STATE OF MICHIGAN

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

IN THE MATTER OF:



Reg. No.: 201255777 Issue No.: 2009; 4031 Case No.:

Hearing Date: August 15, 2012

County: Saginaw

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administ rative 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 August 15, 2012. Claimant appear ed and provided testimony her behalf Participants on behal f of the Department of Hum an Services (Department) included

<u>ISSUE</u>

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 May 26, 2011.
- 2. On May 16, 2012 the Department of Human Services (DHS) terminated the Claimant's MA-P based on a reco vered non-disability per BEM 260 with a hearing request on May 24, 2012.
- 3. Claimant was age 45, with a GED, and unskilled telemarketer and skilled work in auto engine block repair, inspector, and welding.
- 4. Claimant alleges continued disability due to back problems.
- Medical reports since Claimant's last MA-P approval state the Claimant on:
 - July 7, 2011, has a right radi culopathy which is intractable a nd disabling with severe low back pain and segmental change wors e

at the 4-5 segment of his lumbar spine; that on examination he walks with a severe right antalgi c gait; that he has mechanical findings of positive straight leg r aising at 45° degrees; and that he has sensory changes more in L5 distribution (Medical Pack et, Page 173).

- b. July 12, 2011, was admitted for the purpose of undergoing surgery and that he was transferred recovery r oom in stable condition; that after two days he was discharge and has been up amb ulating; that his pain is under contro I; that his lower ex tremities strength is strong and equal; that he was advis ed not to lift anything heavier than 5 to 10 pounds, no bending or twisting; that he sho uld continue to wear his lumbar brac e at all times (Medical Pack et, Page 169).
- c. August 8, 2011, has continued to have some right low back pain; that his pain has increased with coughing and sneezin g; that he is not sleeping well; that he relates this particularly to the back brace; that there is no measurable neurological weakness; that at this time he is encouraged to increase his ac tivities (Medical Packet, Page 166).
- d. November 9, 2011, c ontinues to wear his lumbar brace; that his bilateral lower extremities is st rong and equal without any evidence of neurological weak ness; and that he is doing very well (Medical Packet, Page 167).
- 6. State Hearing Rev iew Team deci sion dated July 6, 2012 states the Claimant's impairments do not m eet/equal a Soc ial Sec urity listing (DHS Exhibit A, Page 234).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode 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 Bridges Reference Manual (BRM).

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies are found in the Bridge es Administrative Manual (BAM), the Bridges Elig ibility Manual (B EM) and the Bridges Reference Manual (BRM).

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Facts above are undisputed.

"Disability" is:

...the inability to do any substant ial 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.

...Ability to engage in substantial gainful activity. In most instances, we must show that you are able to engage in substantial gainful act ivity before your benefits are stopped. When doing this, we will consider all your courrent impairments not just that impairment(s) present at the time of the most recent favorable edetermination.... 20 CFR 416.994(b)(1)(v).

...To assur e that disability reviews are carried out in a uniform manner, that a decision of continuing disab ility can be made in the most expedi tious 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 disab ility contin ues. Our review may cease an denefits 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 steps are:

Step 1. Do you have an impai rment 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, ha s there been a medical improvement as def ined in pa ragraph (b)(1)(i) of this section? If there has been me dical improvement as s hown by a decrease in medical s everity, 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 m edical improvement, we must determine whether it is related to your ability to do w ork in

accordance with paragraphs (b)(1)(I) through (b)(1)(iv) of this section; i.e., whether of not there has been an increase in the residual functional capac ity 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 w ork, 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)(40 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 medica limprovement 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 im provement applies, we will determine whether all your current impairments in combination are severe (see Sec. 416.921). This determination will consider al I your current impairments and the impact of the combination of these impairments on your ability to function. If t he residual functional c apacity assessment in Step 3 in paragra ph (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 antly limit y our physic al or in combination do not signific 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 impai rment(s) is severe, we will asses s your current ability to engage in s ubstantial gainful activ ity in accordance with 41 6.961. That is, we will ass ess 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 b e 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 cons ider one fina I step. Given the residual functional capacity assessment and c onsidering y our age, education, and past work experience, c an you do other work? If you can, dis ability will be found to have ended. If you cannot, disability will be found to continue. 20 CF R 416.994(b)(5)(vii).

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

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

At Step 3, the evidence of record does not establish the medical improvement is related to Claimant's ability to perform basic work activities, as defined below.

Basic w ork activities. When we talk about basic wor k activities, we mean the abilities and aptitudes neces sary to do most jobs. Examples of these include:

- 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 medic al reports of record are mostly examination, diagnostic, and treatment reports. They do not provi de medical assessments of Claim ant's physical limitations relative to his functional in capacity to perform basic work activit ies, as defined above. 20 CFR 416.913(c)(1) and (2). Stated differently, do the ph ysical impairments impair the Claimant slightly, mildly, moderately (non-severe im pairment, as defined above) or severely, as defined above?

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At Step 4, the eviden ce of record does not establish medical improvement or medical improvement related to Claiman t's ability to work. Therefore, di sability continues at Step 4.

Therefore, recovered non-disability has not 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 conclusion sof law, decides recovered non-disability has not been medically established.

Accordingly, termination is **REVERSED**, and retroactive reins tatement of benefits **ORDERED**.

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

William A Sundquest

Date Signed: February 12, 2013

Date Mailed: February 12, 2013

NOTICE: Administrative Hearings may or der a re hearing 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 Hear ings will not orde rarehearing 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 ti mely 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

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