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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013- 62511
Issue No.: 2009
Case No.: [redacted]
Hearing Date: December 12,2013
County: Grand Traverse

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 12, 2013, from Lansing, Michigan. Participants on behalf of Claimant included Claimant, and a [redacted]. Participants on behalf of the Department of Human Services (Department) included Amber Warren.

ISSUE

Was the Department correct in closing Claimant's MA-P case due to 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 awarded MA-P benefits based on a May 2012 application.

2. In May 2013, the Department reviewed the Claimant's MA-P eligibility.

3. On June 27, 2013, the MRT found the Claimant no longer disabled.

4. The Department notified the Claimant of the MRT determination.

5. On August 7, 2013, the Department received the Claimant's timely written request for hearing.

6. On October 7, 2013, the State Hearing Review Team denied Claimant's appeal because Claimant retains the capacity to perform a wide range of simple, unskilled, medium work.

7. The Claimant has physically disabling impairments including rotator cuff injury, osteoporosis, depression, and learning disability.

8. Claimant has the following symptoms: pain, fatigue, shortness of breath, insomnia, memory and concentration problems, crying spells, and social isolation.

9. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months of longer.

10. Claimant has had no medical improvement in his condition.

11. Claimant credibly testified that his physical health has not improved significantly since he was found to be disabled.

12. Claimant takes the following prescribed medications:

    a. Adderall
    b. Diazepam
    c. Flomax
    d. Percocet
    e. Proair
    f. Symbicort
    g. Haldol
    h. Wellbutrin
    i. Cymbalta
    j. Tenorm

13. Claimant testified to the following physical limitations:

    I. Sitting: 10 minutes
    II. Standing: 20 minutes
    III. Walking: 100-200 feet
    IV. Bend/stoop: difficulty
    V. Lifting: 10 lbs.
    VI. Grip/grasp: no limitations

14. Claimant testified to experiencing pain, at a high level of 8, on an everyday basis with some pain, always present, at a low level of 5.

15. In January 2013, Claimant was found to have a GAF score of 43 with diagnoses of posttraumatic stress disorder and depression.

16. Claimant was not working at the time of hearing. Claimant last worked in September 2009 as a carpenter.

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 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").

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-relate activities, or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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 applicants 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 continued 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 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 cooperated;
(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.

At the time of the Claimant's initial approval, the Claimant had a diagnosis of shoulder injury, osteoporosis, depression and learning disability. The Claimant was previously found disabled.

Listing:

In this case, the Claimant's diagnosis has not changed. Claimant's impairments do not meet or equal listing, 12.04 and 1.02. 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 as of May 2012. In comparing those medical records to the recent evidence (as detailed above), it is found that the Claimant's condition has not medically improved. Accordingly, the Claimant's disability is found to have continued at Step 2. 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) The Department has failed to meet its burden proving that the Claimant has had medical improvement that would warrant a finding that the Claimant is no longer disabled. The Department could not explain at hearing in what way the Claimant's health had improved.

In this case, the Claimant is found disabled for purposes of continued MA-P entitlement. The Department failed to present adequate proof that Claimant has had medical improvement.

Therefore, the Administrative Law Judge finds that the Claimant met the Department's definition of disabled for the purposes of continued MA-P.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of continued MA benefits.

Accordingly, it is **ORDERED:**

1. The Department's determination is **REVERSED**.

2. The Department shall initiate review of the May 2013 redetermination application for MA-P to determine if all other non-medical criteria are met, and inform the Claimant of the determination.

3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.

4. The Department shall review the Claimant's continued eligibility in January 2015 in accordance with Department policy.

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

Signed: 01/02/2014

Mailed: 01/03/2014

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]