

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

IN THE MATTER OF:



Reg. No.: 2014-9132
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: March 19, 2014
County: Wayne (18)

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 March 19, 2014, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED] appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

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 8/9/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of MA eligibility (see Exhibits 2-3).

4. On [REDACTED], DHS terminated Claimant's eligibility for MA and SDA benefits, effective 10/2013, and mailed a Notice of Case Action (Exhibits 130-131) informing Claimant of the termination.
5. On [REDACTED], Claimant requested a hearing disputing the termination of MA and SDA benefits.
6. On [REDACTED], the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by finding that Claimant had medical improvement.
7. As of the date of the administrative hearing, Claimant was a 47-year-old male with a height of 5'6" and weight of 175-180 pounds.
8. Claimant has a history of alcohol and substance abuse.
9. Claimant's highest education year completed was the 10th grade.
10. Claimant was an ongoing Medicaid recipient through 9/2013.
11. Claimant alleged disability based on impairments and issues including lower back pain, depression, social interaction difficulties and anxiety.

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 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).

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.

Various documents (Exhibits 55-94) from Claimant's mental health provider were presented. The documents were signed by a social worker or therapist and ranged in date from [REDACTED] through [REDACTED]. The documents consistently noted Claimant's attempt to obtain Medicaid and housing.

Various Medical Progress Notes (Exhibit 104-108) were presented. The notes ranged in date from [REDACTED] through [REDACTED]. It was consistently noted that Claimant scored 0 on all 10 AIMS questionnaire sub-scales. A consistent diagnosis of mood disorder was noted. Claimant's GAF was noted to be 50 on multiple dates. Recommendations of psychotherapy and continuing medications were consistently noted.

A Psychiatric Psychological Examination Report (Exhibits 11-12) was presented. The form was unsigned but referenced an attached psychiatric evaluation (presumably the evaluation dated [REDACTED]). Claimant's GAF was noted to be 50.

An Annual Psychiatric Evaluation (Exhibits 24-25; 98-99) dated [REDACTED] was presented. The evaluation was completed by a treating psychiatrist. The psychiatrist noted that Claimant was relatively stable with some persisting symptoms such as sadness, loss of interest and guilt. It was noted that Claimant had good physical health. Axis I diagnoses of mood disorder and polysubstance abuse were noted. Claimant's GAF was noted to be 50. It was noted that Claimant remained stable in treatment over the past year. A plan of psychotherapy was noted.

Treatment documents (Exhibits 14-20) dated [REDACTED] were presented. The documents were signed by a nurse from Claimant's treating mental health agency. It was noted that Claimant reported experiencing audio and visual hallucinations. It was noted that Claimant did not presently use drugs or alcohol but a history of drug and alcohol abuse

was noted. It was noted that Claimant was out of medication for several months. Occasional homicidal ideation was noted.

A Case Management Assessment- Annual Update (Exhibits 21-23) dated [REDACTED] was presented. The report was completed by a social worker from Claimant's treating mental health agency. It was noted that Claimant took Prestique and Seroquel. It was noted that Claimant was on probation for domestic violence.

A Psycho-Social Assessment- Annual update (Exhibits 43-45) dated [REDACTED] was presented. The assessment was signed by a treating therapist. It was noted that Claimant stopped drinking alcohol. It was noted that Claimant would receive outpatient services, therapy, case management and nursing services.

An Individual Plan of Service (Exhibits 46-53) was presented. The plan was completed by Claimant on an unspecified date and was co-signed by a social worker on [REDACTED]. Noted goals included managing anger and learning coping skills. It was noted that Claimant would attend monthly therapy sessions and psychiatric appointments.

A treatment document (Exhibit 27) dated [REDACTED] was presented. The document was from a treating physician with an unspecified history of treating Claimant. It was noted that Claimant presented with complaints of shoulder pain, recurring chest pain, arthritis and back pain. It was noted that Claimant's medical history included herniated discs and a corrective back surgery from 2006. A diagnosis of lumbosacral spondylosis was noted. A plan to continue medications was noted. It was noted that Claimant took various medications including Phenergan with Codeine.

Various lab results (Exhibits 35-41) from a collected sample from [REDACTED] were presented. The results were not accompanied by physician analysis and were not otherwise notable.

A Medical Progress Note (Exhibit 100) dated [REDACTED] was presented. The note was signed by Claimant's treating psychiatrist. It was noted that Claimant was currently asymptomatic. It was noted that psychosocial stressors were overwhelming. It was noted that Claimant was tearful during interview. Current medications for Preistiq and Seroquel were noted. Claimant's GAF was noted as 50.

A treatment document (Exhibit 28) dated [REDACTED] was presented. The document was from a treating physician with an unspecified history of treating Claimant. It was noted that Claimant reported increasing back pain. A plan to continue medications was noted.

A treatment document (Exhibit 29) dated [REDACTED] was presented. The document was from a treating physician with an unspecified history of treating Claimant. It was noted that Claimant reported back pain radiating to both legs. A plan to continue medications was noted. Noted medications included Loracet and carisoprodol.

A treatment document (Exhibit 30) dated [REDACTED] was presented. The document was from a treating physician with an unspecified history of treating Claimant. It was noted that Claimant reported back pain. It was noted that Claimant "got epidural for delivery". A plan noted prescribing Vicodin ES.

A Mental Residual Functional Capacity Assessment (Exhibits 9-10) dated [REDACTED] was presented. The assessment was completed by a person from Claimant's treating mental health agency but the author's job title was unclear. It was noted that Claimant was markedly limited in 1/20 listed work abilities and moderately limited in 17/20 listed abilities.

A prescription (Exhibit 31) dated [REDACTED] was presented. A referral for physical therapy from Claimant's treating physician was noted.

Listings for mental disorders (Listing 12.00) were considered based on Claimant's mental health treatment. The listings were rejected for failing to establish marked restrictions to social interactions, concentration or performing daily activities. There was also no established history of decompensation episodes or other listing requirements.

A listing for spinal disorder (Listing 1.04) was considered based on Claimant complaints of back pain. The listing was summarily rejected due to a lack of radiology verifying nerve root compromise or other evidence verifying an inability to ambulate ineffectively.

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).

A Hearing Decision (Exhibits 125-129) dated [REDACTED] from a State of Michigan administrative law judge was presented. The decision determined that Claimant was disabled. The ALJ appeared to primarily rely on 2012 dated psychiatrist statements that Claimant's GAF was 46 and that Claimant had numerous marked psychological restrictions.

In 2012, Claimant's GAF was noted as 46. In 2013, Claimant's GAF increased to 50. This is evidence of slight improvement of Claimant's functioning level.

In 3/2013, Claimant's psychiatrist deemed Claimant to be asymptomatic; such a statement is consistent with finding medical improvement.

Based on the overall evidence, some medical improvement was established. Accordingly, the analysis may proceed to step three.

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.*

In step two of the analysis, it was noted that Claimant's psychiatrist described Claimant as asymptomatic. Claimant's psychiatrist also noted that Claimant's GAF was 50. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." If Claimant's functioning level was representative of marked restrictions, a statement that Claimant was asymptomatic should be interpreted narrowly. Claimant's psychiatrist likely intended to note that Claimant was asymptomatic only during that particular treatment and/or that Claimant's most serious symptoms (e.g. hallucinations) were resolved. It can be found that Claimant still had numerous functioning restrictions, as noted in a Mental Residual Functional Capacity Assessment from 6/2013. Thus, Claimant's "asymptomatic" status is found to be only slight evidence of medical improvement. This finding is consistent with Claimant's slight increase in GAF functioning, from 46 to 50. Both GAF levels fall within the spectrum of serious symptoms.

In 3/2013, Claimant's psychiatrist also noted that psychological stressors were overwhelming to Claimant. The statement is strongly suggestive of serious daily functioning restrictions.

SHRT summarily found that Claimant had medical improvement but failed to state what improvement occurred. Thus, the SHRT decision contributes little to the analysis.

Based on the presented evidence, it is found that Claimant's medical improvement has not increased Claimant's ability to perform employment. Accordingly, the analysis proceeds to step four.

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 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.
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 in 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.

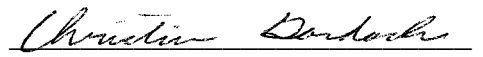
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant has not had medical improvement related to the ability to perform employment. The analysis and finding applies equally to the termination of SDA benefits. It is found that Claimant is a disabled 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 10/2013, 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: 4/10/2014

Date Mailed: 4/10/2014

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:

