

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

IN THE MATTER OF:



Reg. No.: 2014-27470
Issue No(s).: 2009
Case No.:
Hearing Date: June 12, 2014
County: St. Clair

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Thursday, June 12, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included , ES.

ISSUE

Did the Department of Human Services (the Department) properly determine that Claimant was no longer disabled and deny his review application for Medical Assistance (MA-P)?

Whether the Department properly determined that Claimant was not disabled for purposes of the 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. The Claimant was approved for MA-P by an Administrative Law Judge with medical review due on October 2013.
2. On January 30, 2014, the MRT denied the Claimant's medical review for MA-P stating that the Claimant had medical improvement because of effects of treatment.
3. On February 5, 2014, the Department Caseworker sent the Claimant a notice that his medical review was denied for MA-P that he had had medical improvement due to treatment.

4. On February 14, 2014, the Department received a hearing request from the Claimant, contesting the Department's negative action.
5. On April 30, 2014, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of medical review of MA-P for the Claimant. The Claimant is [REDACTED] years old with a [REDACTED]. He alleges disability secondary due to COPD, hypertension, depression, and anxiety. The Claimant's impairments do not meet/equal the intent or severity of a Social Security listing. There is a Social Security Administration Disability determination examination dated January 17, 2014 that supports the diligence that has been given with regards to addressing the allegations, duration, and vocational issues as presented in the evidence found in the medical packet based on listing 3.02, 4.04, and 12.04/06.
6. The Claimant is a [REDACTED] year-old [REDACTED] whose [REDACTED]. The Claimant is 5' 11" tall and weighs 287 pounds. The Claimant has completed [REDACTED]. The Claimant can read and write and do basic math. The Claimant was last employed as a [REDACTED] at the medium level in [REDACTED]. The Claimant has also been employed as a [REDACTED] at the heavy level.
7. The Claimant's alleged impairments are COPD, hypertension, depression, and anxiety.

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.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

In general, Claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only Claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the Claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in

question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual’s disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual’s ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Claimant is not engaged in substantial gainful activity and has not worked since October 2012. Therefore, the Claimant is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant’s impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant’s medical record will not support a finding that Claimant’s impairment(s) is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Claimant’s impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Claimant is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact 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(s) 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 medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Claimant’s impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Claimant’s ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On [REDACTED], the Claimant was admitted to [REDACTED] Hospital with a [REDACTED]. His principal and discharge diagnosis was hepatic encephalopathy due to alcoholic hepatitis. He had acute respiratory failure due to aspiration pneumonia, acute kidney injury, resolved, fluid overload, resolved, hyperlipidemia, depression, chronic alcohol abuse, anemia of renal and liver disease, and nicotine dependence. The Claimant responded to treatment and medications. He was released in stable condition. The Claimant was counseled on smoking and drinking cessation. Department Exhibit 14-16.

On [REDACTED], the Claimant saw his eye doctor because of exotropia, where he was seeing double, but he was able to bring it back in range. He had an essentially normal [REDACTED]. The Claimant does need to wear glasses for corrective vision. Department Exhibit 34-36.

On [REDACTED], the Claimant was seen by his treating physician at [REDACTED]. The Claimant had an essentially normal physical examination except that his treating physician noted that he 1+ pitting edema in the lower extremities. Psychologically, he was alert, oriented, and cooperative with exam with good eye contact. His treating physician's clinical assessment was alcoholic cirrhosis of liver, unspecified tachycardia, cough, and insomnia. The Claimant is undergoing counselling twice a month and attending [REDACTED]. He admitted to having a drinking problem and is still struggling to quit. He was exposed to asbestos for six years due to work combined with a long history of smoking. The Claimant was counselled on smoking cessation. Department Exhibit 6-8.

At Step 3, this Administrative Law Judge finds that the Claimant does have medical improvement and his medical improvement is related to the Claimant's ability to perform substantial gainful activity. The Claimant is currently in treatment for his drinking, but is still struggling to quit. He is in therapy for his alcoholism and [REDACTED] AA. His other medical conditions are being medically managed. He continues to smoke cigarettes even with COPD and his treating physician's orders to stop smoking. The Claimant is capable of performing at least medium work. Therefore, the Claimant is disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where he can perform his past work. The Claimant was last employed as a tool and die stamper at the medium level.

At Step 4, the Claimant testified that he does perform most of his daily living activities. The Claimant testified that his condition has not gotten worse. He did have a mental impairment of depression and anxiety, where he was taking medications, but not in therapy. The Claimant smokes 1 pack of cigarettes every 3 days. He stopped drinking

alcohol 2 months ago where before he drank [REDACTED]. He stopped using [REDACTED].

This Administrative Law Judge finds that the Claimant's medical improvement is related to his ability to do work. The Claimant is taking medication, but not therapy for his mental impairments. He is in therapy for his [REDACTED]. The Claimant completed the [REDACTED]. The Claimant should be able to perform at least medium work. Therefore, the Claimant is disqualified from receiving disability at Step 4 where the Claimant can perform medium work. If there is a finding of medical improvement related to Claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. The Claimant's medical impairments are medically managed. He is taking medications for his mental impairments. The Claimant continues to smoke against doctor's orders. He struggles to stop drinking, but he is in therapy and attending AA. In this case, this Administrative Law Judge finds Claimant can perform at least medium work even with his impairments. See Steps 3 and 4. Therefore, the Claimant is disqualified from receiving disability at Step 6.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Claimant's current residual functional capacity based on all current impairments and consider whether the Claimant can still do work he/she has done in the past. At Step 7, the Claimant has previously been employed at the medium level as a [REDACTED]. In this case, this Administrative Law Judge finds that Claimant should be able to perform medium work. The Claimant is capable of performing past, relevant work. See Steps 3 and 4. Therefore, the Claimant is disqualified from receiving disability at Step 7 where the Claimant is capable of performing her past, relevant work.

Step 8

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Claimant can do any other work, given the Claimant's residual function capacity and Claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the Claimant's vocational profile of advanced age individual, with a [REDACTED], and a history of work, MA-P is denied using Vocational Rule 203.22 as a guide. This Administrative Law

Judge finds that Claimant does have medical improvement in this case and the Department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to closed Claimant's MA-P case based upon 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 purposes of the medical review of MA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 9/17/14

Date Mailed: 9/17/14

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 Claimant;
- 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

CGF/tb

cc:

