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

IN THE MATTER OF:

[redacted]

Reg. No.: 201428281
Issue No.: 2009; 4009
Case No.: [redacted]
Hearing Date: May 22, 2014
County: Wayne (19)

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, a telephone hearing was held on May 22, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [redacted] appeared and testified as Claimant's authorized hearing representative and translator. 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 [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of MA and SDA eligibility (see Exhibits 3-4).

4. On [redacted], DHS terminated Claimant's eligibility for MA and SDA benefits, effective 3/2014, and mailed a Notice of Case Action (Exhibits 46-50) 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. On [redacted] an administrative hearing was held.

8. Claimant presented new medical documents (Exhibits A1-A49) at the hearing.

9. During the hearing, Claimant waived the right to receive a timely hearing decision.

10. During the hearing, Claimant and DHS waived any objections to allow the admission of additional 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 State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.

12. On [redacted], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.

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 62-year-old female.

15. Claimant's highest education year completed was the 8th grade.

16. Claimant alleged disability based on panic attacks, cardiomegaly, back pain, and high blood pressure.

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*., p. 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*., p. 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. Claimant was an ongoing MA recipient, based on a previous determination of disability.

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 below described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence stated that Claimant received any wages since receiving disability benefits.

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.

Hospital documents (Exhibits 21-37; A8-A19) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of chest pain. An angiogram of Claimant's chest noted a 2mm nodule which may require a follow-up in 12 months. It was noted that a stress myocardial perfusion study was normal. A discharge date of [redacted] was noted.

A Medical Examination Report (Exhibits 18-20) dated [redacted] was presented. The form was completed by an internist/cardiologist with an unspecified history of treating Claimant. The physician provided diagnoses of hypertension, knee arthritis, osteoporosis, diabetes, and chronic back pain. Tenderness and spasms were noted in Claimant's knees and back. It was noted that Claimant had poor peripheral circulation. An impression was given that Claimant's condition was stable. It was noted that Claimant needs assistance with housework and shopping. The physician opined that Claimant was restricted as follows over an eight-hour workday, less than 2 hours of standing and/or walking, and less than 6 hours of sitting. Claimant's physician opined that Claimant was restricted to occasional lifting/carrying of 10 pounds or less, and no lifting of 20 pounds.

An internal medicine report (Exhibits 6-10) dated [redacted] was presented. The report was completed by a consultative physician. It was noted that Claimant spoke little English. A medical history of a mild stroke from 1998 and hypotension was reported. A history of cardiac treatment and abdomen pain was also reported. Restricted ranges of motion and tenderness were noted in Claimant's right hip and right knee. Lumbar tenderness was noted. Claimant's gait was noted as normal. Noted physician impressions included the following: hypertension, diabetes, and recurrent lumbar pain, recurrent knee pain, and recurrent right hip pain. It was noted that Claimant takes a lot of medications. It was noted that Claimant has multiple medical problems but is in good health. The physician opined that Claimant appeared to be disabled for any kind of work.

Hospital discharge documents (Exhibits A42-A47) dated [redacted] were presented. Various discharge medications and generic hysterectomy discharge instructions were noted.

Hospital discharge documents (Exhibits A27-A33 dated [redacted] were presented. Diagnoses of diabetes, hypertension, cerebral infarction, a-fib, and coronary artery disease were noted. A course of treatment was not provided.

Various hospital documents (Exhibits A1-A5; A34-A38) from 5/2014 were presented. The documents indicated that Claimant underwent cataract surgery. Details of the surgery were not provided.

Listings for joint dysfunction (Listing 1.02) and spinal disorders (Listing 1.04) were considered. Claimant provided no radiology to support that she meets either listing. It is found that Claimant does not meet a SSA listing and the analysis may proceed 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).

DHS presented a Medical-Social Eligibility Certification (Exhibits 45) dated [redacted] approving Claimant for continued disability benefits. DHS did not present any of the medical documents related to the disability approval. A medical packet justifying the past approval was not presented. Without such a medical packet, it cannot be determined whether medical improvement occurred. It is found that DHS failed to establish that Claimant has medical improvement. Without a finding of medical improvement, 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 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)

There was no evidence that any of the above exceptions are applicable. 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 still disabled for purposes of MA benefits based on a finding that DHS failed to establish medical improvement and that no exceptions apply. The analysis and finding applies equally for Claimant's SDA benefit eligibility. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly terminated Claimant's SDA eligibility.

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 MA and SDA eligibility. It is ordered that DHS:

(1) reinstate Claimant's MA and SDA eligibility, effective 3/2014, 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 application denial; and
(3) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for ongoing benefits.

The actions taken by DHS are **REVERSED**.

Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 8/15/2014

Date Mailed: 8/15/2014

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: [redacted]