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

IN THE MATTER OF:

[redacted]

Reg. No.: 201414806
Issue No(s).: 2009; 4009
Case No.: [redacted]
Hearing Date: March 17, 2014
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 17, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [redacted]. Participants on behalf of the Department of Human Services (Department) included [redacted].

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or State Disability Assistance (SDA) benefit programs?

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 applied for MA-P on September 4, 2013.

2. Claimant was an SDA recipient.

3. Claimant is 31 years old.

4. Claimant has a 12th grade education.

5. Claimant has a past work history home health care.

6. These jobs were performed at the light levels.

7. These jobs required significant standing and walking.

8. Claimant has a medical history consisting of a foot fracture with significant nerve damage.

9. Claimant was treated for the fractured arm in November, 2013, where it was noted that the fracture was not healing correctly.

10. Claimant has significant pain in the foot, and is unable to stand over 5 minutes.

11. Claimant can perform some activities of daily living.

12. Claimant is restricted from lifting over 5 pounds frequently, due to her inability to stand for extended lengths.

13. On October 11, 2013, the Medical review team denied MA-P, stating that claimant did not meet durational requirements.

14. On October 31, 2013, claimant was sent a notice of case action denying MA-P.

15. On November 19, 2013, claimant requested a hearing with regard to the MA-P decision.

16. On January 23, 2014, a medical review of claimant's SDA disability status was conducted by MRT.

17. Claimant was found to be medically improved.

18. There is no evidence that medical evidence from the previous file was considered.

19. On January 29, 2014, claimant was sent a notice of case action closing the SDA benefits.

20. On February 3, 2014, claimant requested a hearing with regard to SDA benefits.

21. On January 22, 2014, the State Hearing Review Team denied MA-P, stating that claimant could perform other work.

22. On March 17, 2014, an administrative hearing was held after the two separate causes of action were combined into a single hearing.

23. Claimant submitted new medical evidence at the hearing; on May 21, 2014, SHRT again denied MA-P disability, stating that claimant was able to perform other work.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to

1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program purusant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

With regards to the MA-P allegations, Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five-step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2013 is $1,740. For non-blind individuals, the monthly SGA amount for 2013 is $1040.

In the current case, claimant has testified that they are not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore,

the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented medical evidence of broken foot and nerve damage, according to the great weight of the evidence by both the Department and claimant's treating sources. The symptoms described by the claimant, and supported by independent medical evidence, support the existence of a condition that would result in an impairment that would limit claimant's ability to perform basic work activities. Claimant has an inability to stand or walk for any great length of time. The medical records show that the claimant's impairment can be expected to last 12 months, given the chronic nature of the impairment. Claimant thus passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding

of “not disabled”; if the claimant’s impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant’s medical records do not contain medical evidence of an impairment that meets or equals a listed impairment.

In making this determination, the undersigned has considered listings in Section 1.00 (Musculoskeletal). Claimant has not provided medical evidence required to find disability at this step. The medical evidence presented does not support a finding of disability at this step, as there is no evidence that claimant is unable to ambulate effectively, as defined by the listing. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant’s vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual’s residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that

1) the individual has the functional and vocational capacity to for other work, considering the individual’s age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or

2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant’s functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant’s age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual’s ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant’s medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional

limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of “sedentary”, “light”, “medium”, “heavy”, and “very heavy” work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform at their PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant’s RFC on a function-by-function basis, based upon all the relevant evidence of an individual’s ability to do work related activities. Only at step 5 can we consider the claimant’s exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual’s limitations and restrictions of physical strength, and the claimant’s ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual’s physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptom, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, claimant has a documented fractured foot with nerve damage. Medical reports, supplied by the claimant and Department, indicate that claimant cannot stand for long periods. Claimant does not appear to have any sensory deficits, or any mental deficits.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment for the purposes standing and walking for any great length of time. Claimant has no limitations in the use of their hands for manipulation. Claimant has postural limitations (e.g. stooping, bending, and crouching). Claimant has no visual

limitations or communicative (hearing, speaking) limitations. Claimant is medically restricted from lifting objects due to the inability to stand and the need to keep off her feet.

Claimant's PRW includes home health care. These jobs, as typically performed and described by the claimant, require repetitive lifting for long periods of time, and standing and walking for most of the day. Therefore, given the functional requirements as stated by claimant (which is consistent with how these jobs are typically performed) for these jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does not retain the capacity to perform their past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

(1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;

(2) age, education, and work experience, 20 CFR 416.963-.965; and

(3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional and nonexertional functions required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very

heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semiskilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204 et. seq*) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is 31 years old, with a skilled work history at the light level. Claimant's exertional impairments likely render claimant at least able to perform work at the sedentary level. Claimant has medical lifting restrictions, but the limitations are a function of keeping claimant from excessive standing. Claimant testified to difficulty with standing and walking for long periods of time, but no difficulties in sitting. Given the claimant's impairments, the undersigned finds this testimony credible. However, claimant is not limited from all standing or walking; claimant uses a cane, and can stand for short periods of time. Claimant can perform some activities of daily living. Claimant did not testify to any difficulty with the use of their hands. While claimant submitted a treating source opinion stating that claimant was "disabled" for a year, this opinion did not give specific RFC limitations, nor did this opinion state that claimant was completely unable to stand or walk.

Thus, the Administrative Law Judge finds that claimant does have restrictions on lifting heavy weights, and cannot stand, per the medical record, for long periods of time. This is consistent with sedentary work which would involve standing intermittently over the course of an 8 hour day, and lifting light objects.

Therefore, using a combination of claimant's age, education level (which does not provide for direct entry into skilled work), and skilled work experience, a finding of not disabled is directed. 20 CFR 404, Subpart P, Appendix 2, Rule 201.28.

As stated above, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone. However, claimant did not testify to non-exertional limitations.

As such, the undersigned holds that claimant retains the residual functional capacity to perform a full range of sedentary work. As claimant retains the capacity to perform a full range of sedentary work, a finding of not disabled, with regards to the MA-P program, is directed by rule. The Department was correct in its assessment and must be upheld, with regards to the MA-P program.

However, with regard to the claimant's SDA allegations, our analysis must change, as the Department has the burden of proof to show medical improvement; claimant is, at the outset, considered disabled, and the Department must prove that she is not. This can necessarily lead to a different outcome.

Once an individual has been determined to be disabled for the purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. 20 CFR 416.994. In evaluating whether disability continues, the Administrative Law Judge must follow a sequential evaluation process, not unlike the initial disability evaluation, in which current work activities, severity of impairment, and the possibility of medical improvement and its relationship to the individual's work ability is assessed. Review

ceases and benefits continue if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity (SGA). 20 CFR 416.994(b)(5)

In determining the continuation of disability, an eight-step process is followed. First, there must be a determination of whether the claimant is engaging in SGA. Second, the undersigned will determine whether the claimant has an impairment which meets or equals the severity of a listed impairment. This is followed by a determination of whether there has been medical improvement. If there has been medical improvement, a determination of whether the medical improvement is related to the claimant's ability to work must be made. If there has been no medical improvement, the undersigned will consider whether any exceptions apply if the claimant has made no medical improvement. If there has been medical improvement and the improvement is related to claimant's ability to work, a determination of whether the impairment is severe will be made. For the seventh step, the undersigned will assess a claimant's current ability to engage in SGA. Finally, the claimant will be judged according to their capacity to perform any other work, given the claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(i-viii).

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.994(b)(5)(i). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2013 is $1,740. For non-blind individuals, the monthly SGA amount for 2013 is $1040.

In the current case, claimant has testified that they are not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

In the second step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step three.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. We therefore proceed to the next step.

In this step, the undersigned must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues to be disabled. A determination that there has been a decrease in the medical severity must be based on improvement in the symptoms, signs, and/or laboratory findings associated with claimant's impairment. If there has been medical improvement as shown by a decrease in the medical severity, the undersigned must proceed to step 4, as discussed above. If there has been no decrease in severity, and thus no medical improvement, step 4 is skipped, and the undersigned will proceed to step 5.

In the current case, the Department has failed to meet its burden of proof in showing medical improvement, shown by a decrease in medical severity. The medical evidence presented does not indicate an improvement or a decrease in medical severity. No previous medical packet was submitted, so the undersigned is unable to make a determination as to whether claimant's current medical records show improvement. As the Department has the burden of proof in showing medical improvement, such an omission must therefore meant that the Department has failed to meet its burden of proof.

The Administrative Law Judge will not find actual medical improvement without adequate submitted medical records actually showing significant improvement, nor will the Administrative Law Judge infer improvement from a lack of medical evidence, when the Department has the burden of proof in showing improvement.

The Department has the burden of proof to show actual improvement. There are no findings that show claimant is capable of work related activities. Therefore, as the medical records cannot be said to show improvement, the Department has not met its burden of proof in showing improvement, and the undersigned will continue to step 5.

If there has been no medical improvement or it is found that the medical improvement is not related to your ability to work, the Administrative Law Judge must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (4) apply. If no exceptions apply, disability will be found to continue. If one of the first group of exceptions to medical improvement applies, the sequential process continues. If an exception from the second group of exceptions to medical improvement applies, disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(v).

The law provides for certain limited situations when disability can be found to have ended even though medical improvement has not occurred, if the claimant can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that a person is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the person should no longer be considered disabled or never

should have been considered disabled. If one of these exceptions applies, it must also be shown that, taking all current impairment(s) into account, not just those that existed at the time of the most recent favorable medical decision, you are now able to engage in substantial gainful activity before disability can be found to have ended. 20 CFR 416.994(b)(3).

The first group of exceptions, found in 20 CFR 416.994(b)(3), are as follows:

(i) Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work);

(ii) Substantial evidence shows that you have undergone vocational therapy (related to your ability to work);

(iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision;

(iv) Substantial evidence demonstrates that any prior disability decision was in error. This exception to medical improvement based on error is considered if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(A) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in your file such as pulmonary function study values was misread or an adjudicative standard such as a listing in appendix 1 of subpart P of part 404 of this chapter or a medical/vocational rule in appendix 2 of subpart P of part 404 of this chapter was misapplied), or;

(B) At the time of the prior evaluation, required and material evidence of the severity of your impairment(s) was missing. That evidence becomes available upon review, and substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found, or;

(C) Substantial evidence which is new evidence which relates to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the new evidence, (which relates to the prior determination) been considered at the time of the prior decision, the claim would not have been allowed or continued. **A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.**

In examining the record, the undersigned finds that no exceptions of the first group apply.

In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that the claimant is no longer disabled. In these situations, the decision will be made without a determination that the claimant has medically improved or can engage in substantial gainful activity. 20 CFR 416.994(b)(4). The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

i) A prior determination or decision was fraudulently obtained;

ii) Claimant did not cooperate;

iii) Claimant is unable to be located; and

iv) Claimant failed to follow prescribed treatment which would be expected to restore the ability to engage in substantial gainful activity.

The undersigned has considered the record and finds no evidence that the claimant meets any of these exceptions.

Therefore, as no exceptions apply, disability must be found to continue. 20 CFR 416.994(b)(5)(v). As claimant is found disabled at this step, no further evaluation is needed, and the undersigned declines to do so. Finally, as disability must be found to continue, the Department was in error when in closed claimant's SDA benefit case for medical improvement.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for the purposes of the MA-P program. Claimant is not medically improved for the purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED IN PART and REVERSED IN PART.

☒ THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to remove all negative actions against claimant's SDA benefit case. The Department is further ORDERED to initiate a review of claimant's SDA disability case in January, 2015.

Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 20, 2014

Date Mailed: August 20, 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

RJC/tm

cc: [redacted]