

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017544
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: January 26, 2015
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on January 26, 2015, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED], case manager of New Oakland, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's State Disability Assistance (SDA) eligibility for the reason that Claimant is not a disabled individual.

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 ongoing SDA benefit recipient.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was no longer a disabled individual (see Exhibits 3-4).
4. On [REDACTED], DHS terminated Claimant's SDA eligibility, effective 1/2015, and mailed a Notice of Case Action (Exhibits 1-2) informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of SDA benefits.

6. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
7. Claimant alleged disability based on restrictions related to diagnoses of bilateral shoulder abnormalities and bicep tears, depression, cervical spine pain, lumbar pain, and panic disorder.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (7/2014), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, 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; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. The definition of SDA disability is identical except that only a three month period of disability is required.

Substantial gainful activity means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. BEM 260 (7/2014), p. 10. Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

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. Claimant was previously certified by the DHS Medical Review Team (MRT) as unable to work for at least 90 days. At Claimant's most recent SDA benefit redetermination, DHS determined that Claimant was no longer disabled.

In evaluating a claim for ongoing disability benefits, federal regulations 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 if 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 below described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence suggesting that Claimant received any wages since receiving disability benefits.

The first step in the analysis in determining the status of a claimant's disability 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 and no further analysis is required. This consideration requires a summary and analysis of presented medical documents since Claimant's last disability review.

An MRI report of Claimant's cervical spine dated [REDACTED] (Exhibit A1) was presented. An impression of multi-level disc disease and degenerative changes causing severe neural foraminal stenosis at C5-C6 was noted.

Physician office visit documents (Exhibits 10-12) dated [REDACTED] were presented. It was noted that Claimant was a new patient reporting feelings of depression, hopelessness, and anxiety- all ongoing for 2 weeks. Claimant reported difficulties with concentrating, speaking very softly, and feeling fidgety. A Prilosec refill was noted. Assessments of anxiety and agoraphobia were noted.

Physician office visit documents (Exhibits 8-9) dated [REDACTED] were presented. Assessments included anxiety, rheumatoid arthritis, and HTN.A four month follow-up was noted as planned.

A Psychiatric Evaluation (Exhibits 13-17; 39-43; A2-A3; A7-A9) dated [REDACTED] was presented. The evaluation was completed by a psychiatrist from a treating mental health

agency. It was noted that Claimant reported complaints of depression, anxiety, delusional thoughts, hallucinations, lack of motivation, crying spells, racing thoughts, withdrawn behavior, panic attacks, and suicidal thoughts. Notable psychiatric observations included the following: cooperative attitude, constricted affect, normal thought content, normal psychomotor activity, normal attention and concentration, average grooming, normal judgment, and normal impulse control. An Axis I diagnosis of major depressive disorder (recurrent and severe) was noted. Claimant's GAF was noted as 44.

Medication Review Notes dated [REDACTED] (Exhibits 18-21; 35-38; A10-A14) from a treating psychiatrist were presented. It was noted that Claimant complained of continuing depression symptoms including decreased sleep. It was noted that Claimant was tearful throughout the visit. Effexor and Xanax were noted as prescribed.

Medication Review Notes dated [REDACTED] (Exhibits A23-A27) from a treating psychiatrist were presented. It was noted that Claimant reported not wanting to take anti-depressants because she was only depressed by her circumstances. A plan of continuing Xanax was noted.

Medication Review Notes dated [REDACTED] (Exhibits A28-A31) from a treating psychiatrist were presented. It was noted that Claimant reported increased stress from loss of SDA income. A change in medication to Xanax was noted.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

It is found that Claimant failed to meet a SSA listing. Accordingly, the analysis may proceed to Step 2 of the disability redetermination analysis.

The second step of the analysis considers whether medical improvement occurred. 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). An analysis typically begins with examining the original basis of disability.

A Medical-Social Eligibility Certification (Exhibits 113-114) dated [REDACTED] was presented. The form verified that the Medical Review Team found Claimant to be disabled as of 9/2013. A review date of 9/2014 was noted.

DHS did not provide a detailed explanation of how Claimant was initially found to be disabled. Presented documents could not identify when disability was first established. Older medical documents will be examined as an attempt to discern the original basis of disability.

Various physician treatment documents (Exhibits 67-100; 130-267; 286-319) from 2007-2013 were presented. Regular complaints of bilateral shoulder pain, neck pain, vaginal infection, depression, and thumb pain were noted. Presumably, thumb pain and vaginal infection were not significant factors in the original disability finding. Possible impairments amounting to disability include shoulder pain, neck pain, and depression.

A left shoulder MRI report (Exhibits 70-71) dated [REDACTED] was presented. An impression of an intact rotator cuff with significant supraspinatus fraying and "considerable atrophy" was noted. On [REDACTED], the atrophy was described as "moderate to marked" (see Exhibit 77). A 5 pound lifting restriction was noted.

An MRI report of Claimant's cervical spine (Exhibits 62-6; 187-1883) dated [REDACTED] was presented. An impression of mild central canal stenosis and severe right-side foraminal stenosis at C5-C6 was noted.

Spinal physician treatment documents (Exhibits 45-50; 53-55) dated [REDACTED] were presented. It was noted that Claimant complained of back numbness, right arm numbness, headaches, and blurred vision. An impression of cervical spondylosis was noted. A plan for an EMG to determine the existence of neuropathy was noted.

An EMG report (Exhibits 56-61) dated [REDACTED] was presented. An impression of a normal study with no findings of cervical radiculopathy was noted.

It was regularly noted that Claimant received medication treatment for depression from 2013 and earlier. For that time, psychiatric appointments were not verified. In 2014, Claimant's mental health sufficiently deteriorated to the point that Claimant sought psychotherapy. Claimant's GAF of 44 as of 8/2014 is indicative of marked functional restrictions. Over the course of 2013 to 2014, Claimant's mental health appears to have deteriorated.

Radiology from 2014 verified severe stenosis of Claimant's cervical spine. Severe stenosis appears to be deterioration from previously radiology which found neither severe stenosis nor spondylosis. The evidence was indicative of deterioration, not medical improvement.

An absence of recent shoulder treatment documents is suggestive of improvement in shoulder function. The absence of records is not sufficient to infer that shoulder function improvement occurred.

Based on presented records, it is found that DHS failed to establish that Claimant had medical improvement. Accordingly, the analysis skips Step 3 and proceeds directly to Step 4.

Step four considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). If medical improvement related to the ability to work has not occurred and no exception applies, then benefits will continue. CFR 416.994(b). Step 4 of the disability analysis lists two sets of exceptions.

The first group of exceptions allow a finding that a claimant is not disabled even when medical improvement had not occurred. The exceptions are:

- (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.
20 CFR 416.994(b)(4)

If an exception from the first group of exception applies, then the claimant is deemed not disabled if it is established that the claimant can engage in substantial gainful activity. If no exception applies, then the claimant's disability is established.

The second group of exceptions allow a finding that a claimant is not disabled irrespective of whether medical improvement occurred. The exceptions are:

- (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.
20 CFR 416.994(b)(4)

There was no evidence that any of the above exceptions are applicable. It is found that Claimant is still a disabled individual. Accordingly, it is found that DHS improperly terminated Claimant's SDA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's SDA benefit eligibility, effective 1/2015;
- (2) evaluate Claimant's SDA eligibility subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by DHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/17/2015**

Date Mailed: **2/17/2015**

CG / 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:

A large black rectangular redaction box covers the names and email addresses listed in the CC field.