

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

IN THE MATTER OF:



Reg. No.: 2014-26037
Issue No(s): 2009; 4009
Case No.: [REDACTED]
Hearing Date: June 18, 2014
County: Sanilac

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 Wednesday, June 18, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant and his mother, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES.

ISSUE

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

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 and SDA by the Medical Review Team (MRT) with medical review due in November 2013.
2. On January 10, 2014, the MRT denied the Claimant's medical review for MA-P and SDA stating that the Claimant had medical improvement because of the effects of treatment.
3. On January 18, 2014, the Department Caseworker sent the Claimant a notice that he was denied for SDA and for MA-P because he had medical improvement.

4. On January 27, 2014, the Department received a hearing request from the Claimant, contesting the Department's negative action.
5. On March 27, 2014, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of medical review of MA-P and SDA is denied for the Claimant. The Claimant is 43 years old with a less than high school education and a history of gainful work. He alleges disability secondary due to multiple fractures, seizures, and brain tumor. There is a Social Security Administration Disability Determination (SSA/DDE) dated October 18, 2013. A review of the evidence presented supports that diligence has been given with regards to addressing the allegations, duration, and vocational issues put forth in the medical packet.
6. During the hearing on June 18, 2014, the Claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office and forwarded to SHRT for review.
7. On September 12, 2014, the SHRT considered the newly submitted objective medical evidence in making its determination of a medical review of MA-P and SDA. The Claimant is 44 years old with a limited school education and a history of unskilled/semiskilled work. He alleges disability secondary due to brain tumor, brain surgery, shattered head, pins in his right hand, and problems with his hands and his foot. The Claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence on the record indicates that the Claimant retains the capacity to perform a wide range of simple, unskilled, light work avoiding such hazards, such as unprotected heights and dangerous moving machinery. Therefore, based on the Claimant's vocational profile (younger individual, limited education, and history of unskilled/semi-skilled work), MA-P is denied due to medical improvement and using Vocational Rule 202.20 as a guide. SDA is denied per BEM 261 because the nature and severity of the Claimant's impairments no longer preclude work activity at the above-stated level for 90 days.
8. The Claimant is a 43-year-old man whose date of birth is [REDACTED]. The Claimant is 5' 10" tall and weighs 123 pounds. The Claimant has completed the 11th grade of high school. The Claimant can read and write and do basic math. The Claimant was last employed as a machine operator at the medium level in [REDACTED]. The Claimant has also been employed as an assembly line worker at the sedentary level, tiler at the heavy level, carpet layer at the heavy level, waiter, and car wash worker.
9. The Claimant's alleged impairments are seizures, shattered skull and broken hand in [REDACTED], brain surgery for a brain tumor in [REDACTED], and arthritis in heel and hand.

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.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or Department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"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 [REDACTED]. 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 underwent an independent psychological evaluation at [REDACTED]. The Claimant was diagnosed with adjustment disorder with mixed features and cannabis related disorder. His prognosis was guarded. He could manage his benefit funds. The Claimant has a normal psychiatric evaluation, but the independent examiner noted that his formal judgment was marginal to impaired. He is able to perform his activities of daily living. His emotional reaction was euthymic and matter of fact. Claimant Exhibit P-R.

On [REDACTED], the Claimant was seen by his treating physician. His chief complaint was a fall. He had pain in his left low back just lateral to the SI joint with bony swelling, but no evidence of a fracture and a small abrasion over the top. The Claimant had an accidental

fall. It was recommended that he ice the area for 20 minutes per hour as needed for pain. Department Exhibit C-D.

On [REDACTED], the Claimant was seen by his treating neurologist. He presented with numbness, swelling, and weakness. His condition moderately limits his activities. He felt the frequency was increasing and worse while he slept. Pertinent findings include muscle weakness in the left hand. The Claimant also presented with seizures. The quality is described as multiple event and tonic clonic of grand mal. He had a tumor in the brain that causes the seizures. The tumor was removed, but the Claimant is still having seizures. His seizure symptoms are alleviated by medications. The Claimant also had low back pain in the lower lumbar region. His pain was described as throbbing and dull. He is in constant pain. His symptoms are alleviated by rest and aggravated by activity. He has left leg numbness and muscle spasms, which moderately limits his activities. Medications do not help with pain that range from a 4/10 to 9/10. The Claimant was scheduled for further testing and procedures, but those results were not submitted as part of the medical packet. Department Exhibit 613-620.

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's treating specialist ordered tests and procedures, but the information was not part of the medical packet. The Claimant did undergo brain surgery to remove a tumor, but continues to have seizures. His seizures are controlled by medications, but he feels that he has break out seizures when he is asleep. He had lumbar back pain that moderately limits his activities. According to the Claimant's testimony, he is not taking medications and in therapy for his mental impairments. The Claimant did not have any evidence of a severe thought disorder or risk factors. The Claimant is able to perform simple, unskilled, light, work with seizure precautions. 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 to the point where he can perform work.

At Step 4, the Claimant testified that he does perform a few of his daily living activities. The Claimant testified that his condition has gotten worse because he has an increase in forgetfulness. He stated that he has short term memory loss, brain surgery to remove a tumor, and seizures. The Claimant is on medications for his seizures, but not in therapy for his mental impairments. The Claimant does smoke a pack of cigarettes every two days. He drinks alcohol occasionally. He stopped using illegal or illicit drugs of cocaine when he was in his early 20s.

This Administrative Law Judge finds that the Claimant's medical improvement is related to his ability to do work. The Claimant can perform at least simple, unskilled, light work with seizure precautions. Therefore, the Claimant is disqualified from receiving disability at Step 4. 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. In this case, this Administrative Law Judge finds that the Claimant meets the severity criteria with his physical and mental impairments. See Steps 3 and 4. Therefore, the Claimant is not disqualified from receiving disability at Step 6 where the Claimant passes for severity.

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 was last employed as a machine operator, tiler, and carpet layer at the heavy level. The Claimant is unable to perform heavy work. He was also employed as a waiter and car wash worker, which are performed at the medium level, but require a lot of physical exertion and standing. However, the Claimant was employed as assembly line worker at the sedentary level. With current level of physical and mental impairments, the Claimant is capable of performing his past, relevant work with seizure precautions. In addition, the Claimant did not know what type of work he could do. In this case, this Administrative Law Judge finds that Claimant can perform simple, unskilled, light work. The Claimant is capable of performing past, relevant work, which was unskilled and sedentary. See Steps 3 and 4. Therefore, the Claimant is disqualified from receiving disability at Step 7 where the Claimant is capable of performing his past, relevant work with seizure precautions.

Step 8

The objective medical evidence on the record is insufficient that the Claimant lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The Claimant's testimony as to his limitations indicates his limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Claimant testified that he has seizure disorder and short term memory loss. The Claimant is taking medication for his seizure disorder. The Claimant improved with treatment and medications. The medical evidence on the record is sufficient to support that the Claimant is capable of performing simple, unskilled work.

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 a younger individual, with a limited education, and a history of semi-skilled and unskilled work, MA-P is denied using Vocational Rule 202.20 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as seizure disorder and short term memory loss. This Administrative Law Judge finds that Claimant does have medical improvement sufficient to perform work 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 close Claimant's MA-P case based upon medical improvement. The Claimant is capable of performing simple, unskilled, light work with seizure precautions.

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

**DISABILITY – SDA
DEPARTMENT POLICY
SDA**

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, 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.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

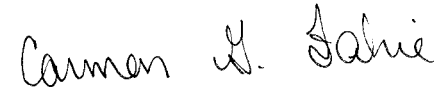
- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the Claimant does meet the disability criteria for SDA, he has not had medical improvement making him capable of performing simple, unskilled work with seizure precautions.

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 and SDA benefit programs.

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: 12/23/2014

Date Mailed: 12/23/2014

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 48909-8139

CGF\crl

cc:

