

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-000499
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: July 24, 2014
County: Jackson 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 July 24, 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], Family Independence Manager.

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. A September 5, 2012, administrative hearing Decision and Order found Claimant disabled for Medicaid (MA-P) and SDA as of June 2011.
2. In December 2013, the Department reviewed Claimant's ongoing eligibility for MA-P and SDA benefits.
3. On March 22, 2014, the Medical Review Team (MRT) found Claimant not disabled.
4. On March 27, 2014, the Department notified Claimant of the MRT determination.
5. On April 4, 2014, the Department received Claimant's timely written request for hearing.

6. On June 5, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
7. Claimant alleged disabling impairments including back pain, bursitis in both shoulders, and depression.
8. At the time of hearing, Claimant was 37 years old with an [REDACTED], birth date; was 6' in height; and weighed 160 pounds.
9. Claimant completed the 10th grade and has a history including working at a book bindery, car rotor factory, shipping and receiving at an organic greens company, and seasonal work with a tree company.
10. 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 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 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 disabling impairments including back pain, bursitis in both shoulders, and depression.

The September 5, 2012, administrative hearing Decision and Order found Claimant disabled for Medicaid (MA-P) and SDA as of June 2011. Claimant's medically diagnosed impairments were degenerative disc disease, shoulder and knee pain, closed head injury, as well as left leg and arm pain. Claimant's exertional and non-exertional impairments were found to render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis.

A July 30, 2011, MRI of the lumbar spine showed: multilevel degenerative disc disease in the lower lumbar spine most significant at L5-S1, tiny broad based central disk protrusions at L4-L5 and L5-S1 that do not narrow the thecal sac or displace nerve roots; and mild neural foraminal stenosis at L5-S1, right greater than left mostly due to end plate osteophytes.

An August 13, 2012, Medical Source Statement of ability to do work-related activities indicated physical limitations of lifting less than 10 pounds frequently, standing/walking less than 2 hours in an 8 hour work day, a need to alternate between sitting and standing every 15-20 minutes, limited use of lower extremities, unable to climb/kneel/crouch/crawl, limited reaching, and many environmental limitations.

On May 19, 2013, Claimant was seen in the emergency department for a splinter in his left middle finger.

A September 19, 2013, MRI of the lumbar spine showed: spondylosis of the lumbar spine L3-S1; L3-L4 right paracentral disc bulge causing mild narrowing of the right lateral recess; L4-L5 central disc bulge with annular tear causing mild narrowing of the bilateral lateral recess and mild bilateral neuroforaminal narrowing; and L5-S1 right paracentral disc bulge with annular tear causing mild right neuroforaminal narrowing.

A September 19, 2013, MRI of the cervical spine showed: spondylosis of the cervical spine at C4-C7; C5-C6 asymmetric left sided disc bulge with left paracentral and left foraminal component causing mild central spinal canal stenosis, mild right neuroforaminal narrowing, and moderate left neuroforaminal narrowing; and C4-C5 right paracentral disc bulge and C6-C7 mild right paracentral/central disc bulge without evidence of central spinal canal stenosis nor neuroforaminal narrowing.

Claimant was seen in the emergency department on October 6, 2013 for low back pain due to exacerbation of a low back injury. Claimant had run out of pain medication about three weeks prior. Claimant described the pain as radiating down both legs with tingling in both feet. Musculoskeletal findings included left and right sided 4/5 weakness, paresthesia of anterior thigh, pain to palpation on lumbar vertebrae and sacrum, decreased range of motion with twisting flexion and extension, positive straight leg raise

and positive opposite straight leg raise. Diagnoses were spondylosis and intervertebral disc prolapse. Claimant was given 10 days of pain medication to last until he could be seen by his neurosurgeon.

On November 27, 2013, Claimant was seen in the emergency department for an ankle laceration requiring stitches.

On November 29, 2013, Claimant was seen in the emergency department for a recheck of an ankle laceration. The wound was noted to appear to be healing well.

A January 29, 2014, consultative physical examination indicated Claimant reported he was taking pain medication and was able to sit, stand, and walk up to 30 minutes before having exacerbation of his symptoms and can lift 5 pounds comfortably. Claimant reported occasional flare ups during which time he will use a cane. On examination, Claimant's gait and station were within normal limits, there were no pathological reflexes, hands had full grip and full digital dexterity. Claimant's back pain appeared to be more musculoskeletal in nature without evidence of pinched nerve on examination. However, it does not appear this doctor was able to review the MRI results. Regarding the left shoulder pain, Claimant was able to perform full range of motion testing, empty can test and Apley's scratch test were also within normal limits.

A February 4, 2014, consultative mental status examination listed diagnoses of rule out borderline intellectual functioning, tobacco use disorder and cannabis use disorder. Claimant's prognosis was fair. It was noted that his physical health issues are apparently more pronounced than his mental health issues.

The evidence confirms recent diagnosis and treatment of lumbar and cervical spine problems and back pain. Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System and 11.00 Neurological. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent.

In consideration of all medical evidence, it is found that, overall, there has not been medical improvement. For example, comparison of the lumbar spine MRI reports from July 30, 2011, and September 19, 2013, indicate worsening of the lumbar spinal condition. However, the January 2014 consultative physical examination indicates Claimant's gait and station were normal on examination and he had full function of joints and spine in orthopedic maneuvers. This report also notes that Claimant reported that he was taking pain medication, but still had to alternate between sitting, standing, and walking by every 30 minutes and could only lift 5 pounds comfortably. It does not appear that the consultative examiner had been able to review the recent MRI reports nor that he observed Claimant performing any exertional activity on a repeated and/or continuous basis. Claimant's exertional and non-exertional impairments are still found to render Claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. As there has not been medical improvement and no exception applies, Claimant's disability is found to continue.

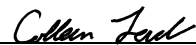
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA and SDA benefit programs

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 SDA cases, 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 October 2015.
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: **9/25/2014**

Date Mailed: **9/25/2014**

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.

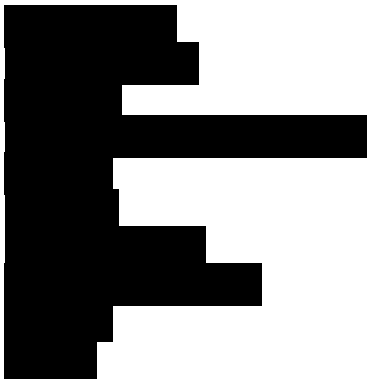
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the CC field.