

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-35675
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 3, 2012
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 conducted from Detroit, Michigan on Thursday, May 3, 2012. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED]

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On August 14, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was no longer disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

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

1. The Claimant submitted a redetermination application for MA-P and SDA benefits on September 1, 2010.

2012-35675/CMM

2. On January 12, 2012, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. On February 13, 2012, the Department notified the Claimant of the MRT determination.
4. On February 24, 2012, the Department received the Claimant’s written request for hearing. (Exhibit 2)
5. On April 2nd and August 7, 2012, the SHRT found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to low back pain with radiculopathy, shortness of breath, high blood pressure, acid reflux disease, diabetes, and peripheral neuropathy.
7. The Claimant alleged mental disabling impairments due to anxiety and schizoaffective disorder.
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 6’2” in height; and weighed 237 pounds.
9. The Claimant has a limited education, reportedly under a special education curriculum, with an employment history as a prep cook and in commercial cleaning.
10. The Claimant’s impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Tables (“RFT”).

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(a). The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence

from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing MA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of

the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). If no medical improvement is found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement is related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;

- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CF R 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, the Claimant alleges disability due to low back pain with radiculopathy, shortness of breath, high blood pressure, acid reflux disease, diabetes, peripheral neuropathy, anxiety, and schizoaffective disorder.

On [REDACTED], a Psychiatric/Psychological Examination Report was completed on behalf of the Claimant. The diagnosis was schizoaffective disorder with a Global Assessment Functioning ("GAF") of 45. A Mental Residual Functional Capacity was also completed. The Claimant was markedly limited in 5 of the 20 factors and moderately limited in 10 factors.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension, chronic back pain, insulin dependent diabetes with neuropathy, generalized anxiety, and hyperlipidemia. The Claimant was in stable condition finding him capable of occasionally lifting/carrying 20 pounds; standing and/or walking less than 2 hours in an 8-hour work day; sitting less than 6 hours during this same time frame; and able to perform repetitive actions with his extremities. The Physician noted that the Claimant has chronic debilitating medical conditions that require constant follow-up and adequate management to prevent debilitating and catastrophic complications.

On [REDACTED] a Psychiatric/Psychological Examination Report was completed on behalf of the Claimant. The Claimant had poor motivation, lack of interest, isolates, poor sleep, and poor judgment. The diagnosis was schizoaffective disorder with a GAF of 45. A Mental Residual Functional Capacity was also completed. The Claimant was markedly limited in 8 factors; moderately to markedly limited in 2 factors; and moderately limited in the remaining 10 factors.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension, insulin dependent diabetes

mellitus with neuropathy, chronic back pain, and generalized anxiety disorder. The Claimant's condition was deteriorating.

On [REDACTED] the Claimant's blood work confirmed high cholesterol.

On [REDACTED] the Claimant attended a consultative evaluation at the neurology clinic for complaints of back pain. The physical examination revealed low back pain on palpitation, S1 joint pain on palpitation, and positive Patrick sign (hip pain). Weakness in the lower extremities was noted secondary to pain. EMG, MRI, and blood work were all recommended.

On [REDACTED] the Claimant attended a consultative physical evaluation. The examination revealed lumbar tenderness with decreased flexion and extension and positive straight leg test in supine position at 40 degrees. The extremities had moderately severe calluses on the soles of both feet and on the lateral aspect of the solar aspect of both great toes. Decreased sensation over the entirety of both feet, dorsal and ventral aspects, as well as both hands was documented. The impressions were diabetes mellitus (suboptimally controlled), diabetic neuropathy, low back pain, hypertension (suboptimally controlled), and neuropathies of both feet, moderately severe. The Claimant's limitations were listed as decreased sensation in the fingers and toes as well as difficulty with stooping and bending, and decreased grip strength.

On this same date, a mental status examination was performed. The Claimant appeared to be in questionable contact with reality with apparent ongoing psychotic thinking and hallucinations. The diagnosis was schizoaffective disorder with a GAF of 51. Based on the evaluation, the Psychologist stated that the Claimant demonstrated little cognitive strengths with slight capacity to concentrate and pay attention along with significant difficulties with short-term and immediate memory. The Claimant displayed difficulty with judgment, abstract thinking, and impulse control. The Psychologist opined that the Claimant would be capable of extremely simple work-type activities, remembering and executing a two or possible three step repetitive procedure on a sustained basis with no independent judgment or decision making requirements.

On [REDACTED], an MRI of the lumbar spine revealed degenerative disc disease including disc protrusions/bulges and Schmorl's nodes at multiple lumbar levels; mild compression of the thecal sac by the bulging discs at L3-4, L4-5; mild degenerative facet arthropathy in the right L5-S1 facet joint; and no evidence of nerve root compression.

On [REDACTED] the Claimant attended a follow-up appointment at the neurology clinic. An EMG study from [REDACTED] showed mild sensory motor polyneuropathy related to his diabetes with predominantly axonal features with evidence of superimposed median mononeuropathy at the bilateral wrist. On physical

2012-35675/CMM

examination, the Claimant had significant musculoskeletal-type pains with pain on palpitation and positive Patrick sign bilaterally along with evidence of neuropathy and decreased pinprick sensation.

On [REDACTED], the Claimant sought treatment at the pain clinic for back pain. The diagnoses were lumbar degenerative disc disease, lumbar spondylosis, and facet syndrome.

On [REDACTED], the Claimant presented to the pain clinic to undergo lumbar medial branch block with fluoroscopy at L5, L4, L3, and L2 without complication. The diagnoses were facet arthropathy and lumbar spondylosis/facet syndrome.

On [REDACTED] the Claimant presented to the pain clinic with complaints of back pain. Straight leg test reproduced back and bilateral lower extremity pain. Positive lumbar facet loading was also noted. The Claimant's gait was antalgic requiring a cane for ambulation. The diagnoses were lumbar spondylosis and degeneration of lumbar intervertebral disc.

On [REDACTED] a list of the Claimant's problems/diagnoses confirmed treatment since [REDACTED] of anxiety disorder, back pain with radiation, brachial neuritis or radiculitis, diabetes mellitus, dysuria, hypertension, hematuria, hyperlipidemia, renal insufficiency, sciatica, and peripheral neuropathy.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A. Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A. Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. 1.00B2a. The inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities. 1.00B2c. In other words, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c. To use the upper extremities effectively, an individual must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. 1.00B2c. Examples include the inability to prepare a simple meal, feed oneself, take care of personal hygiene, sort/handle papers/files, or place items in a cabinet at or about the waist level. 1.00B2c. Pain or other symptoms are also considered. 1.00B2d.

Categories of Musculoskeletal include:

- 1.02 Major dysfunction of a joint(s) due to any cause:
Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively as defined in 1.00B2c

* * *

- 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:
- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
 - B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
 - C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

Listing 9.08 no longer exists; however, 9.00B5 addresses diabetes mellitus. Serious complications that arise from this condition are evaluated under the affected body system.

Listing 11.14 requires a diagnosis of peripheral neuropathy along with disorganization of motor function in spite of prescribed treatment.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A .

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning and are defined in Listing 12.03. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one or more of the following:
 - 1. Delusions or hallucinations; or
 - 2. Catatonic or other grossly disorganized behavior; or;
 - 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt Affect; or
 - b. Flat Affect; or
 - c. Inappropriate affect;

or

- 4. Emotional withdrawal and/or isolation;

AND

B. Resulting in a least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended durations

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or changed in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more year's inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In this case, the evidence confirms treatment/diagnoses of chronic back pain, S1 joint pain, hip pain, positive straight leg test in supine position, degenerative disc disease, disc protrusions/bulges with compression on the thecal sac, facet arthropathy, Schmorl's nodes at multiple levels, lumbar spondylosis/facet syndrome, brachial neuritis or radiculitis, insulin dependent diabetes with peripheral neuropathy, generalized anxiety and schizoaffective disorder. The evidence shows that the Claimant's conditions are debilitating with severe calluses on his feet, reduced sensation in feet and hands, weakness, and antalgic gait requiring a cane for ambulation. Mentally, the evidence shows hallucinations, poor motivation, lack of interests, isolates, poor sleep, poor judgment, little cognitive strengths, and difficulties with short-term and immediate memory. The Claimant's physical and mental condition is noted as deteriorating placing him at less than sedentary activity. After review of the entire record, it is found that the combination of the Claimant's physical and mental impairments meet, or are the medical equivalent thereof, listing impairment as detailed above. Accordingly, the Claimant's disability is found to continue.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rule 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of continued MA-P program; therefore, the Claimant is found disabled for purposes continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of continued MA-P and SDA benefits.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the September 2010 (based on the MRT determination) review application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with department policy.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in September 2013 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: August 29, 2012

Date Mailed: August 29, 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

CMM/cl

cc:

