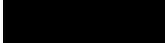


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**



IN THE MATTER OF:



Reg. No.: 2012-21472
Issue Nos.: 2009, 4031
Case No.: 
Hearing Date: March 5, 2012
County: Wayne (82-18)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION


This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on March 5, 2012, from Detroit, Michigan. Claimant appeared and testified. The Department of Human Services (Department) was represented by 


ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material and substantial evidence in the record and on the entire record as a whole, finds as fact:

1. In June 2010, Claimant was approved for MA-P and SDA.
2. On review dated December 15, 2011, the Department's Medical Review Team (MRT) found Claimant ineligible for continuing MA and SDA benefits.
3. On December 22 and December 29, 2011, Claimant submitted requests for hearing to the Department.
4. Claimant is thirty-nine years old .
5. Claimant completed the eleventh grade.

6. Claimant has employment experience as a machine maintenance worker. He last worked in 2007 as a physical laborer.
7. Claimant's limitations have lasted for twelve months or more.
8. Claimant suffers from degenerative disc disease, chronic obstructive pulmonary disease, seizures, neuropathy, carpal tunnel syndrome, depression and anxiety.
9. Claimant has significant limitations on physical activities involving lifting, pulling, pushing, reaching, stooping, standing, squatting and bending.

CONCLUSIONS OF LAW

MA is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). MA-P (disability), also known as Medicaid, is a program designed to help public assistance claimants pay their medical expenses. The Department administers MA-P 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).

The SDA program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACCS, Rule 400.3151 through Rule 400.3180.

In order to receive MA benefits based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act. 20 CFR 416.901. The Department utilizes the SSI definition of disability when making medical decisions on MA applications.

The law defines disability as the inability to do substantial gainful activity (SGA) 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 twelve months. 20 CFR 416.905.

Once an individual has been determined "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in SGA. 20 CFR 416.994(b)(5).

The first step to be considered is whether the claimant can perform SGA defined in 20 CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified at this step in the evaluation.

In the second step, the trier of fact must determine if the claimant's impairment (or combination of impairments) meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant's medical record does not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Accordingly, the sequential evaluation process must continue.

In the third step of the sequential evaluation, the trier of fact 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 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) (see §416.928).

If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and, thus, no medical improvement, the trier of fact skips Step 4 and moves to Step 5 in the sequential evaluation process.

Claimant was approved for MA-P in June 2010. In this case, the Department failed to meet its burden of proof in showing medical improvement by a decrease in medical severity. No medical documentation was provided that showed Claimant's condition at the time of the most favorable disability determination. There is no evidence that this medical documentation was inaccessible; no explanation was given as to why only the most recent records were reviewed, and there was nothing preventing the contacting of Claimant's treating sources to reconstruct the file if the previous evidence was unavailable. The medical improvement evaluation requires a comparison of the most recent favorable medical records with Claimant's earlier records; it does not allow for the governing agency simply to repeat the initial disability process. Therefore, as no prior medical records have been provided, the Department has not met its burden of proof in showing improvement, and the undersigned must continue to Step 5.

Before continuing to Step 5, it should also be noted that Claimant gave credible and un rebutted testimony to establish that his condition has not improved in any manner, and, in fact, it worsened with regard to increased seizures and increased shortness of breath related to chronic obstructive pulmonary disease.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) applies. If none of them applies, Claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

In the first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), is as follows:

- *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).*
- *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).*
- *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.*
- *Substantial evidence demonstrates that any prior disability decision was in error.*

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above applies to Claimant's case.

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

- *A prior determination or decision was fraudulently obtained.*
- *You did not cooperate with us.*
- *Claimant cannot be found.*
- *Claimant failed to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.*

After careful review of the record, this Administrative Law Judge finds none of the above-mentioned exceptions applies to Claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that Claimant's disability for purposes of Medical Assistance and State Disability Assistance must continue.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant continues to be medically disabled.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to maintain Claimant's eligibility for MA and SDA if otherwise eligible for program benefits. A review of this case shall be set for April 2013.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 6, 2012

Date Mailed: March 6, 2012

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

JL/pf

cc:

