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

IN THE MATTER OF:

Reg. No: 2013-12404 Issue No: 2009;4031

Case No:

Hearing Date: March 7, 2013

Kent County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

This matter is before the undersigned Admini strative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notic e, a telephone hearing was held on March 7, 2013. Claimant personally appeared and testified. The claimant was represented at the hearing by Social Wo rker, the department was represented at the hearing by Family Independence Manager,

<u>ISSUE</u>

Did the Department of Hum an Services (the department) properly determine that claimant was no longer disabled and deny 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 Assis tance benefit recipient and his Medical Assistance case was scheduled for review in August, 2012.
- On Augus t 1, 2012, claimant fil ed a review application for Medica
 Assistance and State Dis ability Assist ance benefit s alleging continued disability.
- 3. On October 23, 2012, the M edical Rev iew Team denied claimant's application stating that claimant's impairments are non extertional.
- On October 30, 2012, the department caseworker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.

- 5. On November 13, 2012, claimant f iled a request for a hearing to contest the department's negative action.
- 6. On January 15, 2013, the State Hearing Review T eam again denie d claimant's review applic ation stating in its anal vsis and recommendation: the claimant's blood pressure is we II controlled. The lumbar spine had limited range of moti on. His grip st rength was intact. Motor strength and sensation was intact. The medical evidence shows that he may be depressed at times. He is still able to remember, understand, and communicate with others. As a result of the claimant combination of onditions, he is restricted to performing severe physical and mental c unskilled work. Claim ant is not engaging in substantial gainful activity at this time. Claimant's severe impairments do not meet or equal any listing. Despite the impairments, he retains the capacity to perform unskille work. Therefore, based on the claim ant's vocational profile (c laimant th grade education, and medium work approaching advance age, 11 history); MA-P is denied using Vocational Rule 204.00 as a guide. SDA is denied per PEM 261 because the inform ation in file is inadequate to ascertain whether the claimant is or would be dis abled for 90 days. Retroactive MA-P benefits are deni ed at step 5 of the sequentia 1 evaluation; claimant retains the capacity to perform unskilled work.
- 7. The hearing was held on March 7, 2013. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- 8. Additional medical information wa s submitted and sent to the State Hearing Review Team on March 7, 2013.
- 9. On June 3, 2013, the State Hearing Review Team again denied claimant's application stating that the Medica | Review Team (MRT) and the State Hearing Review Team (SHRT) deni ed c ontinuing MA-P and SDA o October 23, 2012 and Janu ary 18, 2013, respectively. T he MRT previously approved benefits on November 3, 2010 and March 29, 2012. Drug and alcohol abuse has been present in the pas t but is n ot currently present and therefore not mat erial to this determination. The medical records detail throughout the psy chiatric history inconsistencies that have been observed in May 6, 2011, February 21, 2012 and June 18, 2012 evaluations and als o noted in prior Social Sec urity Administration determinations but not addressed in previous determinations. The MRT determination of March 29, 2012 was not scheduled for a review until March, 2013. Per DHS-3050 t he case was sent for MA-P and SDA redetermination on August 1, 2012; s ee also DHS-1010. This case has been returned by the Office of Administra tive Hearings for review of new medical since the MRT and SHRT determinations cited above. The medical records reasonably support t hat medical improvement has been evidenced. Further, the medical records indicate that there is evidence of continued claimant prevaric ation. It is reasonable that the claimant would retain the ability to perform light e xertional tasks of a simple and repetitiv e

nature. The medical evidenc e of record indicates that significant medical improvement has been evidenced (20C FR416.994) and that the following now applies to this claim: the clai mant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments/combi nation of impairments does not meet/equal the intent of severity of a Social Security Administration listing. The medic all evidence of record indicates that the claimant retains the capacity to perform light exertional tasks of a simple and repetitive nature. The claimant's past work was: ma chine operator, 619.685-062, 3M; and, assembly, 706.687-010, 2L. As such, the claimant would be un able to their past work. Likewise, the perform the duties associated with claimant's past work skills will not transfer to other occupations. Therefore, based on the claimant's vocational pr ofile (53 years old, a less than high school education and a history of light exertional, unskilled; and, medium), continuing MA-P is exertional, semi-skilled employment 20CFR416.920(e&g)/BEM 260, using Vocati onal Rule 202.10 as a guide. Continuing SDA is denied per BEM 261 because the nature and severity of the claimant's impai rments would not preclude work activity at the above stated level for 90 days. Retroacti ve MA-P was not considered as part of this continuing MA-P and SDA only review. Listings 1.02/04, 4.04, 11.03/14 and 12.02/03/04/05/08/09 were considered in this determination.

- 10. Claimant is a 53-year-o ld whose birth date is 5'9" tall and weighs 200 pound s. Claimant attended the 11 th grade and has no GED. Claimant testified that he cannot read or write and he has no basic math skills.
- 11. Claimant last worked in 2006 for Claimant has worked as a busboy, in a factory and was in prison from 2009-2010.
- 12. Claimant alleges as disabling impairments: bipolar dis order and hypertension.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an ap plicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability A ssistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Service s (DHS or department) admin isters the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department polic ies are found in the Program

Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the C ode 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 Administ rative Manual (PAM), the Program Eligibili ty Manual (PEM) and the Program Reference Manual (PRM).

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically a cceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory finding s, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. In formation must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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 as equential evaluation process by which cur rent work activities, severity of impairment(s), and the possibility of medical improvement and its relations hip to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the claimant is not engaged in substantial gainful activity and has not worked since 2006.

Secondly, if the indiv idual has an impair ment or combination of impairments which meet or equal the sev erity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

The objective medical evidence in the record indicates the physical examination on July 7, 2011 reported his bl ood pressure was 120/72. He had limited range of motion of the lumbar spine. Grip strength was intact. Mo tor strength and sensation were intact. The mental status on June 20, 2012 noted he was lucid and displayed good eye contact. His gross attention and concentration faculties were intact. His speech was c lear, coherent, and goal directed. He had full range of affect. He was fully oriented (p 28-31). A mental status evaluation dat ed Decem ber 4, 2012 indi cates that claimant came in casually dressed. His mood was good. His affect wa s appropriate. He was much more upbeat. Psychomotor activity was normal with no retairdation noted. He denied any auditory or

visual hallucinations or delusions . He also denied any suicidality or homicidality. The impression was schizoaffective disor der, depressed type. H e was continued on Seroquel and Zoloft (p 2). An exam dated October 25, 2012 indicated that claimant had a fairly full affect; described his mood overall as having some irritability but "better" and fairly euthymic. He was alert and oriented. His speech was normal. No abnor malities of thought form or thought content, although he describes a "dull roar" which he identified as a hallucination because he had been told in the past that it is a hallucination. Insight and judgment appear adequate and there is no suicidal or homicidal ideation (p 4). This Administrative Law Judge did consider all 390 pages of medical reports contained in the file when making this determination.

At Step 2, claimant's impairm ents do not equal or meet the severity of an impairment listed in Appendix 1.

In the third step of the sequential evaluat ion, the trier of fact must determine whether there has been medica I improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvem ent is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues 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 claimant's impair ment(s). 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 the instant case, this Administrative Law Judge finds that claimant retains the residual functional capacity to perform light or sedentary work even with his impairments.

Thus, this Administrative Law Judge finds that claimant's **dictate**. If there is a finding of medical improvement related to claimant's ability to perform wo rk, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequent ial evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CF R 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant 's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequent ial evaluation process. In this case, this Administrative Law Judge finds claimant can perform his prior work as a busboy.

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in sub—stantial gainful activities in accomplete reduce with 20 CF R 416.960 through 416.969. 20 CF R 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residua. I functional capacity based on—all current impairments and consider whether the claimant—can still do work he/she has don—e in the past. In this case, this Administrative Law J udge finds that claimant can perform his prior work as a busboy.

In the final step, Step 8, of the sequential evaluation, the trie r of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and pas t wo rk experience. 20 CFR 416.994(b)(5)(viii). In this case, , MA-P is denied using Vocational Rule 202.10 as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that c laimant does have medical improvement in this case and the dep artment has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant 's Medical Assistance and State Disability Assistance benefits based upon medical improvement.

The department's Program Elig ibility Manual contains the following policy statements and instructions for casework ers regarding the State Disability Assistance program: to receive State Disability Assist ance, a person must be disabled, caring for a disable disperson or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability or iteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's continued disability and application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentarly work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is AFFIRMED.

Landis

Y. Lain

Administrative Law Judge

for Maura D. Corrigan, Director Department of Human Services

Date Signed: June 19, 2013

Date Mailed: June 20, 2013

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely 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.
- A reconsideration MAY be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical erro r, 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

LYL/las

CC:

