

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007480
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: October 15, 2014
County: DELTA

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 hearing was held on October 15, 2014, in Escanaba, Michigan. Participants on behalf of Claimant included Claimant and Claimant's Authorized Hearing Representative, Attorney [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist, [REDACTED], Family Independence Manager, and [REDACTED], Assistant Attorney General.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical records. The Interim Order called for submission of new evidence 60 days from the date of the hearing, which is December 14, 2014. This matter is now before the undersigned for a final decision without admission of Claimant's new medical evidence, as the submission of [REDACTED] is found to be untimely.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit program.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Based on the record, Claimant was approved for SDA by the Medical Review Team (MRT) in July of 2013 and a review was set for July of 2014 (Exhibit 2, p. 5).
2. On [REDACTED], the MRT found Claimant no longer disabled (Exhibit 1, p. 3).

3. The Department notified Claimant of the MRT determination on [REDACTED].
4. On [REDACTED], the Department received Claimant's timely request for hearing.
5. Claimant is not currently working.
6. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days or longer.

CONCLUSIONS OF LAW

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 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) 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 and SDA 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 and SDA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5):

(5) Evaluation steps. To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)

(i) Step 1. Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part [404 of this chapter](#)? If you do, your disability will be found to continue.

(ii) Step 2. If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) Step 3. If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; *i.e.*, whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not related* to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) Step 4. If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3

in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

v) Step 5. If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see [§416.921](#)). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) Step 6. If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with [§ 416.960](#). That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) Step 7. If you are not able to do work you have done in the past, we will consider whether you can do other work given the residual functional capacity assessment made under paragraph (b)(5)(vi) of this section and your age, education, and past work experience (see paragraph (b)(5)(viii) of this section for an exception to this rule). If you can, we will find that your disability has ended. If you cannot, we will find that your disability continues.

(viii) Step 8. We may proceed to the final step, described in paragraph (b)(5)(vii) of this section, if the evidence in your file about

your past relevant work is not sufficient for us to make a finding under paragraph (b)(5)(vi) of this section about whether you can perform your past relevant work. If we find that you can adjust to other work based solely on your age, education, and residual functional capacity, we will find that you are no longer disabled, and we will not make a finding about whether you can do your past relevant work under paragraph (b)(5)(vi) of this section. If we find that you may be unable to adjust to other work or if § [416.962](#) may apply, we will assess your claim under paragraph (b)(5)(vi) of this section and make a finding about whether you can perform your past relevant work.

As discussed above, the first step in the sequential evaluation process is to determine whether Claimant's impairment(s) meets or equals a listed impairment in Appendix 1.

This Administrative Law Judge consulted all the listings and finds that the medical evidence alone does not support a finding that Claimant's impairment meets or equals a listed impairment.

Next, a determination must be made of whether medical improvement has occurred.

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s)**. (Emphasis added.)
20 CFR 416.994 (b) (1) (i)

Claimant was approved for SDA in July of 2013, according to the analysis found in the Department's Exhibit 2 (p. 5). However, upon reviewing the Department's exhibits (Exhibit 1, pp. 1-137 and Exhibit 2, pp. 1-5), no medical records upon which the most recent favorable medical decision was based were presented for review by the Department. Although the Department presented current medical documentation submitted by Claimant on [REDACTED] and [REDACTED], as per the date stamps found on the documentation, there are no prior records to compare to the recent evidence. Without such a comparison, it cannot be concluded that the Department was correct in its determination that medical improvement occurred "based on changes (Improvement) in the symptoms, signs and/or laboratory findings associated with the impairment." *Id.*

The next step is to determine whether any of the exceptions described below apply. If none of them applies the disability will continue.

The first group of exceptions found in CFR 416.994(b)(3), is as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial 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 found in 416.994(b)(4) is 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.

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above applies to Claimant's case.

Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that Claimant's disability for purposes of SDA must continue.

DECISION AND ORDER

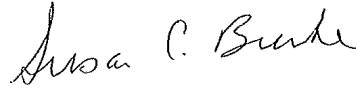
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant continues to be medically disabled for SDA purposes.

Accordingly, the Department's decision is hereby 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. Continue or reinstate Claimant's SDA case, effective the date of closure that was enunciated in a Notice of Case Action dated [REDACTED].
2. Issue SDA supplements for any payment Claimant was entitled to receive but did not receive, as of the date of SDA closure of on or about [REDACTED].

It is further ORDERED that a review of Claimant's SDA eligibility shall be set for January of 2016.



Susan C. Burke
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/19/2014**

Date Mailed: **12/19/2014**

SCB / hw

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:

