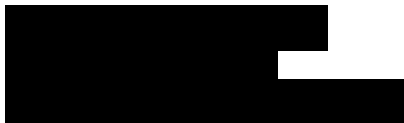


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201338279
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: August 8, 2013
County: Iosco DHS

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on August 8, 2013, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's ongoing eligibility for Medical Assistance (MA) and State Disability Assistance (SDA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. Claimant was an ongoing MA and SDA benefit recipient.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On March 22, 2013, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On March 22, 2013, DHS terminated Claimant's eligibility for MA and SDA benefits, effective May 2013, and mailed a Notice of Case Action informing Claimant of the termination.

5. On March 28, 2013, Claimant requested a hearing disputing the denial of MA benefits.
6. On June 18, 2013, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by determining that Claimant had medical improvement.
7. As of the date of the administrative hearing, Claimant was a 43 year old female with a height of 5'5" and weight of 150 pounds.
8. Claimant has no known relevant history of substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. Claimant received Medicaid through April 2013 and Adult Medical Program (AMP) benefits beginning in May 2013.
11. Claimant alleged disability based on impairments and issues including arthritis and various psychological problems.

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). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

The analysis of Claimant's MA benefit eligibility depends on whether Claimant was an applicant or an ongoing recipient. Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994.

In evaluating a claim for ongoing MA benefits, federal regulations 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 individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 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 the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. Prior to the commencement of a disability analysis, the medical documents should be considered.

A psychiatric examination (Exhibits 28-30) dated January 26, 2010 was presented. Diagnoses of mood disorder and alcohol dependence (in remission) were noted. Claimant's GAF was noted as 52. A guarded prognosis was given.

Medication review documents (Exhibits 23-25) were presented. The documents were dated February 23, 2010, March 16, 2010 and June 9, 2010 and verified an ongoing need for medication for Claimant.

A Consumer Plan of Service (Exhibits 33-36) dated October 11, 2012 was presented. It was noted that Claimant was in a car accident in 2004 and suffered various medical problems. It was noted that Claimant worried excessively to the point of having panic attacks.

Documents (Exhibit 16-17) dated October 13, 2012 from Claimant's treating physician were presented. Diagnoses of Post-traumatic Stress Disorder (PTSD) and bipolar disorder were noted. It was noted that Claimant's GAF was 31-40.

A document (Exhibit 15) dated December 8, 2012 from Claimant's treating physician was presented. It was noted that Claimant had a lot of social stressors and was in need of psychotherapy.

Hundreds of other psychiatric and medical documents (Exhibits 37-288) from 2010-2012 were presented. The documents verified consistent treatment for anxiety and various medical problems including arthritis.

Claimant's primary impairment appears to be anxiety related to either bipolar disorder and/or PTSD. Listing 12.06 covers anxiety disorders and reads:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

SHRT cited Claimant's psychiatric examination as proof of the absence of disability. SHRT noted that Claimant was cooperative and had increased psychomotor tone at an examination dated October 13, 2012. SHRT also noted that Claimant was doing "okay" and had no formal thought disorder at an examination from December 8, 2012. SHRT made no reference to Claimant's GAF which was 31-40. A GAF of 31-40 is described as

“some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood.”

A GAF is indicative of only one point in time. It is expected that a person would be temporarily low during a time of immense crisis (e.g. following a suicide attempt or during a hospitalization). Claimant's GAF was taken during a period of relative stability for Claimant. The fact that Claimant was found to function with major impairments during a time of stability is, by itself, considered sufficient to meet the above listing.

It should be noted that had Claimant been found not to meet the above listing, it would have been found that DHS failed to establish medical improvement and that no exceptions apply to justify a reversal of the previous disability finding. It is found that Claimant is a disabled individual and that DHS improperly terminated Claimant's MA benefit eligibility.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

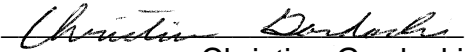
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet a SSA listing for anxiety-related disorders. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly terminated Claimant's eligibility SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly terminated Claimant's eligibility for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit eligibility, effective May 2013;
- (2) evaluate Claimant's ongoing eligibility for MA and SDA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper termination; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA and SDA benefits.

The actions taken by DHS are **REVERSED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 21, 2013

Date Mailed: August 21, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.
- 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 affect the substantial rights of the claimant,
 - 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

CG/aca

cc:

