

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-75074
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 22, 2013
DHS County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 January 22, 2013, from Detroit, Michigan. Claimant appeared and testified. The Department of Human Services (Department) was represented by [REDACTED].

ISSUE

Whether the Department properly determined that Claimant is not disabled for purposes of the Medical Assistance (MA-P) program.

FINDINGS OF FACT

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

1. On April 20, 2011 Claimant was approved MA-P. (Exhibit 1, p. 79)
2. On review of June 13, 2012, the Medical Review Team found Claimant no longer disabled. (Exhibit 1, p. 1)
3. The Department notified Claimant that he was no longer eligible for MA on June 26, 2012.
4. On August 27, 2012, Claimant submitted to the Department a request for hearing.
5. The Claimant is [REDACTED] years old.

6. The Claimant completed schooling through tenth grade.
7. The Claimant is not currently working.
8. The Claimant's limitations have lasted for 12 months or more.
9. The Claimant suffers from coronary artery disease, pancreatitis, hypertension, arthritis, back pain and degenerative disc disease. (Exhibit 1, p. 16)
10. The Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

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). 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 Bridges Reference Manual (RFT).

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 (20R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

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 12 months. (20 CFR 416.905).

Once an individual has been determined to be "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 a substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first step to be considered is whether the claimant can perform Substantial Gainful Activity (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 moves to Step 5 in the sequential evaluation process.

In this case, Claimant was most recently approved for MA-P on April 20, 2011. The Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds there is no medical improvement. The medical examination report of May 2, 2012, from Claimant's treating physician indicates that Claimant's health is deteriorating. (Exhibit 1, p. 17) Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reason for discounting the opinion, and the undersigned does not see a particular reason to discount this opinion. *Rogers v Commissioner*, 486 F. 3rd 234 (6th Cir. 2007).

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.*

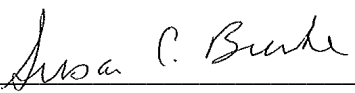
After careful review of the record, this Administrative Law Judge finds none of the above-mentioned exceptions applies to Claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that Claimant's disability for purposes of Medical Assistance must continue.

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:

- 1.) Initiate reinstatement of Claimant's MA case, effective August 1, 2012, if claimant is otherwise eligible for program benefits.
- 2.) Review Claimant's continued eligibility in March of 2014, in accordance with Department policy.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: January 29, 2013

Date Mailed: January 29, 2013

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 mailing 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

SCB/ hw

cc:

