in [redacted] shows continued need for an assistive walking device, the inability to lift all but the smallest amounts of weight, normal range of motion, a need for pain reduction and continued care, and an inability to stand, walk, or operate foot controls for any great length of time.

14. A physical status exam conducted on [redacted], is almost identical in regards to range of motion, the use of an assistive device, and the need for pain reduction and continued care; the report did not make assessments with regard to standing, walking, or lifting.

15. On April 26, 2012, claimant filed for hearing.

16. On June 16, 2012, the State Hearing Review Team (SHRT) denied MA-P and SDA, stating that claimant was medically improved.

17. On August 6, 2012, a hearing was held before the Administrative Law Judge.

18. The record was held open for additional evidence, on November 8, 2012, SHRT again denied MA-P and SDA, stating that claimant was not disabled through the normal 5-step process.

CONCLUSIONS OF LAW

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 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 Bridges Reference Manual (BRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in BAM, BEM and BRM.

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

Disability is defined as 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.

However, once an individual has been determined to be disabled for the purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. 20 CFR 416.994. In evaluating whether disability continues, the Administrative Law Judge must follow a sequential evaluation process, not unlike the initial disability evaluation in which current work activities, severity of impairment, and the possibility of medical improvement and its relationship to the individual's work ability are assessed. Review ceases and benefits continue if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity (SGA). 20 CFR 416.994(b)(5).

In determining the continuation of disability, an eight-step process is followed. First, there must be a determination of whether the claimant is engaging in SGA. Second, the undersigned will determine whether the claimant has an impairment which meets or equals the severity of a listed impairment. This is followed by a determination of whether there has been medical improvement. If there has been medical improvement, a determination of whether the medical improvement is related to the claimant's ability to work must be made. If there has been no medical improvement, the undersigned will consider whether any exceptions apply if the claimant has made no medical improvement. If there has been medical improvement and the improvement is related to claimant's ability to work, a determination of whether the impairment is severe will be made. For the seventh step, the undersigned will assess a claimant's current ability to engage in SGA. Finally, the claimant will be judged according to her or his capacity to perform any other work, given the claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(i-viii).

The first step that must be considered is whether the claimant is still partaking in SGA. 20 CFR 416.994(b)(5)(i). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a

person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2012 is $1,690. For non-blind individuals, the monthly SGA amount for 20121 is $1010.

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that claimant is not engaging in SGA and, thus, passes the first step of the sequential evaluation process.

In the second step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step three.

The Administrative Law Judge finds that claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. We, therefore, proceed to the next step.

In this step, the undersigned must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues to be disabled. A determination that there has been a decrease in the medical severity must be based on improvement in the symptoms, signs, and/or laboratory findings associated with the claimant's impairment. If there has been medical improvement, as shown by a decrease in the medical severity, the undersigned must proceed to step 4, as discussed above. If there has been no decrease in severity and, thus, no medical improvement, step 4 is skipped and the undersigned will proceed to step 5.

In the current case, the Department has failed to meet its burden of proof in showing medical improvement, shown by a decrease in medical severity. The medical evidence presented does not indicate an improvement or a decrease in medical severity. While the medical evidence does show a few exams showing that the large cell tumor in claimant's femur has been removed and has not recurred, the cited records makes no mention of any lingering decreases or improvements in claimant's residual functional capacity. Furthermore, claimant also originally applied for benefits on the basis of bi-polar disorder and submitted evidence of the same. These new records contain no evidence regarding this disorder. While it is unclear as to whether claimant was approved on the basis of bipolar disorder, the original approval from the Medical Review Team (MRT) certainly does not indicate that the bipolar disorder was not considered. Regardless, the undersigned cannot simply assume that the basis for approval did not

involve a condition for which the claimant applied and submitted copious amounts of medical records.

Additionally, an internal exam conducted in [redacted] showed normal range of motion but difficulties in walking, standing, lifting, and the need for continued care, pain reduction, and an assistive ambulatory device. A similar exam was conducted at order of the undersigned on [redacted]. This exam contained almost identical findings as the first internal exam. While the second exam did not conduct any exams or report findings with regard to limitations in claimant's walking, standing and lifting abilities, it did indicate a continued need for treatment and a reduction in functional capacity. As such, the undersigned, at most, can hold that there is no evidence of an increase in functional capacity.

The Department has the burden of proof to show actual improvement. The evidence presented by the Department shows some slight improvement with regard to a removal of a tumor, but certainly not improvement with regard to functional capacity. Therefore, as the medical records cannot be said to show improvement, the Department has not met its burden of proof in showing improvement, and the undersigned will continue to step 5.

If there has been no medical improvement or it is found that the medical improvement is not related to your ability to work, the Administrative Law Judge must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (4) applies. If no exceptions apply, disability will be found to continue. If one of the first group of exceptions to medical improvement applies, the sequential process continues. If an exception from the second group of exceptions to medical improvement applies, 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)(v).

The law provides for certain limited situations when disability can be found to have ended even though medical improvement has not occurred if the claimant can engage in SGA. These exceptions to medical improvement are intended to provide a way of finding that a person is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the person should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, it must also be shown that, taking all current impairment(s) into account, not just those that existed at the time of the most recent favorable medical decision, you are now able to engage in SGA before disability can be found to have ended. 20 CFR 416.994(b)(3).

The first group of exceptions, found in 20 CFR 416.994(b)(3), is as follows:

> (i) Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work);

(ii) Substantial evidence shows that you have undergone vocational therapy (related to your ability to work);

(iii) 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;

(iv) Substantial evidence demonstrates that any prior disability decision was in error. This exception to medical improvement based on error is considered if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(A) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in your file such as pulmonary function study values was misread or an adjudicative standard such as a listing in appendix 1 of subpart P of part 404 of this chapter or a medical/vocational rule in appendix 2 of subpart P of part 404 of this chapter was misapplied), or;

(B) At the time of the prior evaluation, required and material evidence of the severity of your impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found, or;

(C) Substantial evidence which is new evidence which relates to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the

> new evidence (which relates to the prior determination) been considered at the time of the prior decision, the claim would not have been allowed or continued. **A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception**.

In examining the record, the undersigned finds that no exceptions of the first group apply.

In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that the claimant is no longer disabled. In these situations, the decision will be made without a determination that the claimant has medically improved or can engage in SGA. 20 CFR 416.994(b)(4).

The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), is as follows:

> i) A prior determination or decision was fraudulently obtained;
>
> ii) Claimant did not cooperate;
>
> iii) Claimant is unable to be located;
>
> iv) Claimant failed to follow prescribed treatment which would be expected to restore the ability to engage in substantial gainful activity.

The undersigned has considered the record and finds no evidence that claimant meets any of these exceptions.

Therefore, as no exceptions apply, disability must be found to continue. 20 CFR 416.994(b)(5)(v). As claimant is found disabled at this step, no further evaluation is needed and the undersigned declines to do so. Finally, as disability must be found to continue, the Department was in error when it closed claimant's MA-P and SDA benefit cases for medical improvement.

DECISION AND ORDER

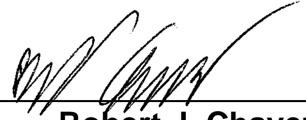
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is disabled for the purposes of the MA and SDA programs. Therefore, the decision to close claimant's MA-P and SDA benefits was incorrect.

Accordingly, the Department's decision in the above-stated matter is, hereby, REVERSED.

The Department is ORDERED to:

1. Remove all negative actions against claimant's benefit case in question.

2. Initiate a review of claimant's disability case in January, 2014.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 23, 2013

Date Mailed: January 24, 2031

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

RJC/pf

cc: