

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2013-59987
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: December 4, 2013
County: Huron-00

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 December 4, 2013, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included Alison Ellis, and Margaret Kubacki.

ISSUE

Whether the Department properly determined that the Claimant had medical improvement, and was not disabled for purposes of the MA-P and SDA benefit programs?

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 an ongoing recipient of MA-P and SDA benefits.
2. In July 2012 the Medical Review Team ("MRT") found the Claimant disabled for purposes of the MA-P and SDA benefit programs.
3. In April 2013, the Department reviewed the Claimant's eligibility.
4. On May 16, 2013, the MRT found the Claimant no longer disabled based upon medical improvement.
5. The Department notified the Claimant of the MRT determination.

6. On July 26, 2013, the Department received the Claimant's timely written request for hearing.
7. On September 16, 2013, the State Hearing Review Team upheld the Department's closure of MA-P and SDA finding medical improvement and that Claimant was capable of performing light work.
8. The Claimant has physical disabling impairments including testicular seminoma cancer, and hepatitis C.
9. The Claimant completed a GED and has a history of light exertional work.
10. Claimant has had medical improvement in his condition.
11. Claimant testified to the following physical limitations:
 - i. Sitting: 20-30 minutes
 - ii. Standing: 20-30 minutes
 - iii. Walking: 100 feet
 - iv. Bend/stoop: difficulty
 - v. Lifting: 5 lbs.
 - vi. Grip/grasp: no limitations
12. Claimant is 30 years old.
13. Claimant takes the following prescription medications:
 - a. Albuterol
 - b. Prilosec
14. Claimant was diagnosed with stage IIC testicular cancer in 2012. He underwent orchiectomy and chemotherapy.
15. Claimant's cancer was still in remission at his last check-up.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formerly known as the Family Independence Agency, 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 Bridges Reference Manual ("BRM").

The State Disability Assistance (“SDA”) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code (“MAC R”) 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical, or mental, impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability, or blindness, or the receipt of MA benefits based on disability, or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as 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(a). The person claiming a physical, or mental, disability has the burden to establish it 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). Similarly, conclusory statements by a physician, or mental health professional, that an individual is disabled or blind, absent supporting medical evidence is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant’s pain on his or her ability to do basic work activities. 20 CFR 416.929(c) (3). The applicant’s pain must be assessed to determine the extent of his, or her, functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c) (2).

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 continue if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding 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 whether an individual's disability has ended 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 with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b) (1) (i). If no medical improvement is found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b) (5) (iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b) (5) (iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b) (5) (iii) (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b) (5) (vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b) (5) (v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether, despite the limitations, an individual is able to perform other work. 20 CFR 416.994(b) (5) (vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b) (3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical, or vocational, therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;

- (iii) Substantial evidence shows that based on new, or improved, diagnostic, or evaluative, techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b) (4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b) (5) (iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

The Claimant has physical disabling impairments including testicular cancer.

Listing

In this case, the Claimant's testicular cancer was in remission and his condition is stable. Claimant's impairments do not meet or equal a listing. In light of the foregoing, a determination of whether the Claimant's condition has medically improved is necessary.

As noted above, the Claimant was previously found disabled in 2012. In comparing those medical records to the recent evidence, as detailed above, it is found that the Claimant's condition has medically improved. Accordingly, the Claimant's disability must be further evaluated under the sequential analysis. 20 CFR 416.994(b) (1); 20 CFR 416.994(b) (5) (ii).

In the third step of the analysis, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record does not support a finding that the Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Listing 13.25 was considered.

The person claiming a physical, or mental, disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for a recovery and/or medical assessment of ability to do work-related activities, or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged. 20 CFR 416.913. A conclusory statement by a physician, or mental health professional, that an individual is disabled, or blind, is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.927.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, the Claimant's past employment was as a cook. Working as a cook would be considered light work. This Administrative Law Judge finds that Claimant is capable of light exertional work and his previous employment.

The Department has met its burden proving that Claimant has had medical improvement that would warrant a finding that he is no longer disabled.

In this case, the Claimant is found not disabled for purposes of continued Medical Assistance and State Disability Assistance ("SDA") entitlements.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact, and conclusions of law, finds the Claimant not disabled for purposes of continued MA-P and SDA benefits.

Accordingly, it is ORDERED:

1. The Department's determination is **AFFIRMED** and Claimant's MA-P and SDA benefits shall be processed for closure if not done so already.



Aaron McClintic
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 12/26/2013

Date Mailed: 12/26/2013

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.

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

AM/pw

cc:

[REDACTED]
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