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

IN THE MAT	TER OF:	Reg. No: 201311439 Issue No: 2009, 4031
ADMINISTRATIVE LAW JUDGE: Aaron McClintic		
	DECISION AND	ORDER
and MCL 400	0.37 upon the Claimant 's reque earing was held on	rative Law Judge pursuant to MCL 400. 9 st for a hearing. After due notice, a  Cla imant appeared along with a e Department was represented by
<u>ISSUE</u>		
Did the Department properly close Claim ant's Medical Ass istance (MA-P) program benefits and deny Claimant's State Disability Assistance (SDA) application?		
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 applied for SDA on	·
2.	Claimant was a recipient of MA	-P benefits based on MRT approval in
3.	Claimant's eligibility for MA-P was	reviewed in
4.	The Medic al Rev iew Team dete eligible for MA-P and denied Cl	•
5.	Claimant filed a request for hearing on MA-P closure and SDA denial.	
6.	A telephone hearing was held on	

- 7. On the State Hearing Rev iew Team denied the application because the medic allevidence of record indicates that the claimant retains the capacity to perform a wide range of medium work.
- 8. Claimant is 5' 11" tall and weighs 230 pounds.
- Claimant is 61 years of age.
- 10. Claimant's impairments have been medically diagnosed as hypertension, stroke, hyperlipidemia and diabetes.
- 11. Claimant has the foll owing symptoms: pain, fa tigue, and shortness of breath.
- 12. Claimant completed high school.
- 13. Claimant is able to read, write, and perform basic math skills.
- 14. Claimant is not working. Claim ant last worked in mechanic.
- 15. Cla imant lives with his sister.
- 16. Claimant testified that he cannot perform some household chores.
- 17. Claimant takes the following prescribed medications:
  - a.
  - b. c.
  - d.
  - e.
- 18. Claimant testified to the following physical limitations:
  - i. Sitting: 60 minutes
  - ii. Standing: 60 minutes
  - iii. Walking: ½ mile
  - iv. Bend/stoop: no difficulty
  - v. Lifting: 50 lbs.
  - vi. Grip/grasp: no limitations
- 19. In a psychological examination dated to have a GAF score of 50 to 55 with a diagnosis of adjustment disorder with depressed mood-mild.

- 20. Claimant testified t hat his condition has improved and that he would be able to return to his job as an auto mechanic full time.
- 21. Claimant has not had a seizure in several years.

### **CONCLUSIONS OF LAW**

The Medical Assistance ("MA") program is est ablished by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), fo rmerly known as the Family Independ ence Agency, pursuant to MCL 400.10 et seq and MCL 400.105. Department polic ies are found in the Bridges Administrative Manual ("BAM"), the Bridge is Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program purusant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are f ound in BAM , BEM, and BRM. A person i s considered disabled for SDA purposes if the person has a phys ical or menta I impariment which m eets federal SSI dis ability standards for at least ninety days. Receipt of SSI or RSDI benefit s 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.

Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental im pairment which can be expected to result in death or which has lasted or can be expect ed 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 esta blish it through the use of competent medical evidence or her medical history, clinica l/laboratory from qualified medical sources such as his findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities o r ability to reason a nd make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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 applicants 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 benefit s, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in acco rdance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing MA benefits, federal regulation 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 indiv idual is st ill unable to engage in substantial gainful activity. Id. Prior to decid ing an individual's disability has end ed, the de partment will develop, along with the Claimant's cooperation, a complete medic al history covering at least the 12 months precedi ng the date the individual signed a request seeking continuing disability benef its. 20 CF R 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 w hether 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 list ed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CF R 416.994(b)(5)(i). If a Listing is met, an individual's disability is found to continue with no further analysis required.

equal a Listing, then Step 2 requires a If the impairment(s) does not meet or determination of whet her there has been m edical improvement as defined in 20 CF R 416.994(b)(1); 20 CFR 416.994(b )(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impa irment(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 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 pr esent at the time of t he 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)(i v). If no exception is applicable, disability is found to continue. ld. If the medical improvement is related to an individual's ability to do work, then a det ermination 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 CF R 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establis hes that the impairment(s) do (does) not significantly limit an individual's physical or ment al 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

individual's age, educ ation, and past work ex perience 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 exc eptions (as mentioned above) to medical improvement (i.e., when disability c an be found to have ended e ven 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 medial or vocationa I therapy or technology (related to the ability to work;
- (ii) Substantial evidence s hows that the individual has undergone vocational therapy re lated 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 dem onstrates 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 cooperated;
- (iii) The individual cannot be located:
- (iv) The presc ribed 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 medica I improvement may be considered at any point in the process. *Id.* 

As disc ussed above, the first step in t he sequential evaluation process to determine whether the Claimant's disability continues Tooks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

At the time of the Claimant's initial approval, the Claim ant had diagnoses of stroke, seizures and depression.

In this case, the Claimant's condition has improved. Claimant's impairments do not meet or equal a listing. In light of the foregoing, a det ermination of whether the Claimant's condition has medically improved is necessary.

As noted above, the Claimant was previously found disabled in July, 2011. In comparing those medical records to the recent evidence (as detailed above), it is found that the Claimant's condition has medically improved accordingly, the Claimant's disability must be further evaluated under the sequential analysis. 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii).

In the third step of the analysi s, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the 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. Listing 12.04 and 9.00 were considered.

The person claiming a physica I or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/pre scribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CRF 416.913. A conc lusory statement by a physici an or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 20 CFR 416.927.

The fourth step of the analys is to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 y ears. The trier of fact must determine whet her the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant 's past employment was as an auto mechanic. Working as an auto mechanic would be medium work. This Administrative Law Judge finds that Claimant is capable of medium exertional work and his past relevant work. Therefore, Claimant's appeal is denied at step four.

The Department has met its burden proving that Cla imant has had medic al improvement that would warrant a finding that he is no longer disabled.

In this cas e, the Claimant is found not di sabled for purposes of continued Medical Assistance.

With regard to State Dis ability Assistance, The Department conforms to state statute in administering the SDA program. 2000 PA 294, Sec. 604, of the statute states:

(1) The department shall operat e a state disability assistance program. Except as provided in subsection

- (3), persons eligible for this program shall include ne edy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:
  - (a) A recipient of supplemental security income, socia security, or medical assistance due to disability or 65 years of age or older.
  - (b) A person with a phy sical or mental impairment which meets federal supplemental se curity income disability standards, exc ept that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the Feder al Supplemental Security Income (SSI) policy in determining el igibility for disability under the MA-P program. Under SSI, disability is defined as:

...the inability to do any substant ial 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.

Federal regulations r equire that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

# "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.

In determining whether an indiv idual is disabled, 20 CFR 4 16.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual f unctional c apacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if t he individual is working and if the work is substantial gainful activity. 20 CFR 416.9 20(b). In this case, the Claimant is not working therefore, the Claimant is not disqualified a this step in the evaluation.

The second step to be determined in consi dering whether the Clai mant is c onsidered disabled is whether the severity of the impairment. In order to qualify the impairment must be considered severe which is defined as an impairment which significantly limits an individual's physical or mental ab ility to perform basic work activities. Examples of these include:

- 1. Physical functions s uch as walkin g, standing, sitting, lifting, pushing, 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).

In this case, the Claimant's medical ev idence of record supports a finding t hat Claimant has significant physical and mental limitati ons upon Claimant's abili ty to perform basic work activities such as walk ing, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; Medical evidence has clearly established that the Claimant has an impairment (or combination of impairments) that has more than a minimal effect on the Claimant's work activities. See Social Security Rulings: 85-28, 88-13, and 82-63.

In the third step of the analysi s, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the 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. Listing 1.04 and 1.02 were considered.

The person claiming a physica I or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/pre scribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CRF 416.913. A conc lusory statement by a physici an or mental health professional that an individual is disabled or blind is not sufficient, without supporting medical evidence, to establish disability. 2 0 CFR 416.927.

The fourth step of the analys is to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whet her the impairment(s) presented prevent the Claimant from doing past relevant work. In the pr esent case, the Claimant's past employment was as an auto mechanic. Working as an auto mechanic as describ ed by Claimant at hearing would be considered medium exerti onal work. The Claimant's impairments would not prevent him from doing past relevant work. Therefore, Claimant's appeal with regard to denial of his SDA application is denied at step 4.

## **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion s of law finds the Claimant not disabled for purposes of continued MA-P benefits and SDA benefits.

Accordingly, it is ORDERED:

The Department's determinations with regard to closure of MA-P and denial of SDA are **AFFIRMED** and Claimant's MA-P benefits shall be processed for closure if not done so already.

> Aaron Administrative

> > for Department

Am milesti Law Judge

Maura Corrigan, Director of Human Services

Date Signed: 04/02/2013

Date Mailed: 04/02/2013

NOTICE: Administrative Hearings may order a rehearing or reconsider ation on either its own motion or at the request of a party within 30 days of the mailing date of this Decis ion and O rder. Administrative Hearings will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 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.
- reconsideration **MAY** be granted for any of the following reasons: A
- 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 ot her relevant iss ues 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

#### AM/kl

CC: