

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-20869
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: April 17, 2013
Macomb-12 County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 April 17, 2013. Claimant personally appeared and testified. [REDACTED] [REDACTED] representative, appeared and testified on claimant's behalf. The department was represented by Eligibility Specialist, [REDACTED] [REDACTED]

ISSUE

Did the Department of Human 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 Assistance benefit recipient and his Medical Assistance case was scheduled for review in May, 2012.
2. On May 30, 2012, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On November 19, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On November 26, 2012, the department caseworker sent claimant notice that his Medical Assistance and State Disability Assistance case would be cancelled based upon medical improvement.
5. On December 19, 2012, claimant filed a request for a hearing to contest the department's negative action.

6. On February 15, 2013, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommended decision: although the claimant has left eye blindness, the right eye has perfect vision. There was limited range of motion of the cervical, lumbar spine and left knee. His grip strength was normal. He had normal muscle strength. The medical evidence shows that he may be anxious and depressed at times. He is still able to remember, understand and communicate with others. As a result of the claimant combination of severe physical and mental condition, he is restricted to performing light unskilled work. He retains the capacity to lift up to 20 lbs occasionally, 10 lbs frequently and stand and walk for up to 6 of 8 hours. Claimant 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 light unskilled work. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education, and light work history); MA-P is denied using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the information in file is inadequate to ascertain whether the claimant is or would be disabled for 90 days. Retroactive MA-P benefits are denied at step 5 of the sequential evaluation; claimant retains the capacity to perform light unskilled work.
7. Claimant is a 34-year-old man whose birth date is [REDACTED]. Claimant is 5' 6.5" tall and weighs 150 pounds. Claimant attended the 10th grade and does have a GED. Claimant is able to read and write but does have trouble with concentration and can add/subtract.
8. Claimant testified on the record that he has worked as a farmer, in sales and doing drilling.
9. Claimant was receiving Medical Assistance and State Disability Assistance benefits.
10. Claimant alleges as disabling impairments: bipolar disorder, substance abuse, arthritis, left eye blindness, degenerative cervical disease, herniated disc, knee problems, attention deficit hyperactive disorder, and anxiety.

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 opportunity 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 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).

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).

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 acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, 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. Information 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 a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship 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 at least 2012.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity 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 that claimant testified on the record that he lives with friends and he is married. That he is homeless and in a wheelchair because he has injuries to his spine and neck. He did not provide clear testimony and was very scattered at the hearing. He found it difficult to respond to direct questions.

The physical examination on September 15, 2012 reported left eye blindness and 20/20 vision for the right eye. He had limited range of motion of the cervical, lumbar spine and left knee. There was normal grip strength. Muscle strength was normal throughout. The mental status on September 5, 2012 noted the claimant had poor insight. His thoughts were racing and tangential. He was highly anxious. He was fully oriented. A September 15, 2012 physical examination indicates that claimant's blood pressure on the right arm was 116/68 and on the left arm was 110/66. Pulse 85 and regular. Respiration was 16, weight 146 lbs and height 66" without shoes. He was cooperative throughout the exam. His hearing appeared normal and speech was clear. The patient had moderate difficulty getting on and off the exam table and heel and toe walking. He had severe difficulty with squatting and hopping on exam today. He has a wide based gait with left sided limp. The patient did use a cane for distances over 15 ft. His head was normocephalic and atraumatic with no evidence of lymphadenopathy. The patient had a scar on the left knee from an old wound. There is no cyanosis or clubbing. Visual acuity in the right eye was 20/20 and the left eye was blind and without glasses. The sclera were not icteric, nor was there any conjunctival pallor. Pupils were equal and reactive to light and accommodation. The neck was supple with no thyroid masses or goiter. No bruits were appreciated over the carotid arteries. There was no lymphadenopathy. The chest's AP diameter was grossly normal. Lungs were clear to auscultation without any adventitious sounds. The heart had normal S1 and S2. No murmurs or gallops were appreciated. The heart did not appear to be enlarged clinically. The PMI was not displaced. The abdomen was soft and non-tender without distention. There were no masses felt, nor was there enlargement of the spleen or liver. There were no obvious bony deformities. Peripheral pulses were easily palpated and symmetrical. There was no edema. The patient had paravertebral muscle spasms in the lumbar spine. The patient had limited range of motion of the cervical spine, lumbar spine and left knee as listed below; otherwise all other range of motion was intact and full throughout. Straight leg raise was negative bilaterally. There was no erythema or effusion of any joint. Grip strength was normal as tested grossly today. The hands had full dexterity (p 89). Strength in the neurological area 5/5 throughout. The patient had tingling in the left lower extremity. Romberg's test was negative. Cranial nerves II – XII were grossly intact. The patient was awake, alert and oriented to person, place and time. Reflexes were present and symmetrical. No disorientation was noted. The conclusion was a history of cervical and lumbar spine pain with degenerative disk disease. The patient had muscle spasms noted on exam today. He had limited range of motion in the cervical and lumbar spine. He did use a cane for ambulation and had moderate and severe difficulty with orthopedic maneuvers. He did have tingling in the left lower extremity. He had a history of arthritis affecting the back and left knee with the patient having limited range of motion of the left knee. He had history of left eye blindness since age 7 with etiology unknown (p 91). A May 12, 2012 behavioral medicine admission profile indicated claimant had an axis I diagnosis of bipolar nos. His axis V GAF score was 20. He had anhedonia, anxiety, depressed mood, hopelessness, impaired concentration, loss of energy, manic symptoms, sleep disturbances, thought disturbances, weight decrease and worthlessness/guilt (p 76).

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

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994(b)(5)(iii). Medical improvement 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 impairment(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 not 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 does have medical improvement in this case. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 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 sequential evaluation process. At the sixth step, this Administrative Law Judge finds that physically claimant can perform light or sedentary work. However, his mental status, such that the last mental examination that he received in May, 2012 indicated that his axis V GAF is 20. Therefore, he cannot perform light work based upon his mental state.

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residual functional capacity based on all current impairments and consider whether the claimant can still do work he/she has done in the past. In this case, this Administrative Law Judge finds that claimant could probably not perform his past work based upon his mental state.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual functional capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the claimant's vocational profile of a younger individual, age 34, with a GED and his history of unskilled work, can probably not perform other work in the form of light work based upon his mental condition. This Administrative Law Judge finds that claimant does not have medical improvement in this case and the department has not 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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not 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 and State Disability Assistance benefits. The claimant had an axis V GAF of 20 on his last mental report and therefore, he is probably not mentally capable of performing a wide range of light or sedentary work with his impairments. The department has not established its case by a preponderance of the evidence. The record does not establish medical improvement based upon the objective medical findings in the file. Claimant does not have medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is **REVERSED**.

The department is ORDERED to reinstate claimant's Medical Assistance and State Disability Assistance benefit case, if claimant is otherwise eligible to continue claimant's eligibility for Medical Assistance and State Disability Assistance benefits.

The department is ORDERED to assist claimant in performing a medical review of this case in April, 2014.

Landis

/s/

Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 29, 2013

Date Mailed: April 30, 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.

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.

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:

