

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-28768
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: May 8, 2014
County: Wayne (15)

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 8, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified on behalf of Claimant. 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 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 SDA benefit recipient.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED] the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On [REDACTED], DHS denied terminated Claimant's SDA eligibility, effective 3/2014, and mailed a Notice of Case Action informing Claimant of the termination.

5. On [REDACTED], Claimant requested a hearing disputing the termination of SDA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.17.
7. On [REDACTED], an administrative hearing was held.
8. During the hearing, Claimant waived the right to receive a timely hearing decision.
9. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
10. On an unspecified date, an Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit primary care physician treatment records.
11. On [REDACTED] Claimant submitted additional records (A1-A17).
12. 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.
13. On [REDACTED], SHRT determined that Claimant was not disabled, in reliance on a Disability Determination Explanation (Exhibits 2-1 – 2-13) which determined that Claimant was not disabled, in part, based on Medical-Vocational Rule 201.24.
14. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
15. As of the date of the administrative hearing, Claimant was a 44-year-old female with a height of 5'7" and weight of 178 pounds.
16. Claimant has no known relevant history of substance abuse.
17. As of the date of the administrative hearing, Claimant was an ongoing Medicaid recipient.
18. Claimant alleged disability based on impairments and issues including asthma, degenerative disc disease (DDD), bipolar disorder and leukemia.

CONCLUSIONS OF LAW

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.

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA eligibility without undergoing a medical review process (See BAM 815) which determines whether Claimant is a disabled individual. *Id.*, p. 3.

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. As noted above, SDA eligibility is based on a 90 days period of disability.

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 CFR 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 benefit eligibility depends on whether Claimant was an applicant or an ongoing recipient. Once an individual has been found disabled for purposes of 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 or SDA 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 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.

Lab results (Exhibits 19-21) dated [REDACTED] were presented. An impression of marked leukocytosis was noted. A recommendation of further evaluation was noted.

Cancer center documents (Exhibits 37-39) dated [REDACTED] were presented. It was noted that Claimant reported chronic fatigue. An assessment of chronic myelocytic leukemia was noted.

A Medical Oncology Report (Exhibits 12-14) dated [REDACTED] was presented. It was noted that Claimant appeared for regular follow-up of chronic myelogenous leukemia. It was noted that Claimant presented in good spirits with no complaints. It was noted that Claimant took Vicodin for chronic back pain. A 2 month follow-up appointment was noted as scheduled.

Pulmonary function test results (Exhibits 18) dated [REDACTED] were presented. An actual FEV1 of 1.92 was noted. An actual FVC of 3.30 was noted.

A Medical Examination Report (Exhibits 15-17) dated [REDACTED] was presented. The form was completed by a physician with an approximate 22-month history of treating Claimant. The physician provided diagnoses of depression, bipolar disorder, and an illegible hip problem. Noted diagnoses included Norco. Impressions of back pain, spasm, leg tingling were noted following physical examination. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs. It was noted that Claimant was restricted from lifting/carrying 10 pounds or more.

A Medical Examination Report (9-11) dated [REDACTED] was presented. The form was completed by an oncologist with an approximate five month history of treating Claimant. Claimant's oncologist provided diagnoses of bipolar disorder, asthma, and CML (presumed to be chronic myelogenous leukemia). Physical examination notes included: intact senses, 5/5 power in all limbs, intact tendon reflexes, and grossly intact cranial nerves. An impression was given that Claimant's condition was stable. It was noted that Claimant was restricted to occasional lifting of any amount of weight. It was noted that Claimant was restricted to standing/walking of less than 2 hours per 8 hour workday. It was noted that Claimant was restricted to less than 6 hours of sitting per 8 hour workday. It was noted that Claimant can meet household needs. It was noted that provided opinions were based on fatigue and pain

A Social Summary Update (Exhibits 4-5) dated [REDACTED] was presented. A DHS specialist noted that Claimant walked with a cane.

Cancer center documents (Exhibits 69-71) dated [REDACTED] was presented. It was noted that Claimant reported episodes of mild fatigue and occasional left-side numbness. It was noted that Claimant tolerated treatment with Gleevec well. It was noted that Claimant's symptoms were well controlled. A follow-up appointment in 3 months was noted.

An adult status mental examination report (Exhibits 2-14 – 218) dated [REDACTED] was presented. It was noted that Claimant reported a previous drug-induced psychiatric hospitalization. It was noted that Claimant took Depakote, Seroquel, Xanax, and Valium. Diagnoses of bipolar disorder, borderline personality disorder, and alcohol abuse were noted. A fair prognosis was noted. A medical source statement noted that Claimant was best suited to job requiring little-to-no independent judgment.

Cancer center documents (Exhibits A2-A4) dated [REDACTED] was presented. It was noted that Claimant reported increasing fatigue because she receives less help performing ADLs. It was noted that Claimant reported needing an unspecified rest every 15-20 minutes. It was noted that Claimant reported weekly vomiting as a medication side effect. It was noted that Claimant's BCR-ABL increased in the last testing results (see Exhibits A7-A13); it was noted that three consecutive decreases in BCR-ABL would be needed to establish remission. A follow-up appointment in 2 months was noted.

Claimant's most prominent problem is leukemia. The SSA listing for leukemia reads as follows:

13.06 Leukemia. (See 13.00K2.)

A. Acute leukemia (including T-cell lymphoblastic lymphoma). Consider under a disability until at least 24 months from the date of diagnosis or relapse, or at least 12 months from the date of bone marrow or stem cell transplantation, whichever is later. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

OR

B. Chronic myelogenous leukemia, as described in 1 or 2:

1. Accelerated or blast phase. Consider under a disability until at least 24 months from the date of diagnosis or relapse, or at least 12 months from the date of bone marrow or stem cell transplantation, whichever is later. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

2. Chronic phase, as described in a or b:

a. Consider under a disability until at least 12 months from the date of bone marrow or stem cell transplantation. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

b. Progressive disease following initial antineoplastic therapy.

Part A is not applicable. Concerning Part B, it is unknown if Claimant underwent bone marrow or stem cell transplantation. There is no evidence that Claimant is in the accelerated or blast phase or that she has a progressive disease following initial antineoplastic therapy.

Listings for joint dysfunction (Listing 1.02), pulmonary insufficiency (Listing 3.02), and bipolar disorder (Listing 12.04) were considered. The listings were rejected due to a lack of evidence.

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 failed to present evidence of when Claimant was initially determined to be disabled. SHRT decisions dated [REDACTED] and [REDACTED] were presented. Neither decision addressed medical improvement.

Based on the presented evidence, DHS failed to establish that medical improvement occurred. Without a finding of medical improvement, the analysis proceeds to the fourth step.

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 in 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 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 SDA eligibility. It is ordered that DHS:

- (1) reinstate Claimant's 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: 8/7/2014

Date Mailed: 8/7/2014

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:

