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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-001156
Issue No.: MEDICAID - DISABILITY
Case No.: [redacted]
Hearing Date: July 30, 2014
County: ST. CLAIR

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 July 30, 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. Claimant had been found disabled and was eligible for Medicaid (MA-P) and SDA based on a last review completed in March 2013.

2. In March 2014, the Department was to review Claimant's ongoing eligibility for MA-P and SDA benefits.

3. On March 28, 2014, the Medical Review Team (MRT) found Claimant not disabled.

4. On April 2, 2014, the Department notified Claimant of the MRT determination.

5. On April 14, 2014, the Department received Claimant's timely written request for hearing.

6. Claimant alleged disabling impairments including weight gain affecting mobility, thyroid, hypertension, depression, and anxiety.

7. At the time of hearing, Claimant was 57 years old with a [redacted], birth date; was 6'2" in height; and weighed 280 pounds.

8. Claimant completed the 12th grade and has a work history including factory work and party store cashier/stocker/cleaning.

9. 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 impariment 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-relate 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 applicants 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 cooperated;
(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 alleged disabling impairments including weight gain affecting mobility, thyroid, hypertension, depression, and anxiety. However, Claimant stated that the thyroid and hypertension do not cause symptoms that would prevent work.

A July 25, 2012, X-ray showed degenerative disc disease at C4-C5 and C5-C6 with slight narrowing of neural foramina.

A February 22, 2013, mental health treatment record documented diagnoses of major depressive disorder, recurrent, severe, with psychosis, and anxiety disorder. Claimant's Global Assessment of Functioning (GAF) was 40 as of January 2013.

March 2013 through January 2014 records indicate some medication changes and improvements with some symptoms, such as denying suicidal thoughts at many encounters. However, ongoing symptoms, included sometimes having hallucinations or nightmares, periods of depression, and more persistent reports of the self-injurious digging behavior were documented.

March 2013 through February 14, office visit records indicated Claimant was being seen for multiple conditions, including spot on left arm, nasty dreams, hyperlipidemia, anxiety, depression, hypertension, and shoulder pain. Other conditions in the current problem list included acute uritis, anxiety, bipolar, calcifying tendonitis of shoulder, depressive disorder, dermatophytosis of groin and perianal area, other congenital anomaly of spine, other malaise and fatigue, hypertension, hypothyroidism, and vitamin D deficiency.

A January 24, 2014, DHS-49 D Psychiatric/Psychological Examination Report documented diagnoses of major depressive disorder, recurrent, severe, with psychosis, and anxiety disorder. Claimant's GAF was 40. It was noted that Claimant was experiencing frequent suicidal thoughts, visual and auditory hallucinations, as well as despair with suicidal ideation of overdosing. Self- injurious behavior, as evidenced by digging in inner thigh to point of drawing blood was noted as well as experiencing problems sleeping and sometimes experiencing symptoms of paranoia. Insight was fair but judgment was poor.

May through July 2014, mental health treatment records document diagnoses of recurrent severe major depressive disorder with psychosis and anxiety disorder. Ongoing symptoms included auditory hallucinations, using his nails to dig at his groin until it bleeds, considerable anxiety, and suicidal thoughts.

A May 5, 2014, office visit record indicated Claimant was being seen for jerking in his arms and legs, and worsening of the digging in groin area over the past month. Other conditions in the current problem list included acute uritis, anxiety, bipolar, calcifying tendonitis of shoulder, depressive disorder, dermatophytosis of groin and perianal area, other congenital anomaly of spine, other malaise and fatigue, hypertension, hypothyroidism, and vitamin D deficiency.

In his credible testimony, Claimant described ongoing symptoms including: crying spells, panic attacks, suicidal thoughts, digging at his groin for the last 5 months, anger, grooming and hygiene being affected, trouble being around people, and memory problems.

Based on the objective medical evidence, considered listings included: 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. On March 20, 2013 and April 7, 2011, the MRT found Claimant disabled based PA 5, medical review of continuing eligibility for MA disabled. No more specific reasoning was provided as the basis of the ongoing disability determination. However, it does not appear that the prior disability determinations were in error.

The mental health treatment records show that at times there may have been improvement in some areas, such denying suicidal ideation at some visits. However, the records indicate that ongoing hallucinations and nightmares occurred at times and isolating continued. Further, the physical and mental health treatment records both indicate persistent issues with the self-harm, specifically the ongoing digging in the groin area to the point of drawing blood. The GAF score appears to have remained at 40 from January 2013 through January 2014. This GAF score indicates some impairment in reality testing or communication or major impairment in several areas, such as work, school, family relations, judgment, thinking, or mood. Overall, the records do not document significant medical improvement since March 2013.

In consideration of all medical evidence, it is found that, overall, there has been no medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) are not applicable.

Accordingly, Claimant is found disabled for purposes of continued MA-P entitlement; therefore the Claimant's is also found 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 disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's MA and/or SDA case(s) retroactive to the effective date of the closure, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for January 2016.

2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

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

Date Signed: **12/4/2014**

Date Mailed: **12/4/2014**

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 48909-8139

cc: [redacted]