

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001134
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: August 06, 2014
County: ARENAC

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 August 6, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [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 and reviewed.

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. An April 9, 2013, administrative hearing Decision and Order found Claimant disabled for Medicaid (MA-P) as of August 2012.
2. Claimant applied for SDA on April 23, 2013 and was approved.
3. In March 2014, the Department reviewed Claimant's ongoing eligibility for MA-P and SDA benefits.
4. On March 12, 2014, the Medical Review Team (MRT) found Claimant not disabled.

5. On March 26, 2014, the Department notified Claimant of the MRT determination.
6. On April 7, 2014, the Department received Claimant's timely written request for hearing.
7. On May 2, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
8. Claimant alleged disabling impairments including lower back problems, arthritis, neck pain, hypertension, depression, bipolar, and anxiety.
9. At the time of hearing, Claimant was 50 years old with an [REDACTED], birth date; was 5'7" in height; and weighed 200 pounds.
10. Claimant completed the 12th grade and has a work history that included temp services laborer and roofing.
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 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 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.

The April 9, 2013, administrative hearing Decision and Order found Claimant disabled for Medicaid (MA-P) as of August 2012 under listing 12.04.

A June 12, 2013, Psychiatric Evaluation listed a diagnosis of bipolar disorder mixed. Claimant's Global Assessment of Functioning (GAF) was 40-45.

Claimant was discharged from one of his mental health providers in July 2013 as Claimant got his insurance and wished to be seen by a physician of his choice. Diagnoses included bipolar II disorder, anxiety disorder, and several substance dependence diagnoses in sustained full remission. Claimant's GAF was 71.

An October 3, 2013, medical management review note indicated Claimant was doing well, was focused, knew where he was and there were no signs of psychosis.

A November 11, 2013, lumbar spine x-ray showed mild narrowing L5-S1 disc space.

On November 25, 2013, Claimant attended an evaluation for physical therapy for low back pain with decreased range of motion strength, pain and tenderness.

A December 3, 2013, record documented that Claimant's treating mental health provider confirmed the diagnosis of mixed bipolar disorder and indicated medication somewhat improved the major problem with sleep. However it was noted that Claimant's illness is chronic, it is relapsing, and does disable him fully. The medical management review note with the same date indicates Claimant was doing well, is stable on his current medication, but he needs more than just medication. It was noted that Claimant had left a prior provider that used telepsychiatry because this did not work for him. Claimant wanted in-person contact.

An August 21, 2014, DHS-49 E Mental Residual Functional Capacity Assessment was completed by a provider that last saw Claimant August 11, 2013. Marked limitations were indicated regarding all social interaction activities and moderate limitations were indicated with all remaining activities. Attached was a June 12, 2013 psychiatric evaluation and medical management review notes from March 3, 2014 and June 18,

2014. Even though the last examination date listed on the DHS-49 E Mental Residual Functional Capacity Assessment was August 11, 2013, the additional records document Claimant has had ongoing treatment with this provider for at least medication reviews through at least June 2014. The March 4, 2014, medical management review note indicates Claimant denied any complaints, the medications were treating his mood adequately, he was in a good mood, and had a good affect. The June 18, 2014, medical management review note indicates Claimant had stabilized on the current combination of medications, he was seeing someone at a clinic, and he was doing well with that program. Claimant's diagnosis was major depression.

Claimant's testimony at the August 6, 2014, telephone hearing indicated the bipolar was manageable right now and there had been no serious breakdown in a year. Claimant stated he has had a safe place to live, no real stress, and he is able to work through it with proper medication. Claimant indicated this has not always been the case as sometimes he gets paranoid on a job where it is crowded or there is too much information at one time. Claimant described ongoing difficulty with depression particularly over the winter, suicidal thoughts that are always present, sometimes having crying spells and panic attacks, as well as ongoing trouble with sleeping and anger. Claimant was in the process of moving from his parents' home to live by himself.

The evidence indicates some improvement with Claimant's mental health such that he no longer met or equaled the intent and severity requirements of listing 12.04 for this review. Further, the medical evidence was not sufficient to meet the intent and severity requirements of any other listing, or its equivalent.

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 Listing at that time.

Claimant's testimony indicated he can walk 15 minutes, can stand 30 minutes, sit 60 minutes, and lift significant weight but not repeatedly. Claimant explained he tried physical therapy but stopped as it seemed to make him hurt worse. Claimant testified a routine day may involve watching TV, mowing the yard, a little gardening, and trying to

ride his bike, though riding the bike hurts his back. Claimant stated he can shop if it is not crowded and he can complete activities like cooking, dishes and housework. Claimant stated his condition has been about the same since April 2013. Claimant's testimony regarding his symptoms and limitations is not fully supported by the medical evidence and is found only partially credible. The evidence indicates Claimant's conditions are chronic and he may experience relapses with the mental health impairments. However, at the time of the March 2014 review and since then, it appears Claimant's mental health has been stable on medications. Claimant's own testimony acknowledged he has not had a breakdown in a year and he can complete activities like cooking, dishes, and housework, as well as shopping if it is not crowded. Claimant was moving out of his parent home to live by himself. 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). Limitations would include simple routine tasks and only brief, superficial contact with others.

Claimant's prior work included general laborer and roofing. As described by Claimant, the most recent re-model laborer work was through a temporary service and only lasted a few months. Claimant described past roofing work lasting 10 years that required lifting up to 50 pounds. The past relevant roofing work would be classified as medium work. In light of the entire record and Claimant's RFC (see above), it is found that Claimant is not able to perform his past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled at this step.

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 completed the 12th grade and has a work history that included temp services laborer and roofing. 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 limited light work as defined by 20 CFR 416.967(b). Limitations would include simple routine tasks and only brief superficial contact with others. Even considering these limitations, significant jobs would still exist in the national economy.

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 is found not disabled for purposes of the MA-P program.

In this case, the Claimant is also found not disabled for purposes SDA benefits as the objective medical evidence also does not establish a physical or mental impairment that met the federal SSI disability standard with the shortened duration of 90 days. In light of the foregoing, it is found that Claimant's impairments did not preclude work at the above stated level for at least 90 days.

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**.



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

Date Signed: **10/6/2014**

Date Mailed: **10/6/2014**

CL /hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, 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

cc:

