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

### IN THE MATTER OF:



Reg. No.:	2013- 65776
Issue No.:	2009, 4009
Case No.:	
Hearing Date:	January 16, 2014
County:	Mecosta

## ADMINISTRATIVE LAW JUDGE: Aaron McClintic

### HEARING DECISION

Following Claimant's req uest f or a hearing, this matter is be fore the undersigned Administrative Law J udge pursuant to MCL 400.9 and 4 00.37; 42 CF R 431.200 to 431.250; and 45 CF R 205.10. After due notice, a tele phone hearing was held on January 16, 2014, from Lansing, Michigan. Participants on behalf of Claimant included Claimant, and a witness, **Participants** on behalf of the Department of Human Services (D epartment) included

#### ISSUE

Was the Department correct in closing Claimant's MA-P and SDA case due to medical improvement?

## FINDINGS OF FACT

The A dministrative Law Judg e, base d u pon the competent m aterial and substantial evidence on the whole record, finds as material fact:

- 1. Cl aimant was awarded continuing MA-P and SDA in January 2013.
- 2. In June 2013, the Department reviewed the Claimant's MA-P eligibility.
- 3. On August 12, 2013, the MRT found the Claimant no longer disabled.
- 4. T he Department notified the Claimant of the MRT determination.
- 5. On August 19, 2013, the Department received the Claimant's timely written request for hearing.

- 6. On October 15, 2013, the State Hearing Review Team denied Claimant's appeal because medical improvement was found.
- 7. The Cl aimant h as p hysically disabling impair ments including migraines, chronic back pain and seizures.
- 8. Claimant has the following symptoms: pain, fatigue, and headaches.
- 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. Cl aimant credibly testified that h is physical health has not improved significantly since he was found to be disabled.
- 12. CI aimant takes the following prescribed medications:
  - a. gabapentin
  - b. divalproex
  - c. tamsulosin
  - d. baclofen
  - e. fenofibrate
  - f. simvastatin
  - g. lorataidne
  - h. ranitidine
  - i. montelukas t
  - j. tizanidine
  - k. norco
- 13. Claimant testified to the following physical limitations:
  - I. Sitting: 30 minutes
  - II. Standing: 10-15 minutes
  - III. Walking: 50 yards
  - IV. Bend /stoop: difficulty
  - V. Lifting: 10 lbs.
  - VI. Gri p/grasp: no limitations
- 14. Cl aimant testified to experiencing pain, at a hig h le vel of 9, o n an ev eryday basis with some pain, always present, at a low level of 6-7.
- 15. Claimant testified to having a seizure every week or two.
- 16. Claimant was not worki ng at the time of hearing. Claimant last worked in September 2010 at a ski resort making snow.

## 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 opp ortunity for a hearing shall be g ranted to an appli cant w ho requests a h earing because his or her cl aim for assistance has been denied. MAC R 400.903(1). Clients have the right to conte st a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorr ect. The Department will prov ide an ad ministrative hearing t o rev iew th e decision and de termine the appropriateness of that decision. BAM 600.

The Medical Assistance ("MA") p rogram 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 Servic es ("DHS"), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department polic ies 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 is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

Receipt of SSI or RS DI benefits based on disability, or blindness, or the receipt of MA benefits bas ed o n d isability, or blindness, automatically q ualifies an ind ividual 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 phy sical or mental impairment which can be ex pected to result in death or which has lasted or can be ex pected to last for a continuous period of not less than 12 mont hs. 20 CFR 416.905(a). The person claiming a phy sical, 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 medic al history, clinical/laboratory findings, diagnosis/pr escribed treat ment, prognosis f or recov ery and/or m edical assessment o f ability to do work-relate activities, or ability to reason a nd make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain c omplaints are not, in and o f the mselves, suff icient t o establish disa bility. 20 CFR 416.9 08; 20 CFR 416.929(a) . Similarly, concluso ry statements by a physician, or mental health professional, that an in dividual is disab led or bli nd, abs ent supporting medical evidence is insufficient t o establish disa ability. 20 CFR 416.927.

When determining disabil ity, the federal r egulations req uire se veral f actors to b e 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 p ain; (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 w ork activities. 20 CFR 416.929(c)(3). The a pplicant's pain must be assessed to det ermine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Once a n individual has been fo und dis abled for purp oses of MA benefits, con tinued entitlement is peri odically rev iewed in or der to make a current de termination, or decision, as to whether disability remains in accordance with the medical improv ement review standard. 2 0 CFR 416 .993(a); 2 0 CFR 416.994 . I n ev aluating a clai m f or ongoing MA benefits, f ederal regulations require a s equential evaluation process be utilized. 20 CFR 416.994(b)(5). The rev iew may cease and b enefits continued i f 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, alon g with the Claimant's cooperation, a complete m edical history covering, at least, the 12 m onths preceding the date the individual sig ned a request seeking continuing disability benefits. 20 CFR 416.993(b). The Department may order a c onsultative ex amination 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 CF R 416. 994(b)(5)(i). If a Listing is met, an ind ividual's disability is f ound t o continue with no further analysis required.

If the imp airment(s) does not m eet or e qual a Listing, then Step 2 req uires a determination of whether there has been medi cal improvement as defined in 2 0 CFR 416.994(b)(1); 20 CF R 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 h as been an increase in the resid ual 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 im provement is not r elated to the ability to work, Step 4 ev aluates whether any listed ex ception a pplies. 20 CF R 416.994(b)(5)(iv). If no ex ception is appli cable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to d o w ork, then a determination of whether an in dividual's impairment(s) are severe is m ade. 20 CFR 416.994(b)(5)(iii), (v) . If severe, an assessment of an individual's residual functional ca pacity to p erform p ast w ork is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relev ant w ork, disabil ity 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 w ork activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relev ant work, vocational factors such as the individual's age, education, a nd past w ork ex perience are c onsidered in dete rmining whether despite the li mitations an ind ividual is able t o per form ot her w ork. 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 en ded 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 adv ances in medical, or vocational, therapy or tech nology (related to the ability to work;
- (ii) Substantial evidence show s th at the in dividual has undergone vocational therapy related to the ability to work;
- (iii) Subst antial evidence shows that based on new , o r improv ed, diagnostic, or ev aluative, techniques the i mpairment(s) is n ot as disabling as previously determined at t he time of the m ost recent favorable decision;
- (iv) Substantial ev idence d emonstrates that a ny pr ior 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 prescri bed treat ment t hat w as ex pected t o rest ore t he individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is ap plicable, a determination that the individual's disa bility has ende d 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 disc ussed above, the f irst step in the sequential evaluation process to determine whether the CI aimant's disability continues looks at the sev erity 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 migraines, chronic back pain and seizures. The Claimant was previously found disabled.

Listing:

In this case, the Cl aimant's diagnosis has not changed. Claimant's impairments do not meet or equal listing 1 1.02. In light of the foregoing, a determination of whether the Claimant's condition has medically improved is necessary.

As noted ab ove, the Claimant w as previously found disabled as of January 2013. In comparing those m edical records to the recent ev idence (as det ailed above), it is found t hat t he Claimant's condition has not medically improved. Accordingly, the Claimant's disability is found to hav e continued at Ste p 2. 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) The Department has failed to m eet its burd en proving that the Claimant has h ad medical improvement that would warrant a finding that the Claimant is no longer disabled. The Department could not explain at hearing in w hat w ay the Claimant's health had improv ed. Claimant c ontinues to have seizures at the same frequency.

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

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

# DECISION AND ORDER

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

Accordingly, it is **ORDERED**:

- 1. The Department's determination is **REVERSED**.
- 2. The Department shall initiate review of the June 2013 red etermination application f or MA-P and SDA to determine if all other non-medical criteria are met, and inform the Claimant of the determination.
- 3. T he Department shall supplement for any lost b enefits (if any) t hat t he Claimant w as entitled to receive if otherwise eligible and q ualified in accordance with Department policy.

4. T he Department shall review the Claimant's continued elig ibility in February 2015 in accordance with Department policy.

Am milit

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

Signed: February 7, 2014

Mailed: February 7, 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, wit hin 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 da te of this Dec ision and Order . MAHS will not order a rehearing or reconsideration on the Department's moti on 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 disc overed evidence that existed at the time of the original hearin g that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decis ion which led to a wrong conclusion;
- Typographical, mathematical or other obvio us error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to addre ss in the hearing decision r elevant 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/las

