

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201415657
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: March 19, 2014
County: Wayne

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 March 19, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) 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. Claimant was an ongoing MA-P and SDA recipient based on a 2009 decision by the Medical Review Team (MRT) finding that Claimant was disabled.
2. In October 2013, the Department reviewed Claimant's ongoing MA-P and SDA eligibility.
3. On November 18, 2013, MRT found Claimant no longer disabled.

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4. On November 21, 2013, the Department sent Claimant a Notice of Case Action closing his MA-P and SDA cases effective December 1, 2013.
5. On November 27, 2013, the Department received Claimant's timely written request for hearing.
6. On January 25, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
7. Claimant alleged mental disabling impairments due to bipolar disorder.
8. At the time of hearing, Claimant was [REDACTED] with an [REDACTED], birth date.
9. At the time of hearing, Claimant was [REDACTED] in height and weighed approximately [REDACTED].
10. Claimant has a [REDACTED] grade education and has an employment history of working as a truck loader for a furniture company, a temporary service employee, and a fast food restaurant employee.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Department policies are found in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (RFT).

A disabled individual is eligible for MA-P and SDA. BEM 105 (January 2014), p. 1; BEM 260 (July 260); BEM 261 (July 2013), p. 1. In order to receive MA benefits based upon

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disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act. 20 CFR 416.901. Disability is 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(a).

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(a). In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process to assess current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work. 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. 20 CFR 416.994(b)(5). Prior to deciding an individual's disability has ended, the Department will develop, along with 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).

Step One

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.

In the present case, Claimant alleges a disability due to bipolar disorder.

A June 1, 2012 psychiatric evaluation listed Claimant's primary diagnosis as active bipolar disorder and secondary diagnosis as post-traumatic stress disorder and noted alcohol abuse. Claimant was prescribed Effexor, Lamictal, and Seroquel. Claimant was noted to have auditory hallucinations; redirectable thought process; soft, fair speech; anxious and depressed mood; intact memory; limited insight; and fair judgment. The psychiatrist noted that Claimant's Global Assessment Functioning (GAF) score was 51 and his prognosis was guarded.

Claimant's October 12, 2012, medication review signed by Claimant's psychiatrist listed Claimant's primary diagnosis as psychotic disorder and considered whether a secondary diagnosis of major depressive disorder, recurring, severe with psychosis

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could be ruled out. The medication review added polysubstance dependence and antisocial personality disorder to the diagnoses listed. The November 8, 2012, review listed the primary diagnosis as psychotic disorder, not otherwise specified (NOS). The record included additional medical reviews for December 6, 2012; January 3, 2013; January 31, 2013; March 28, 2013; May 23, 2013; and July 18, 2013, showing prescribed medications being renewed.

On May 11, 2013, Claimant participated in a mental status consultation. The examiner identified Claimant's diagnosis as bipolar disorder, poly-substance abuse in remission, and listed a GAF score of 48. The examiner concluded that Claimant still struggles with bouts of depression, suicidal ideation and anxiety and opined that he would have difficulty sustaining attention and concentration to do work-related activities at a sustained pace other than in a more structured, routine work environment. Claimant's prognosis was fair to guarded. Claimant was found able to manage his own funds.

A September 19, 2013, annual psychiatric evaluation completed by Claimant's treating psychiatrist does not list a primary diagnosis and continues a secondary diagnosis of major depressive disorder, recurring with sever psychosis. The psychiatrist described Claimant as not having any hallucinations; with a pre-occupied, delusional and paranoid thought content ;having a superficial and guarded behavior; with a constricted affect, but normal tone and volume speech; and fair concentration. The psychiatrist listed Claimant's GAF score as 49, noting that it was the highest GAF score in the past 12 months. He indicated Claimant's compliance with medications was questionable and his compliance with therapy, program or treatment recommendations was poor and added that Claimant continued to be dependent on drugs- alcohol, marijuana and crack.

In light of the medical evidence presented, Listing 12.00 (mental disorders) was considered, most specifically under Listings 12.04 (affective disorders), 12.06 (anxiety-related disorders), and 12.08 (personality disorders). Affective disorders are characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. In an anxiety-related disorder, anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms. A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress.

The medical evidence presented in this case was insufficient to meet or equal any of the listings considered. Therefore, a disability is not continuing under Step 1 of the analysis, and the analysis proceeds to Step 2.

Step Two

If the impairment(s) does not meet or equal a Listing under Step 1, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR

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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 none of the exceptions listed below in Step 4 applies, then an individual's disability is found to continue.

In this case, the Department has failed to provide any evidence concerning Claimant's medical condition in 2009, when MRT found Claimant disabled and the Department approved Claimant's MA-P and SDA application. Therefore, a determination of medical improvement cannot be made.

Step Three

When medical improvement is found in Step 2, Step 3 calls for a determination of whether there has been an increase in the individual's 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).

Because, as discussed above, a medical improvement cannot be ascertained in this case, the analysis continues to Step 4.

Step Four

Step 4 evaluates whether any listed exception described below applies to the individual. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.*

The first group of exceptions 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.

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The Department did not present any evidence establishing an exception under the first set of exceptions.

The second group of exceptions to medical improvement are found in 20 CFR 416.994(b)(4) and 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.*

The only exception from this second group that may be applicable to Claimant's case is the fourth, that the prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

In this case, the September 19, 2013 psychiatric evaluation by Claimant's treating psychiatrist listed Claimant's GAF score at 49 but questioned his compliance with medications and indicated that his compliance with therapy, program or treatment recommendations was poor. The medical reviews provided do not show continuing, uninterrupted monthly medical reviews. However, the March 11, 2013 mental status consultation concluded that, even when Claimant was compliant with medication, he continued to struggle with bouts of depression, suicidal ideation and anxiety. The consultation also reported a GAF score of 48. Both the consultation and the psychiatric evaluation listed the prognosis as fair to guarded. Because there is no evidence that Claimant's compliance with medication and treatment affected his ability to engage in substantial gainful activity, the evidence presented does not establish that an exception from the second set of exceptions applies in this case.

Because no exception under either group of exceptions applies, Claimant's disability under the federal regulations continues. Therefore, Claimant MA-P eligibility continues.

A person's receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. BEM 261 (July 2013), p. 2. In this case, Claimant is found disabled for purposes of the MA-P program and, therefore, disabled for purposes of SDA benefit program.

DECISION AND ORDER


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The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING 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. Review and reprocess the October 2013 review application to determine if all other non-medical criteria are met and notify Claimant of its decision in writing;
2. Issue supplements to Claimant for any lost MA-P and SDA benefits that he was entitled to receive from December 1, 2013 ongoing if otherwise eligible and qualified in accordance with Department policy; and
3. Review Claimant's continued MA-P and SDA eligibility in April 2015 in accordance with Department policy.


Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: April 1, 2014

Date Mailed: April 1, 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:

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- 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 48909-07322

ACE/tlf

cc:

