

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

IN THE MATTER OF:



Reg. No.: 20138998
Issue No.: 4031
Case No.: [REDACTED]
Hearing Date: February 19, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on February 19, 2013.

ISSUE

Did the Department of Human Services (DHS) properly proposed to close Claimant's State Disability Assistance (SDA) at review?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On 6/27/11, MRT approved Claimant's SDA application of 4/18/11 with a review scheduled for 12/11. Exhibit 166.
2. The DHS did not review Claimant's case until 7/12.
3. Pursuant to that review, on 10/11/12 MRT denied Claimant stating "Customer refuses treatment for treatable conditions." MRT denied continuing eligibility.
4. On 10/23/12, the DHS issued notice informing Claimant that his case will close due to the MRT denial period.
5. On 10/29/12, Claimant filed a timely hearing request. The DHS reinstated the case pending the outcome of the hearing.

6. On 12/26/12, the State Hearing Review Team (SHRT) denied Claimant.
7. Claimant has an SSI application pending with the Social Security Administration (SSA). Claimant had previously been denied SSI by a Federal ALJ in 2011.
8. As the date of review, Claimant is a [REDACTED]-year-old male standing 6'1 and weighing 130 pounds.
9. Claimant has an alcohol/drug abuse problem and history. Claimant smokes. Claimant has a nicotine addiction.
10. Claimant does not have a [REDACTED] [REDACTED]
11. Claimant has [REDACTED]
12. Claimant is not currently working. Claimant's work history is unskilled/semi-skilled. Claimant last worked 3 years ago when he worked as a machine operator.
13. Claimant alleges continuing eligibility on the basis of seizure disorder, carpal tunnel syndrome, left shoulder ligament and rotator cuff problems, alcoholism, tobacco abuse, sarcoidosis.
14. The 12/26/12 SHRT findings and conclusions of its decision are adopted and incorporated by reference herein.
15. An 8/7/12 office visit showed the Claimant presented with intermittent left shoulder pain. On exam, lungs clear to percussion and auscultation. Heart rate revealed regular rate and rhythm without murmurs, gallops or rubs. Normal and pain free motion of the wrists. Bilateral shoulder exams within normal limits. Impression left shoulder pain, tobacco abuse disorder, seizure disorder. Exhibits 27-28.
16. Medical evidence indicates that Claimant's seizure disorder is not due to epilepsy.
17. Emergence room visit 6/28/12 for right arm tingling concludes lungs clear, equal grip strength and sensation in the upper and lower extremities. Good grip strength. Normal sensation with the exception of a complaint of paresthesia at a fairly well circumscribed area at the dorsal aspect of the right forearm. Psychiatric findings were appropriate. Reported difficulty using his cigarette lighter, but when demonstrating the same, able to use it fairly well. Hand coordination and motor skills seem otherwise normal. Exhibit 151.

18. Claimant's medical evidence is replete with statements by physicians and medical practitioners that Claimant should refrain from using alcohol, tobacco, marijuana, and cocaine.
19. Neuroscience evaluation 5/21/12 indicates history not consistent with seizures as no repeated stereotypical events. EEG normal and MRI of the brain nonspecific. Well maintained on Dilantin and therapeutic and tolerating medication. Neurological exam was essentially normal with some consistencies of peripheral vascular or peripheral neuropathy trouble. Exhibit 123.
20. Per Exhibit 117 normal musculature, no joint deformities or abnormalities with normal range of motion of all four extremities for age. No edema of the dorsalis pedis pulses and posterior tibial pulses normal. No motor or sensory deficit. Not anxious and did not have pressured speech. Normal attention span and concentration. Exhibit 117.
21. A 5/29/12, Westside Health Center history states that Claimant's condition is aggravated by drugs – last use of cocaine was one month period. Exhibit 30.
22. Claimant's medical continuously diagnoses Claimant with seizure disorder, substance abuse, sarcoidosis, hepatitis C, alcoholism.
23. 5/30/11, CT concludes ventricles to be of normal size.
24. 5/24/12, office note indicates drinking 4 or 5 beers per day and smoking.
25. Exhibit 100 warrants Claimant to refrain from using alcohol, marijuana, tobacco, cocaine.
26. Claimant at the administrative hearing that he does continue to smoke, consume alcohol, and as of the date of the administrative hearing last used "drugs" approximately two months ago.

CONCLUSIONS OF LAW

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

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

Statutory authority for the SDA program states in part:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Federal law and State Policy require very specific considerations at review. These Federal regulations state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical

improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s).... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

As noted above, the review standard is essentially a step sequential analysis. The first two require special consideration for review cases; the last 5 are the standard steps in the sequential analysis.

These 5 steps are discussed below.

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 CFR 416.901). DHS, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses. Michigan administers the federal Medicaid program. In assessing eligibility, Michigan utilizes the federal regulations.

Relevant federal guidelines provide in pertinent part:

"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 federal regulations require that several considerations be analyzed in sequential order:

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The regulations require that if disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b). If no, the analysis continues to Step 2.
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.909(c).

3. Does the impairment appear on a special Listing of Impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment that meets the duration requirement? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. Sections 200.00-204.00(f)?
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? This step considers the residual functional capacity, age, education, and past work experience to see if the client can do other work. If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(g).

At application claimant has the burden of proof pursuant to:

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

Federal regulations are very specific regarding the type of medical evidence required by claimant to establish statutory disability. The regulations essentially require laboratory or clinical medical reports that corroborate claimant's claims or claimant's physicians' statements regarding disability. These regulations state in part:

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as sure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

In addition to these considerations and Federal regulations, Federal regulations do not allow an individual to claim disability whether it is alcohol and drug abuse that is material. 20 CFR 416.214 and .935 et al.

Additional consideration pertinent to the case herein, has to do with failure to follow recommended treatment. This regulation is found at 20 CFR 416.930. This regulation states that where there is a treatable condition, but the individual refuses treatment without good cause, then that person can be denied eligibility and/or continuing eligibility.

After careful review of the substantial evidence and credible on the whole record, this ALJ finds that the last two sections cited above are material to the case herein. Specifically, Claimant continues to abuse drugs and alcohol. Claimant's diagnoses continuously diagnose Claimant with drug and alcohol abuse. Under the federal regulations identified above, Claimant's alcohol and drug abuse is material to his claim of disability. Thus, Claimant is no longer eligible for continuing disability on this basis.

In the alternative, Claimant has been repeatedly advised to cease smoking and nicotine. Claimant has not done so. Under the Federal regulations and State policy, Claimant cannot maintain eligibility for MA-P where Claimant fails to follow recommended treatment without good cause.

For these reasons, and for the reasons stated above, continuing statutory disability is not shown.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/

Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 4/19/13

Date Mailed: 4/23/13

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 mailing 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 error , 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

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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

JGS/tb

cc:

