

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

**IN THE MATTER OF:**



Reg. No.: 2014-28284  
Issue No(s): 2009, 4009  
Case No.: [REDACTED]  
Hearing Date: June 12, 2014  
County: Ottawa County DHS

**ADMINISTRATIVE LAW JUDGE:** Colleen Lack

**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 June 12, 2014, from Holland, Michigan. Participants on behalf of Claimant included [REDACTED] the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist and Hearing Facilitator, and [REDACTED], Eligibility Specialist.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found Claimant not disabled. This matter is now before the undersigned for a final determination.

**ISSUE**

Whether the Department properly determined that Claimant was no longer disabled for purposes of the Medical Assistance (MA) and 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 had been found disabled and was eligible for Medicaid (MA-P) and SDA based on a December 27, 2011, application for MA-P and retroactive MA-P for November 2011.
2. In March 2013, the Department reviewed Claimant's ongoing eligibility for MA-P and SDA benefits.
3. On January 14, 2014, the Medical Review Team (MRT) found Claimant not disabled.

4. On January 15, 2014, the Department notified Claimant of the MRT determination.
5. On February 21, 2014, the Department received Claimant's timely written request for hearing.
6. On April 28, 2014, and August 14, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
7. Claimant alleged physical disabling impairments of hip replacement, pelvis injury, back pain, and leg pain.
8. Claimant alleged mental disabling impairments due to anxiety and depression.
9. At the time of hearing, Claimant was 50 years old with a [REDACTED], birth date; was 6' in height; and weighed 198 pounds.
10. Claimant completed the 11th grade, obtained a GED, and has a work history of factory work and machine operator.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

#### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment 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.

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(a). The person claiming a physical or mental disability has the burden to establish it 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 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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 regulation requires a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continue if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding 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 whether an individual's disability has ended 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 with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 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). If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue.

Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (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.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (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.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv). The second

group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, Claimant alleges disability due to hip replacement, pelvis injury, back pain, leg pain, anxiety and depression.

Claimant was involved in a car accident in November 11, 2011 and sustained multiple injuries, including pelvic fracture on the left side requiring open reduction and internal fixation as well as a large left diaphragmatic hernia and a descending thoracic aorta injury with a small pseudoaneurysm formation. Claimant was hospitalized November 11-30, 2011. Claimant was at a rehabilitation center from November 30, 2011 through December 14, 2011, and, December 19-30, 2011.

On March 8, 2012, the MRT found Claimant disabled because he met or equaled the intent and severity requirements of listings 1.02, 4.12, and 11.04.

An April 30, 2013, record from the orthopedic specialist indicated a return visit for left pelvic pain. Physical exam findings included: gait compensated, full weight bearing with cane; normal strength, negative straight leg raise, pain with internal and external rotation. Claimant was to continue conservative treatment of pain by using his cane or crutch to help with pain control. An MRI was to be scheduled.

A June 13, 2013, record from the orthopedic specialist indicated Claimant reported worsening pain. Claimant had been in jail. The physical exam was unchanged, the left hip hurt with internal and external range of motion, he was stiff and resisted flexion, and was tender over the trochanter. The MRI was re-scheduled.

A July 21, 2013, MRI of the left hip showed no evidence of avascular necrosis of the left femoral head and mild degenerative arthritic change of the left hip joint.

An August 1, 2013, record from the orthopedic specialist indicated Claimant continued to report worsening pain and decreased functional use. Physical exam findings included: straight leg raise positive on the right, negative on the left; gait was normal, full weight bearing, with no assistive device; range of motion was satisfactory; minimal pain on passive flexion/internal rotation; reluctant to sit and prefers to stand or recline at rest. Impressions included radiculopathy vs sacral nerve root injury though the former was suspected.

August 27, 2013, records from the orthopedic specialist indicate Claimant was doing well until April 2013, when he had to do a long walk at the time of an arrest. Claimant had pain down his leg involving the back, buttock, lateral thigh, anterior shin to the great toe on the left side. An MRI was obtained that did not show any avascular necrosis or explanation for the problem, so Claimant was referred to this specialist. On exam, Claimant's gait was slightly antalgic on the left, he could walk on heels and toes, lumbar

flexion and extension were relatively pain free, straight leg raise was negative, hip range of motion did not provoke symptoms, Claimant provided excellent resistance with manual muscle testing, there was no weakness, there was no sensory deficit to pinprick, there was no peripheral joint effusion or cutaneous lesion. Impression was L5 neurogenic claudication and the doctor suspected foraminal stenosis. A TENS unit was ordered for left low back pain/lumbago.

A March 31, 2014, record from the orthopedic specialist indicates Claimant has left sided mechanical low back pain with pseudo-articulation between the transverse process of L5 and vertebral body of L5 near the facet joint, but not in the facet joint. At that visit, Claimant no longer complained of pain down the leg, but did have paresthesias. Pain was limited to the left lumbar region. Physical exam findings included antalgia with ambulation on the left side and pain with extension and flexion. The plan was to try injection to see if this provides relief of back pain.

A June 19, 2014, DHS-49 Medical Examination Report from the orthopedic specialist indicated the doctor last saw Claimant March 31, 2014 and the last injection was May 28, 2014. Diagnosis was status post hip arthroplasty. Claimant had no current restrictions.

A July 3, 2014, DHS-49 Medical Examination Report from a cardiothoracic surgeon listed diagnoses of dilated ascending aortic aneurysm. It was noted that Claimant is not disabled from a cardiothoracic surgery standpoint but may have other medical conditions that prevent him from working that were not a part of this doctor's evaluation. An included June 13, 2014 progress note included diagnoses of aortic aneurysm, coronary artery disease native artery, and essential hypertension. A CTA report showed stable traumatic pseudoaneurysm in the isthmic region of the thoracic aorta.

Listings 1.02 (Major dysfunction of a joint(s) due to any cause), 4.12 (peripheral arterial disease), and 11.04 (central nervous system vascular accident) were again considered in light of the objective findings.

In comparing the records from November 2011 to the current medical records, it is found that there is evidence of medical improvement. The June 19, 2014, DHS-49 Medical Examination Report from the orthopedic specialist indicated the doctor last saw Claimant March 31, 2014 and the last injection was May 28, 2014. Diagnosis was status post hip arthroplasty. Claimant had no current restrictions. The July 3, 2014, DHS-49 Medical Examination Report from a cardiothoracic surgeon listed diagnoses of dilated ascending aortic aneurysm. It was noted that Claimant is not disabled from a cardiothoracic surgery standpoint.

In consideration of all medical evidence, it is found that, overall, there was some medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) are not applicable. Accordingly, an assessment of the Claimant's Residual Functional Capacity to perform past relevant work is required. 20 CFR 416.994(b)(5)(vi).

An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of

whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant's prior RFC was not determined because he was found disabled based on the above noted Listings at that time.

Claimant's testimony indicated he can walk 20-25 minutes, he uses a cane, can stand 5-10 minutes, sit 30-40 minutes, and lift 10-15 pounds. Claimant stated he cannot bend and receives assistance with getting in/out of the bathtub and dressing his lower body. Claimant also described anxiety if he has to leave the house and particularly with getting in the car. Claimant also testified he has depression at least four times per week, noting he will not want to get out of bed or shave. Claimant may go weeks without showering. Claimant's testimony regarding his symptoms and limitations is not supported by the medical evidence and is found only partially credible. After review of the entire record it is found, at this point, that Claimant maintains the residual functional capacity to perform limited light work as defined by 20 CFR 416.967(b).

Claimant's prior work consists of factory work and machine operator. As described by Claimant, the past relevant work involved standing/walking all day and lifting up to 50 pounds. Claimant's past work is classified as unskilled medium work.

In consideration of Claimant's testimony, medical records, and current limitations, it is found that Claimant is unable to return to past relevant work and, thus, an assessment of whether the Claimant is able to perform other work in consideration of vocational factors such as Claimant's age, education, and past work experience.

An assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 50 years old and, thus, considered to be closely approaching advanced age for MA-P purposes. Claimant has completed the 11th grade, obtained a GED, and has a work history of factory work and machine operator. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

As noted above, Claimant maintains the residual functional capacity to perform light work as defined by 20 CFR 416.967(b). After review of the entire record, and in consideration of the Claimant's age, education, work experience, RFC, and using the



Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.13, it is found that Claimant is able to adjust to other work. Accordingly, Claimant's is found not disabled for purposes of the MA-P program.

The SDA program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS 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 BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found not disabled for purposes of continued MA-P entitlement; therefore the Claimant's is found not disabled for purposes of continued SDA benefits.

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 MA and SDA benefit programs.

### **DECISION AND ORDER**

Accordingly, the Department's determination is **AFFIRMED**.



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Colleen Lack  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: September 16, 2014

Date Mailed: September 16, 2014

**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CL/hj

cc:

