

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201275605
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 8, 2013
Wayne County DHS #55

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 Tuesday, January 8, 2013. Participants on behalf of the Claimant included the Claimant, [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED]. The record was extended 90 days for a 2nd SHRT review of additional medical reports submitted at the hearing. (Claimant Exhibit 1, 23 Pages).

ISSUE

Was medical recovery, 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/SDA approval was on August 12, 2010.
2. On August 24, 2012 the DHS terminated the Claimant's MA/SDA based on Medical Recovery per BEM 260/ 261 with a hearing request on August 31, 2012.
3. Claimant was aged 46, with a high school or more education, and unskilled factory assembler and driver of a shuttle hospital bus, and skilled work as an engineer draftsman and designer. (DHS Exhibit A, Pg. 7)
4. Claimant alleges continued disability due to a combination mental/physical impairment.
5. Medical reports since Claimant's last MA/SDA approval state the claimant on:

- a. April 1, 2011: Has a GAF of score of 50. (DHS Exhibit A, Pg. 24).
 - b. November 11, 2011: Has a GAF score of 55, evaluated by an LLNSW (DHS Exhibit A, Pg. 46).
 - c. November 13, 2012: Has a GAF score of 45, by an LLNSW (Claimant Exhibit 1, Pg. 8).
 - d. June 13, 2012: Has no memory loss or weakness; that he has good hand grip bilaterally; that digital dexterity is *intact*; that he managed to get on and off the examination table without difficulty; that he walks with a *slight* limp on the left with a cane on the right; that he is *able* to do tandem, tip toe, and heel walking without problems; that he is *able* to bend and stoop; that he is *able* to squat and recover; that range of motion of the cervical spine is *slightly* decreased; that lumbar spine range of motion is *decreased*; that left knee range of motion is *decreased*; that all other joints had *normal* range of motion; that he is alert, oriented, and cooperative, that he sees a psychiatrist *regularly* and takes medication for his condition.
 - e. June 13, 2012: Has a GAF score of 51. (DHS Exhibit A, Pg. 17).
7. State Hearing Review Team decision dated November 2, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Pg. 56).

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

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 Bridges Reference Manual (BRM).

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

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...Ability to engage in substantial gainful activity. In most instances, we must show that you are able to engage in substantial gainful activity before your benefits are stopped. When doing this, we will consider all your current impairments not just that impairment(s) present at the time of the most recent favorable determination.... 20 CFR 416.994(b)(1)(v).

...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).

The steps are:

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 meets/equals a social security listing.

At Step 2 the evidence of record does not establish claimant's mental improvement by a decrease in medical severity. Therefore; the sequential evaluation is required to Step 4.

The medical reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's mental/physical limitations relative to his functional basic work activities, as defined above. Stated differently, how do the Claimant's medically diagnosed disorder significantly incapacitate his functional ability to perform basic work activities for the required duration? Do the disorders impair the Claimant's ability slightly, mildly, moderately (non-severe impairment, as defined below) or severely, as defined below?

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

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 4 the medical evidence of record does not establish medical improvement related to claimant's ability to work on the date of the negative case action. Nor do any of the exceptions in paragraphs (b) (3) and (4) apply.

Since claimant's last MA/SDA approval in August, 2010, claimant has had GAF scores of 50 in April, 2011 and 51 in June, 2012. 50 is considered a severe mental impairment with occupational-functioning and 51 moderate mental impairment with occupational-function. DSM-IV (4th edition-revised).

Claimant had GAF scores of 55 in November, 2011 and 45 in November, 2012 by an LLMSW. This is an unacceptable medical source.

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

Acceptable medical sources are by an MD, DO, or fully licensed psychologist. BEM 260. Therefore, no evidentiary weight was given to the two unacceptable medical sources.

The medical evidence of record does not establish the claimant's normal mental findings have persisted on repeated examinations since this last approval leading up to the negative case action. So as to reassess and conclude that the claimant mentally recovered.

Therefore, it is unnecessary to determine the physical matter at this time until you determine that claimant has medically recovered a non-severe mental condition.

Therefore, disability is found to continue at Step 4.

The department's Bridges 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 not meet the definition of disabled under the MA-P program and because the evidence of record does establish that claimant is unable to work for a period exceeding 90 days, the claimant meets the disability criteria for State Disability Assistance benefits also.

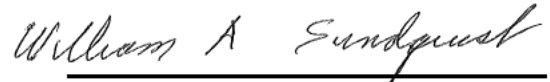
Therefore, medical recovery has not been established at Step 4 by the competent, material, and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides medical recovery has not been established.

Accordingly, SDA/MA-P denial is **REVERSED** and retroactive reinstatement. Reinstatement of benefits is so ORDERED.

Medical review is suggested in 2013.



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

Date Signed: April 9, 2013

Date Mailed: April 9, 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 receipt date of the rehearing decision.

WAS/hj

cc:

