

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-13910
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 20, 2014
County: Roscommon

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 March 20, 2014, from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUE

Was the Department correct in closing Claimant's Medical Assistance disability (MA-P) case based on an improvement of her medical condition which makes her no longer disabled?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent material, and substantial evidence on the whole record, finds as material fact:

1. On July 29, 2005, Claimant applied for Retirement, Survivors, Disability, Insurance (RSDI).
2. On October 31, 2005, the Social Security Administration (SSA) denied Claimant's application for RSDI.
3. On December 4, 2005, Claimant appealed the SSA's denial.
4. On August 8, 2008, the SSA denied Claimant's appeal.
5. Claimant was awarded MA-P based on an October 4, 2011 application.
6. In June, 2013, the Department reviewed the Claimant's MA-P eligibility.
7. On October 28, 2013, the MRT found the Claimant no longer disabled.

8. The Department notified the Claimant of the MRT determination.
9. On November 15, 2013, the Department received the Claimant's timely written request for hearing.
10. On January 21, 2014, the State Hearing Review Team denied Claimant's appeal based on medical improvement.
11. The Claimant was previously determined to be disabled based on lower back pain (degenerative disc disease), right leg pain and carpal tunnel syndrome.
12. Following Claimant's MA-P favorable decision, Claimant has not applied for RSDI benefits with the SSA.

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").

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 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 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 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 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 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. At the time of the Claimant's initial approval, the Claimant had a diagnosis of multilevel degenerative disc disease and carpal tunnel syndrome. The Claimant was previously found disabled.

The Department argues that Claimant has improved and is no longer disabled. However, the Department also argues that Claimant failed to properly pursue disability benefits from the SSA. This Administrative Law Judge need not address the issue of medical improvement as Claimant has failed to pursue potentially available benefits. Policy requires that clients must apply for benefits for which they may be eligible. This includes taking action to make the entire benefit amount available to the group. Any action by the client or other group members to restrict the amount of the benefit made available to the group causes ineligibility. Except for contractual care arrangements, the requirements in this item **do not** apply to a past month determination for MA when the applicant has taken action to apply for potential benefits. See BEM 270 (3-1-2014), p 1.

For MA, refusal to pursue a potential benefit results in the person's ineligibility. BEM 270 (3-1-2014), p 1. Retirement Survivors, Disability Insurance (RSDI) benefits are potential benefit that is payable to a wage earner and/or his/her dependents. The benefits are administered by the Social Security Administration (SSA). The wage earner must be covered by Social Security and must be:

- Retired and at least age 62.
- Disabled or blind.
- Dead.

RSDI are potential benefits for all of the following persons:

- A person who is blind.
- A person who is retired and at least age 62.
- A person who claims illness or injury prevents him from working for at least 12 months.
- A person whose spouse is retired, disabled or dead.
- A child whose parent is retired, disabled or dead.

In the instant matter, the SSA found Claimant not disabled in 2005. Per BEM 270 (cited above), Claimant is required to pursue potential benefits, including disability benefits. Claimant did apply for RSDI disability benefits following her 2008 denial. Claimant did; however, apply for MA-P benefits and was aware that RSDI benefits were available. In fact, Claimant received MA-P based on the claim that she had an illness or injury that prevented her from working at least 12 months. In light of the foregoing, Claimant's failure to pursue disability benefits with the SSA resulted in her ineligibility for MA-P. Accordingly, the Department's MA-P determination that Claimant is correct.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds Claimant is not disabled for purposes of the MA-P benefit program based on her failure to apply for RSDI benefits under BEM 270.

The Department's determination is **AFFIRMED**.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 9, 2014

Date Mailed: April 9, 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.

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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

CAP/las

cc:

