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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-60720
Issue No.: 2009, 4009
Case No.: [redacted]
Hearing Date: December 4, 2013
County: Wayne (57)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on December 4, 2013, from Detroit, Michigan. Participants included the above-named Claimant. [redacted] appeared as Claimant's legal counsel. Participants on behalf of the Department of Human Services (DHS) included [redacted], Supervisor.

ISSUE

The issue is whether DHS properly terminated Claimant's eligibility for Medical Assistance (MA) and State Disability Assistance (SDA) for the reason 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 [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of MA eligibility (see Exhibits 6-7).

4. On [redacted], DHS terminated Claimant's eligibility for MA and SDA benefits, effective [redacted], and mailed a Notice of Case Action (Exhibits 3-5) informing Claimant of the termination.

5. On [redacted] the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of SDA eligibility (see Exhibits 6-7).

6. On [redacted], Claimant requested a hearing disputing the termination of MA and SDA benefits.

7. On [redacted], the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 203.14.

8. On [redacted], an administrative hearing was held.

9. Claimant presented new medical documents (Exhibits A1-A46; B1-B19) at the hearing.

10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.

11. On [redacted], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by the State Hearing Review Team was subsequently issued.

12. On [redacted], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 203.14.

13. On [redacted], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

14. As of the date of the administrative hearing, Claimant was a 55-year-old male with a height of 5'8'' and weight of 135 pounds.

15. Claimant has no relevant history of alcohol or substance abuse.

16. Claimant's highest education year completed was the 12th grade.

17. Claimant was an ongoing Medicaid recipient through [redacted]

18. Claimant alleged disability based on impairments and issues including degenerative disc disease (DDD), depression and lower back pain (LBP).

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).

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 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).

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. This consideration requires a summary and analysis of presented medical documents.

A History and Physical document (Exhibit 23) dated [redacted] from a treating physician was presented. It was noted that Claimant previously underwent left shoulder arthroscopy in 2008. It was noted that Claimant subsequently lost his job and insurance so he has not been treated since 2008. It was noted that Claimant reported ongoing shoulder pain.

A radiography report (Exhibit 26) dated [redacted] was presented. An impression of a normal left shoulder was noted.

An MRI report (Exhibits 24-25) dated [redacted] was presented. Very minimal tendinosis of the distal supraspinatus was noted. It was also noted there was no rotator cuff tear.

An Office Note (Exhibit 21) dated [redacted] from a treating physician was presented. It was noted that Claimant reported for follow-up of a left shoulder impingement. It was noted that a previous injection provided little relief for Claimant. It was noted that Claimant reported continuing night pain and difficulty with reaching. A plan was noted to refer Claimant for neck symptomology examination. A positive Spurling's test was noted.

A treatment document (Exhibits 56-57) dated [redacted] was presented it was noted that Claimant reported moderate impairments with overhead reaching and sleeping. It was noted that Claimant reported a pain level of 5/10. It was noted that Claimant reported that he no longer had difficulty with most basic activities of daily living.

A Medical Examination Report (Exhibits 13-15) dated [redacted] was presented. The report was completed a physician with an approximate three-month history of treating Claimant. The physician noted a diagnosis of cervical spondylosis. It was noted that Claimant reported a 6-7/10 level of pain which radiated into his left arm. Diffuse tenderness on paracervical region with limited range of motion was noted. It was noted that engaging in repetitive activities may aggravate symptoms. An impression was given that Claimant's condition was improving. It was noted that Claimant can meet household needs.

A letter (Exhibit 16) dated [redacted] from Claimant's physician was presented. It was noted that Claimant received physical therapy from [redacted]; presumably, the physician intended to state that Claimant had therapy in 2012, not 2013.

A referral letter (Exhibits 51-53) dated [redacted] was presented. The letter was from a pain clinic physician. It was noted that Claimant presented with complaints of neck and lower back pain, ongoing for seven years. It was noted that Claimant reported pain relief when sitting. It was noted that pain was exacerbated by prolonged walking, standing and sleeping. It was noted that a previous MRI found severe right neural foraminal narrowing at C6-C7.

Treatment documents (Exhibits 17-18; 43-50) dated [redacted] were presented. It was noted that Claimant underwent a bilateral L4-L5 intra-articular facet steroid injection.

Treatment documents (Exhibits 31-42; A37-A46) dated [redacted] were presented. It was noted that Claimant underwent a bilateral L4-L5 and L5-S1 intra-articular facet steroid injection. It was noted that Claimant reported a pain of 7/10 before the procedure. It was noted that five days after the procedure Claimant reported a pain level of 5/10.

Treatment documents (Exhibits A26-A35) dated [redacted] were presented. It was noted that Claimant underwent a lumbar radiofrequency thermal coagulation. It was noted that

Claimant reported a 5-6/10 pain level before the procedure it was noted that five days after the procedure Claimant reported a pain level of 3/10.

Treatment documents (Exhibits A16-A25) dated [redacted] were presented; it was noted that Claimant underwent a radio-frequency thermal coagulation.

An Office Note (A13-A14) dated [redacted] was presented. It was noted that Claimant's back pain was resolving and that he would like to focus on his neck pain. It was noted that Claimant often awoke with neck pain. It was noted that Claimant reported muscle spasms. It was noted that Claimant reported that bending and sitting for long periods exacerbated his pain. It was noted that Claimant reported a pain level of 3/10 in his lower back. It was noted that an MRI the cervical spine showed multilevel disc osteophyte complex formation but no significant spinal canal stenosis. A disc bulge at C5-C6 was noted. It was noted that facet arthropathy and mild broad-based disc osteophyte complex at C6-C7 contributes to severe right foraminal narrowing. It was noted that Claimant received pain medications and that a steroid injection was scheduled.

Treatment documents (A2-A10) dated [redacted] were presented. It was noted that Claimant underwent a steroid injection at C6-C7. A postoperative diagnosis of DDD with cervical radiculopathy was noted.

A Medication Reconciliation Note (Exhibit A12) dated [redacted] was presented. It was noted that Claimant was prescribed naproxen for pain.

A Comprehensive Psychosocial Assessment (Exhibits B4-Be 11) dated [redacted] was presented. The assessment was signed by a social worker and supervisor. It was noted that Claimant reported symptoms of depression and insomnia. It was noted that Claimant reported chronic back neck and shoulder pain from long time employment as a custodian. It was noted that Claimant reported alcohol and marijuana sobriety since 1996. It was noted that Claimant demonstrated the following: good judgment, appropriate self-concept, normal orientations, normal perceptions, spontaneous speech and verbose speech. Axis I diagnoses of dysthymic disorder and generalized anxiety disorder were noted. Claimant's GAF was noted to be 50. A presented Nursing Assessment (Exhibits B12-B18) dated [redacted] was consistent with the psychosocial assessment.

A listing for affective disorder (Listing 12.04) was considered based on Claimant's complaints of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

A listing for anxiety-related disorders (Listing 12.06) was considered based on a social worker's diagnosis of an anxiety disorder. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant had a complete inability to function outside of the home.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of shoulder pain. The listing was rejected due to a failure to establish involvement with each upper extremity.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. This listing was rejected due to a lack of evidence and a failure to establish a spinal disorder resulting in a compromised nerve root or an inability that Claimant ambulates ineffectively as defined in 1.00B2b

Based on the presented evidence, it is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step two.

The second step of the analysis considers whether medical improvement occurred. 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).

The SHRT decision dated 9/23/13 (Exhibits 169-170) found medical improvement based on findings that Claimant had a full range of motion of all extremities on [redacted]. SHRT also cited that Claimant's strength was 5/5 in all extremities. SHRT cited that Claimant had a reduced range of motion in 2009. SHRT cited some signs of improvement. SHRT also cited that Claimant had a full range of motion and 5/5 muscle strength in [redacted]. The evidence tended to verify that Claimant had medical improvement. It must then be determined if the improvement relates to the ability to perform substantial gainful activity.

The third step of the analysis considers medical improvement and its effect on the ability to perform SGA. Medical improvement is not related to the ability to work if there has been a decrease in the severity of the impairment(s) present at the time of the most recent favorable medical decision, but *no* increase in functional capacity to do basic work activities. 20 CFR 416.994(b)(1)(ii). If there has been any medical improvement, but it is not related to the ability to do work and none of the exceptions applies, benefits will be continued. *Id*.

Documents (Exhibits 131-168) from Claimant's application for MA were presented. The presented documents led to a finding of disability in an administrative decision (Exhibits 110-118) finding that Claimant was disabled. The administrative judge determined that Claimant was restricted to performing sedentary employment and a finding of disability was found based on application of Medical-Vocational Rule 201.12.

The SHRT decision fails to factor that Claimant received multiple steroid injections and radio-frequency thermal coagulation treatments over the next several months. During those treatments, Claimant consistently reported levels of pain consistent with a lack of improvement. At times, Claimant's pain diminished, however, there is no indication that the reduction was permanent. As it happened, DHS terminated Claimant's Medicaid eligibility shortly after Claimant's steroid injections. Claimant credibly testified that he had periods of reduced pain, but only temporary periods. Temporary pain relief from steroid injections is not thought to be unusual. The nature of DDD is that it is treatable, but not reversible. The presented evidence tended to verify that Claimant is still restricted to performing sedentary levels of employment, precisely as Claimant was found in the initial finding of disability.

Based on the presented evidence, it is found that Claimant's medical improvement does not relate to his ability to perform employment. It must then be determined whether an exception applies to prevent the continuance of MA benefits.

Step four considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). If medical improvement related to the ability to work has not occurred and no exception applies, then benefits will continue. CFR 416.994(b). Step four lists two sets of exceptions.

The first group of exceptions allow a finding that a claimant is not disabled even when medical improvement had not occurred. The exceptions are:

(i) Substantial evidence shows that the individual is the beneficiary of advances in medial 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.
20 CFR 416.994(b)(4)

If an exception from the first group of exception applies, then the claimant is deemed not disabled if it is established that the claimant can engage is substantial gainful activity. If no exception applies, then the claimant's disability is established.

The second group of exceptions allow a finding that a claimant is not disabled irrespective of whether medical improvement occurred. The exceptions are:

(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.
20 CFR 416.994(b)(4)

None of the above exceptions apply. It is found that Claimant is still disabled. Accordingly, it is found that DHS improperly terminated Claimant's MA 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 (1/2013), p. 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 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:
- 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).
Id.

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant has not had medical improvement related to the ability to perform employment. The analysis and finding applies equally to the termination of SDA benefits. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly terminated Claimant's eligibility for 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 perform the following actions:
(1) redetermine Claimant's MA and SDA benefit eligibility, effective [redacted], subject to the finding that Claimant is a disabled individual;
(2) initiate a supplement for any benefits not issued as a result of the improper benefit terminations; and

(3) 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: 3/11/2014

Date Mailed: 3/11/2014

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

CG/hw

cc: