

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-010328
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: October 15, 2014
County: Van Buren

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 October 15, 2014, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED].

During the hearing, Claimant submitted additional medical evidence for consideration. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or 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 was an MA-P and SDA benefit recipient and her Medical Assistance case was scheduled for review in February, 2014.
- (2) On December 16, 2013, Claimant filed a Redetermination for MA and SDA benefits alleging continued disability.
- (3) On July 16, 2014, the Medical Review Team denied Claimant's Redetermination indicating that Claimant was denied for continuing eligibility.
- (4) On August 12, 2014, the Department sent Claimant notice that her MA and SDA cases would be closed based upon medical improvement.
- (5) On August 20, 2014, Claimant filed a request for a hearing to contest the Department's negative action.

- (6) Claimant was receiving MA and SDA at the time of this review.
- (7) Claimant alleges her disabling impairments are panic disorder with agoraphobia, bipolar disorder, obsessive-compulsive disorder, lumbago, sciatica, bone spurs, scoliosis and tendonitis.
- (8) Claimant is a 33-year-old woman whose birth date is [REDACTED]
- (9) Claimant is 5'3" tall and weighs 175 pounds.
- (10) Claimant has a ninth grade education.
- (11) Claimant last worked in 2009.

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.

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

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. 20 CFR 416.994(b)(5).

The first question asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because he has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CFR 416.994(b)(5)(ii).

The next step asks the question if there has been 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). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

Pursuant to the federal regulations, at medical review, the Department has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

During the hearing, Claimant submitted the below listed medical records.

On [REDACTED], the MRI of Claimant's spine revealed degenerative changes of the cervical spine causing multi-level neural foraminal stenosis, greatest on the right at C5-C6

where the stenosis is moderate to severe, mild degenerative endplate changes of the thoracic spine with Schmorl's malformation, degenerative changes of the lumbar spine at L4-L5 and L5-S1, chronic right L5 pars interarticularis defect without evidence of subluxation and mild dextroscoliosis of the lumbar spine.

On [REDACTED], Claimant underwent a medical evaluation for physical therapy as a result of an injury sustained on [REDACTED]. Claimant complained that she has been having back pain for the last 15 years. She has been using a cane for the last 3 years due to left leg pain. She has had an MRI and a CT scan in the last few years. She also complained of some increased pain and weakness in her arms. On exam, the physician opined Claimant has severe difficulty lifting anything weighing more than 5 pounds. She is also unable to carry or lift any type of weight due to the use of the cane. She is unable to stand for more than 10 minutes at a time due to the severe pain in the back and also increased pain or weakness in the legs. Claimant's maximum minutes that she can walk with a cane is about 5 minutes and that is usually very slowly. Claimant is unable to squat and she is doing stairs non-reciprocally typically with a railing.

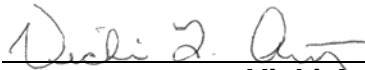
In this case, the Department has not met its burden of proof. The Department has provided no evidence that indicates Claimant's condition has improved, or that the alleged improvement relates to her ability to do basic work activities. The Department provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities, in contrast to the records provided by Claimant that show she is unable to do sedentary work at this time. Accordingly, the Department's SDA and MA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department erred in proposing to close Claimant's MA and SDA case based upon a finding of improvement at review.

Accordingly, the Department's action is **REVERSED**, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with Claimant's next mandatory medical review scheduled in December, 2015, (unless she is approved eligible for Social Security disability benefits by that time).

It is SO ORDERED.



Vicki Armstrong
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/1/2014**

Date Mailed: **12/1/2014**

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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:

