

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

IN THE MATTER OF:



Reg. No.: 2014-21354
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: April 22, 2014
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 April 22, 2014, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED].

ISSUE

Did the Department properly determine that Claimant was no longer disabled and deny his review application for Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon 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 a Medical Assistance benefit recipient and his Medical Assistance case was scheduled for review in December, 2013.
- (2) On October, 31, 2013, Claimant filed a Redetermination for MA and SDA benefits alleging continued disability.
- (3) On December 20, 2013, the Medical Review Team denied Claimant's application indicating that Claimant was denied for continuing eligibility. (Depart Ex. A, pp 1-).
- (4) On December 30, 2013, the Department sent Claimant notice that his MA and SDA cases would be closed based upon medical improvement.

- (5) On January 8, 2014, Claimant filed a request for a hearing to contest the Department's negative action.
- (6) On February 26, 2014, the State Hearing Review Team denied Claimant's Redetermination based on a SSI denial dated 7/23/13.
- (7) On [REDACTED], Claimant's treating physician completed a Medical Examination Report on Claimant. Claimant was admitted to the hospital on [REDACTED] with abdominal pain. He was found to have a perforated colon, with a weight restriction of 30 pounds, status post Hartman's procedure colonoscopy. The physician indicated Claimant was to have colonoscopy takedown surgery on [REDACTED] and was in stable condition. (Dept Ex. A, pp 16-18).
- (8) On [REDACTED], Claimant was admitted to the hospital for elective takedown of end colostomy. He received appropriate perioperative IV antibiotics and deep venous thrombosis prophylaxis. The procedure was notable for intraabdominal and pelvic adhesions. Colostomy was successfully taken down with a low pelvic anastomosis. The abdominal wall was reconstructed. He was discharged after 11 days with a diagnosis of diverticulitis, colostomy status and abdominal adhesions. (Claimant Ex. 10-11).
- (9) On [REDACTED], Claimant was admitted to the hospital with signs and symptoms of an abdominal wall abscess. This was confirmed on a CT scan. This was managed by initiation of broad-spectrum IV antibiotics, and a few staples were removed for drainage of the infected hematoma. The wound was then managed with application of VAC dressing. He was discharged 5 days later in stable condition. (Claimant Ex. 9).
- (10) Claimant was receiving MA and SDA at the time of this review.
- (11) Claimant alleges his disabling impairments are a perforated bowel and diverticulitis.
- (12) Claimant is a 55-year-old man whose birth date is [REDACTED].
- (13) Claimant is 5'10" tall and weighs 172 pounds.
- (14) Claimant has a high school education. He is able to read and write and has basic math skills.
- (15) Claimant last worked in May, 2013.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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). The Department of Human Services (DHS or department) 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).

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first question asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because he has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement.

Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

The State Hearing Review Team upheld the denial of SDA and MA benefits on the basis of the SSI denial from 7/23/13. At the time of the SSI denial, Claimant still had a colonoscopy bag from his perforated bowel in May, 2013.

Pursuant to the federal regulations, at medical review, the Department has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

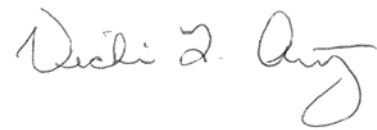
In this case, the Department has not met its burden of proof. The Department has provided no evidence that indicates Claimant's condition has improved, or that the alleged improvement relates to his ability to do basic work activities. The Department provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the Department's SDA and MA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department erred in proposing to close Claimant's MA and SDA case based upon a finding of improvement at review.

Accordingly, the Department's action is **REVERSED**, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with Claimant's next mandatory medical review scheduled in May, 2015, (unless he is approved eligible for Social Security disability benefits by that time).

It is SO ORDERED.



Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 5, 2014

Date Mailed: May 5, 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.

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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

VLA/las

cc:

