

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

IN THE MATTER OF:



Reg. No: 2013-54396
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: October 30, 2013
County DHS Saginaw

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 30, 2013, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

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 April 2013.
2. On April 30, 2013, Claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On May 30, 2013, the Medical Review Team denied Claimant's application stating that Claimant had medical improvement.
4. On June 7, 2013, the Department caseworker sent Claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.

5. On June 14, 2013, Claimant filed a request for a hearing to contest the Department's negative action.
6. On August 14, 2013, the State Hearing Review Team again denied Claimant's review application stating that Claimant as had medical improvement. The Claimant is not currently engaging in substantial gainful activity based on the information that is available in the file. The Claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the Claimant retains the capacity to perform a wide range of light work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical – vocational guidelines would direct a finding of not disabled given the Claimant's age, education and residual functional capacity. Therefore, based on the Claimant's vocational profile of younger individual, [REDACTED] in history of unskilled/semiskilled work, MA-P is denied due to medical improvement and using vocational rule 202.20 as a guide. SDA is denied per PEM 261 because the nature and severity of the Claimant's impairments no longer precludes work activity at the above stated level for 90 days.
7. On October 30, 2013, the hearing was held. At the hearing, Claimant waived the time periods and requested to submit additional medical information.
8. On October 30, 2013, additional medical information was received and sent to the State Hearing Review Team.
9. On December 5, 2013, the State Hearing Review Team again denied Claimant's application stating that 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 work. Therefore, based on the Claimant's vocational profile of [REDACTED] and light work history; MA-P is denied using vocational rule 202.20 as a guide. SDA is denied per PEM 261.
10. Claimant is a [REDACTED]-year-old [REDACTED] whose birth date is [REDACTED]. Claimant is 5'8" tall and weighs 135 pounds. Claimant is a [REDACTED]. Claimant is able to read, write and does have basic math skills.
11. Claimant last worked in [REDACTED] as a [REDACTED]. Claimant has also worked as a [REDACTED] in loading furniture at [REDACTED].
12. Claimant was receiving medical assistance and state disability assistance based upon disability.
13. Claimant alleges as disabling impairments: a left femur fracture, diabetes mellitus, anxiety, pain disorder, damaged hip muscles, and one leg shorter than the other.

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 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 2011.

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 an x-ray of the left femur on [REDACTED] showed progressive healing of the femoral shaft fracture. A scanner Graham revealed a 1.1 cm difference with the left side is shorter. The [REDACTED] reported left leg atrophy of the gastrocnemius and left hip joint. There was no limited range of motion of lumbar spine. The Claimant had a history of a [REDACTED] with a fractured left femur. In [REDACTED] he had nonunion of the left femoral shaft, page 126. On September 21, 2012 the Claimant was noted to have lightheadedness and palpitations with some postural changes. Stress echo was negative for ischemia with normal structure of the heart. ~Table test was positive for neuro cardogenic syncope with a basal depressor responses was tachycardic response. Holter monitors showed some bradycardia, mainly when the Claimant was sleeping, but overall was unremarkable. His [REDACTED] was unremarkable. Assessment was neural cardiogenic symptoms and lifestyle changes were discussed, such as adequate hydration, nutrition and getting up from a seated position slowly. Medication was recommended that the Claimant refused, page 50. [REDACTED] dated [REDACTED] showed the Claimant was doing much better. He had rare use of [REDACTED] page 64. His chest was clear. He had no swelling or edema in the extremities. Sensation was grossly intact. There were no sensory deficits in any pedal digits with Monofilament testing. Pulses were strong and equal bilaterally, page 66. A DHS – 49 form dated [REDACTED] showed the Claimant was status post open fracture of the left femoral shaft, page 17. He had atrophy of the left eye. He had full range of motion of thigh and left hip was slightly decreased motion of the knee. Left leg length is shorter. The remainder of his examination was normal, including his mental status, page 18. The Claimant had a history of [REDACTED] with fractured left femur. In [REDACTED] he had nonunion left femoral shaft. Benefits were approved for treatment. In [REDACTED] there was no evidence of nonunion. His condition is improving. He had some atrophy of the left thigh with some decreased motion of the knee and his left leg shorter. Remainder of his examination was normal, including his mental status. He had medical improvement.

At Step 2, Claimant's impairments do no 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 have medical improvement and his medical improvement is related to the Claimant's ability to perform substantial gainful activity.

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. 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 Claimant does not have significant limitations on his ability to engage in basic work activities.

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 perform his past work as a grocery store clerk even with his impairments.

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 function 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 a younger individual, 14 years of education and light work history, MA-P is denied using Vocational rule 202.20 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 Claimant does have medical improvement in this case and the Department 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 Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person 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 criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of 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 and State Disability Assistance benefits based upon disability. The Claimant should be able to perform a wide range of light or sedentary 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**.

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

Date Signed: 12/11/13

Date Mailed: 12/11/13

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

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The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

LYL/tb

cc:

