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

IN THE MATTER OF:

Reg. No: 2013-15246 Issue No: 2009; 4031

Case No:

Hearing Date: April 2, 2013

Wayne-57 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 April 2, 2012. Claimant personally appeared and testified.

### ISSUE

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 September, 2011.
- On September 1, 2011, claim ant filed a review application for Medical Assistance and State Dis ability Assist ance benefit s alleging continued disability.
- On November 16, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement and could perform prior work.
- On November 27, 2012, the department caseworker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.
- 5. On December 4, 2012, claimant filed a request for a hearing to contest the department's negative action.

- 6. On February 5, 2013, the State Hearing Review T eam again denied claimant's review applic ation stating in its analysis and recommendation: per BEM 260, the SSA ha s administ rative authority once a SSA determination is final. The medical evidence does not support that the claimant has a foot fracture, although the evidence does support that there is significant degenerative changes whic h would impair t he claimant's to perform p hysical act ivities. The claim ant's psychiatric impairments are noted to be marginally stable, page 34; positive for global developmental delays, page 10; and, moderate to marked limitations, page 17. The claimant has a s ignificant history for non c ompliance with treatment. The claimant further has a history of le ss than gainful employment and a high school equivalent education. There is a history of drug and alcohol abuse (DAA) which is not material to this determination. The claimant states on page 75 that they smoke marijuana wit hoccasional alcohol us e but on page 81, they deny all DAA. Page 75 noted for severe ambulatory difficulties requiring an assistive devic e. The evidence is not sufficient to demonstrate that the findings of the SSA/ALJ factually in error at the dat e of their decision, nor t hat significant change has taken place from then to now to alter those findings. The tota lity of the evidence does not support ere lim itations that would prevent the that there are continuing sev performance of sedentary exertional tasks of a simple and repetitiv nature with only occasional int eraction with the public, coworkers and supervisors. Additionally, the claimant would be limited to occas crawling, crouching, kneeling an d crawling. The claim ant also ought to avoid all use of moving machinery and exposure to unprotected heights. The medical ev idence of record in dicates that signific ant medic al improvement has been evidenced (20C FR416.994) and that the following mant is not currently engaging in now applies to this claim: the clai 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 or severity of a Social Security Administration listing. The medial evidence of record indi cates that the claimant retains the capacity to perform limitations as det ailed in the SSA/ALJ dec ision dated July 29, 2011. The claimant has a history of less than gainful employment. As such, there is no past work for the claimant to perform, nor are there past work skills to transfer to other occupations. Therefore, based on the claimant's vocational pr ofile (40 years old, a les s than high schoo education and a history of less than gainful employment), continuing MA-P is denied, 20CFR416.920(e&g), using Vocational Rule 201.24 as a guide. Continuing SDA is denied per BEM 261 because the nature and severit v of the claimant's impai rments would not preclude work activity at the above stated level for 90 days. Retroactive MA-P was not considered as part of this continuing MA-P and SD A only review. Listings 1.06 and 12.03/09 were considered in this determination.
- 7. Claimant is a 40-year-old man w hose b irth date is
  Claimant is 5'11" tall and weighs 170 pounds. Claim ant attended the 6 grade and does not have a GED. Claim ant testified he was in special

education and he is slow, but he can read and write somewhat and he can count money.

- 8. Claimant last worked 2008 for as a cook. He was fired because he wouldn't cut his beard. Claimant was incarcerated from 1999-2006 and he testified that he had been supporting himself by selling drugs and stealing once he got out of prison.
- 9. Claimant was receiving Medica I Assist ance and State Disability Assistance benefits.
- Claimant alleges as disabling im pairments: left foot fracture, mental issues, paranoid sc hizophrenia, head inj ury, broken right foot as of March 18, 2013 when he was beat up and a dislike for female authority.

## **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 applicant 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 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 Administ rative Manual (PAM), the Program Eligibility 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 2008.

Secondly, if the indiv idual has an impair ment or combination of impairments which meet or equal the sev erity of an impairment lis ted 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 medic all evidence in the record indicates that the claim ant has a significant history of non compliance with treat ment. Claimant has a history of less than gainful employment and a less than high s chool equivalent education. There is history of drug and alcohol abuse. On page 75 clai mant states he smokes marijuana with occasional alcohol us e, but on page 81, he denies all dr ug and alcohol use. On page 75, claimant had a mild limpi ng with/without use of a c an and on page 81, they are noted for s evere ambulatory difficulties reguliring an assistive device. The evidence is not sufficient to demonstrate that the findings of the Social Security Administration Law Judge factually erred on the date of his decision, nor that significant change has taken place from then to now to alter those findings. The totality of the evidence support that there are continuing severe limitations that would prevent the performance of sedentary exertional tasks of a simple and repetitive nature with only occasional interaction with the public, cowor kers and super visors. This Administrative Law Judge did consider the entire medical packet of 122 pages when making this determination.

At Step 2, claimant's impairm ents do no equal or meet the e severity of an impairment listed in Appendix 1.

In the third step of the sequent ial evaluation, the trier of fact must determine whether there has been m edical improvement as defined in 20 CFR 41 6.994(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 does have medical improvement and his medical improvement is related to the claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that claimant's. If there is a finding of medical improvement related to claimant's ability to perform work, the tr ier 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 at least sedentary work even with his impairments. This Administrative Law Judge finds that

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 acco—rdance wit h 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 capactity 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 Judge finds—that claimant could probably perform his past work as a cook.

In the final step, Step 8, of the sequential evaluation, the trie r of fact is to consid er whether the claimant can do any other work. given the claimant's residual function age, education, and pas two rk experience. 20 CFR capacity and claimant's 416.994(b)(5)(viii). In this case, based upon t he claimant's vocati onal profile of a younger individual, age 40, with a less than high school education and his tory of less than gainful employment, who c an perform s edentary work is not considered dis abled and is denied using Vocational Rule 201.24 as a guide. Claimant can perf orm other work in the form of light work per 20 CF R 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and the department has established by the necessary, competent, material and subst antial evidence on the record that it was acting in com pliance with department policy when it pr oposed to cancel claimant's Medical Assistance and State Disabilit y Assistance ben efits 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 diperson 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 cr iteria for State Disab ility 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: April 10, 2013

Date Mailed: April 10, 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.

### 2013-15246/LYL

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

