

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201247547
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: July 18, 2012
Bay County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 held on Wednesday, July 18, 2012. Claimant appeared and provided testimony on her behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED]

Continuance of the hearing to obtain additional medical reports was denied per MAC R 400.915.

ISSUE

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 August 2009 for MA-P and June 1, 2009 for SDA.
2. On April 6, 2012, the Department of Human Services (DHS) terminated the Claimant's MA-P/SDA based on a error recovered non-disability per BEM 260/261 with a hearing request on April 18, 2012.
3. Claimant was age [REDACTED] with a [REDACTED] grade education, and semi-skilled work history as a general laborer, supervision of handicap ramps, cook, and housekeeper.

4. Claimant alleges continued disability due to a combination mental/physical impairments of COPD, Barrett's esophagus, depression, anxiety, and acid reflux disease.
5. Medical reports state the Claimant on:
 - a. August 20, 2012, had operation performed with esophagogastroduodenoscopy with balloon dilatation of the esophageal stricture; and that there were no complications (DHS Exhibit A, Page 129).
 - b. May 26, 2011, had minimal dependant atelectasis present in both lung basis; that lungs are otherwise free of infiltrates, nodules, and interstitial changes (DHS Exhibit A, Page 11).
 - c. June 2, 2011, is neurologically alert and oriented x3; that cranial nerves II-XII are intact with no focal deficits; that respirations are even and unlabored; that bilateral breath sounds are clear without cough, wheezing, or shortness of breath; that musculoskeletally she has a full range of motion of all extremities (DHS Exhibit A, Page 142).
 - d. July 7, 2011, has lungs that were clear to auscultation bilaterally; that she has mild obstructive impairment; that she has no significant bronchodilator response; that lung volumes are normal; that diffusion capacity was moderately reduced at 55% (DHS Exhibit A, Page 140).
 - e. July 19, 2011, had mild decreased breath sounds and early use of accessory muscles; that there was no cyanosis or clubbing; that she had no respiratory distress; that she can hear conversational speech with limitations; that speech is clear; that she walked normally without the use of an assistive device; that she was in no acute distress; and that she talks without being short of breath (DHS Exhibit A, Page 14).
6. State Hearing Review Team (SHRT) report dated June 12, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Page 220).

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 MAC R 400.3151-400.3180. Department policies are found in the Program

Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Facts above are undisputed.

"Disability" is:

...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.

The burden of proof is on the Department of Human Services to establish a medical recovery in accordance with the 7 step process below. ...20 CFR 416.9942(b).

...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 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 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).

Step 1. Do you have an impairment 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, has there been a medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, 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 medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(I) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity 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 work, 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)(4) 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 medical improvement 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 improvement applies, we will determine whether all your current impairments in combination are severe (see Sec. 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in Step 3 in paragraph (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 in combination do not significantly limit your physical or 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 impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with 416.961. That is, we will assess 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 be 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 consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue. 20 CFR 416.994(b)(5)(vii).

At Step 1 continued eligibility is denied. The medical evidence of record does not establish Claimant's impairments meet/equal a Social Security listing.

Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

1. 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).

At Step 2, the medical evidence of record does not establish Claimant's medical improvement by a decrease in medical severity.

The medical improvement is not related to your ability to work, unless your functional capacity to do basic work activities (i.e., the ability to sit, stand, walk, understand, remember and carry-out instructions) has increased, for example.

At Step 4, the medical evidence of record does not establish exceptions pursuant to (b)(3) and (b)(4) of this section. Therefore, disability will be found to continue.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work, the claimant does meet the disability criteria for State Disability Assistance benefits also.

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 conclusions of law, decides that recovered non-disability has not been medically established.

Accordingly, proposed MA-P/SDA termination is **REVERSED**, and continuation of benefits is ORDERED.

Medical review suggested in July 2013.

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

Date Signed: January 7, 2013

Date Mailed: January 8, 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.

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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.

WAS/tb

cc:

