

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-42644
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: June 14, 2012
County: Delta

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on September 14, 2012, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED]

ISSUE

Whether the Department of Human Services (the department) properly determined that Claimant was no longer disabled and denied his review application for Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon medical improvement?

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 Medical Assistance benefit recipient and his Medical Assistance case was scheduled for review in October, 2011.
- (2) On October 1, 2011, Claimant filed a Redetermination for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On February 29, 2012, the Medical Review Team denied Claimant's application indicating that Claimant was denied for continuing eligibility. (Department Exhibit A, pages 19-20).

- (4) On March 30, 2012, the department case worker sent Claimant notice that his MA case and SDA would be closed based upon medical improvement.
- (5) On March 30, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (6) On May 16, 2012, the State Hearing Review Team again denied Claimant's Redetermination indicating that Claimant was capable of performing medium exertional tasks of a simple and repetitive nature, using Medical Vocational Rule 203.28. SDA was denied per BEM 261 because the information in the file was inadequate to ascertain whether Claimant was or would be disabled for 90 days. (Department Exhibit B, pp 1-2).
- (7) On August 31, 2012, the SHRT reviewed the additional evidence admitted during the hearing and found Claimant's severe impairments did not meet or equal any listing and despite the impairments, he retained the capacity to perform light work, and denied Claimant disability using Medical Vocational Rule 202.20. SDA was denied per BEM 261 because the information in the file was inadequate to ascertain whether Claimant was or would be disabled for 90 days. (Department Exhibit C).
- (8) On January 31, 2011, Claimant underwent a psychological evaluation on behalf of the department. The examining psychologist opined that Claimant could follow 1 and 2 part directives, but he would have trouble with complex directives. He presented with low motivation, difficulty with interpersonal relations, panic with agoraphobia, disinclination to go out. He reported on past job history of poor performance secondary to basically retreating to a bathroom because he was unable to interact with others. He is unlikely to be successful on a job without first addressing issues and learning coping skills and social/interpersonal skills. Even then Claimant is poorly motivated and his persistence is likely to be quite low. Diagnosis: Axis I: Bipolar disorder; Panic Disorder with agoraphobia, Alcohol dependence in partial remission; Axis II: Personality disorder, borderline antisocial traits; Axis V: GAF=48. (Department Exhibit A, 46-53).
- (9) On April 8, 2011, the Medical Review Team approved Claimant for MA and SDA. (Department Exhibit A, pp 44-45).
- (10) On November 11, 2011, Claimant saw his primary care physician for medication management and wrist pain. He was depressed and anxious and admitted he had been off his medication for 6 months. He had used Xanax as needed, and if that was not available, he used alcohol. There was swelling and tenderness in his left wrist. The x-rays showed a lunate

carpal bone abnormality. He was prescribed Citalopram and Alprazolam and instructed on the importance of proper follow-up. (Department Exhibit A, pp 38-39, 42).

- (11) On December 15, 2011, Claimant saw his primary care physician for wrist pain. The pain was mainly in the dorsal and lateral portion of the wrist and he was unable to fully extend his left wrist. He writes with his left hand. He was also having palpitations. He was prescribed a wrist splint and referred to a hand surgeon. (Department Exhibit A, pp 40-41).
- (12) On February 10, 2012, Claimant saw his primary care physician for follow-up of his hypertension. He stated that he was not taking his atenolol as he was afraid to take it. Claimant will begin using Atenolol. (Department Exhibit A, p 147).
- (13) On March 12, 2012, Claimant was evaluated by an orthopedic surgeon regarding his left wrist pain and Kienbock's disease. There was tenderness to palpation over the dorsal aspect of the lunate. There was wrist pain with flexion and extension. Wrist flex was 0 to 35 degrees and wrist extension was from 0 to 40 degrees. X-rays demonstrated stage III-A of Kienbock's disease with sclerosis and collapse of the lunate bone. A left wrist arthroscopy was scheduled for March 28, 2012. (Department Exhibit B, pp 3-4).
- (14) On March 28, 2012, Claimant underwent a left wrist arthroscopy which revealed laxity of the scapholunate ligament. The volar ligaments were intact and visualized portions of the lunate cartilage overall intact with some destruction of cartilage noted.
- (15) On April 18, 2012, Claimant saw his primary care physician and stated he had started taking the Citalopram with no improvement in his symptoms of depression and anxiety and he was having trouble with his arms burning and some throat irritation. (Department Exhibit A, p 150).
- (16) On May 16, 2012, Claimant saw his primary care physician for anxiety. He had lost his Medicaid and was unable to afford his visits to the psychiatrist. He had been using Xanax as needed for anxiety and was using it three times a day. He had been on SSRI medications in the past, but they were ineffective due to side effects. He has anxiety when going outside the home and has not been employed as he has anxiety attacks when he has tried to work in the past. (Department Exhibit A, p 151).
- (17) On July 19, 2012, Claimant underwent a psychological assessment on behalf of the department. The examining psychologist opined that Claimant could follow 1 and 2 part directives, but he would have trouble with complex directives. He presented with low motivation, difficulty with

interpersonal relations, panic with agoraphobia, disinclination to go out. He reported on past job history of poor performance secondary to an inability to interact with others. He is unlikely to be successful on a job without first acquiring coping skills and improving social/interpersonal skills. His alcohol use is also a negative factor in likelihood of reliability within an employment situation. Diagnosis: Axis I: Bipolar disorder; Panic Disorder with agoraphobia, Alcohol dependence; Axis II: Personality disorder, borderline antisocial traits; Axis V: GAF=48. According to the Mental Residual Functional Capacity Assessment, Claimant is markedly limited in his ability to understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods of time; perform activities within a schedule, maintain regular attendance, and to be punctual within customary tolerances; sustain an ordinary routine without supervision; work in coordination with or proximity to others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public and travel in unfamiliar places or use public transportation. (Department Exhibit A, pp 159-166).

- (18) Claimant was receiving Medicaid and State Disability Assistance at the time of this review.
- (19) Claimant alleges as disabling impairments hypertension, agoraphobia, Keinbock's disease and hypertension.
- (20) Claimant is a 26-year-old man whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 179 pounds. Claimant has a high school equivalent education. He is able to read and write and has basic math skills.
- (21) Claimant has no past relevant employment and does not have a driver's license.

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RTM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

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 decisions 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).

The first question asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because he has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CFR 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement.

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). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

The State Hearing Review Team upheld the denial of SDA and MA benefits on August 31, 2012, on the basis that Claimant's severe impairments did not meet or equal an any listing and despite his severe physical condition, he was able to perform light work.

Claimant was approved for SDA and MA benefits after being diagnosed with panic disorder and agoraphobia. Pursuant to the federal regulations, at medical review, the agency has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The agency has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

In this case, the agency has not met its burden of proof. The agency has provided no evidence that indicates Claimant had improvement or that that improvement relates to his ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the agency's SDA and MA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department erred in proposing to close Claimant's MA and SDA benefits based upon a finding of improvement at review.

Accordingly, the department's action is **REVERSED**, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with Claimant's next mandatory medical review scheduled in September, 2014 (unless he is approved eligible for Social Security disability benefits by that time).

It is SO ORDERED.

/s/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: September 20, 2012

Date Mailed: September 20, 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.

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.

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