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

IN THE MATTER OF:

[redacted]

Reg. No.: 201431445
Issue No(s).: 2009
Case No.: [redacted]
Hearing Date: July 9, 2014
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 9, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [redacted]. Participants on behalf of the Department of Human Services (Department) included [redacted], MCS.

ISSUE

Whether the Department properly determined that Claimant has medically improved 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 a recipient of MA-P benefits.
2. On February 3, 2014, a medical review of claimant's disability status was conducted by the Medical Review Team (MRT).
3. Claimant was found to be medically improved.
4. Medical evidence from the previous file was considered.
5. Claimant had originally applied for MA-P on the basis of [redacted].

6. Claimant was approved for benefits in 2012, and has had regular reviews since.

7. Current medical records show improvement; however, this improvement is only due to consistent and regular medical care—any lessening of care would result in an immediate reversion to claimant's previous state, which included numbness, an inability to complete all activities of daily living, and paralysis.

8. Claimant is not currently working.

9. On March 10, 2014, claimant filed for hearing.

10. On May 19, 2014, the State Hearing Review Team (SHRT) denied MA-P, stating that claimant could perform other work.

11. On July 9, 2014, a hearing was held before the Administrative Law Judge.

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 purusant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impariment 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.

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

However, once an individual has been determined to be disabled for the purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. 20

CFR 416.994. In evaluating whether disability continues, the Administrative Law Judge must follow a sequential evaluation process, not unlike the initial disability evaluation, in which current work activities, severity of impairment, and the possibility of medical improvement and its relationship to the individual's work ability is assessed. Review ceases and benefits continue if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity (SGA). 20 CFR 416.994(b)(5)

In determining the continuation of disability, an eight step process is followed. First, there must be a determination of whether the claimant is engaging in SGA. Second, the undersigned will determine whether the claimant has an impairment which meets or equals the severity of a listed impairment. This is followed by a determination of whether there has been medical improvement. If there has been medical improvement, a determination of whether the medical improvement is related to the claimant's ability to work must be made. If there has been no medical improvement, the undersigned will consider whether any exceptions apply if the claimant has made no medical improvement. If there has been medical improvement and the improvement is related to claimant's ability to work, a determination of whether the impairment is severe will be made. For the seventh step, the undersigned will assess a claimant's current ability to engage in SGA. Finally, the claimant will be judged according to their capacity to perform any other work, given the claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(i-viii).

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.994(b)(5)(i). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2014 is $1,800. For non-blind individuals, the monthly SGA amount for 2014 is $1070.

In the current case, claimant has testified that they are not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

In the second step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step three.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. We therefore proceed to the next step.

In this step, the undersigned must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues to be disabled. A determination that there has been a decrease in the medical severity must be based on improvement in the symptoms, signs, and/or laboratory findings associated with claimant's impairment. If there has been medical improvement as shown by a decrease in the medical severity, the undersigned must proceed to step 4, as discussed above. If there has been no decrease in severity, and thus no medical improvement, step 4 is skipped, and the undersigned will proceed to step 5.

In the current case, the Department has failed to meet its burden of proof in showing medical improvement, shown by a decrease in medical severity. The medical evidence presented does not indicate an improvement or a decrease in medical severity. Claimant originally applied for benefits on the basis of [redacted]. The new records contain evidence of medical improvement; however, this improvement is the result of constant and frequent medical care. The evidence record shows that if this care were to stop for any length of time, claimant would immediately revert to her pre-medical intervention status, which included numbness and paralysis.

The undersigned believes that medical improvement that is the result of constant and ongoing medical care, and requires constant maintenance and medical intervention in order to maintain a semblance of a normal daily life is no medical improvement at all. Claimant is, at all times, a missed appointment or medication from total medical collapse. For that reason, the undersigned declines to find medical improvement in the current case.

The Administrative Law Judge will not find actual medical improvement without adequate submitted medical records actually showing significant, permanent improvement, nor will the Administrative Law Judge infer improvement from a lack of medical evidence, when the Department has the burden of proof in showing improvement.

The Department has the burden of proof to show actual improvement. There are no findings that show claimant is capable of work related activities. Therefore as the medical records cannot be said to show improvement, the Department has not met its burden of proof in showing improvement, and the undersigned will continue to step 5.

If there has been no medical improvement or it is found that the medical improvement is not related to your ability to work, the Administrative Law Judge must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (4) apply. If no exceptions apply,

disability will be found to continue. If one of the first group of exceptions to medical improvement applies, the sequential process continues. If an exception from the second group of exceptions to medical improvement applies, disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(v).

The law provides for certain limited situations when disability can be found to have ended even though medical improvement has not occurred, if the claimant can engage in substantial gainful activity. These exceptions to medical improvement are intended to provide a way of finding that a person is no longer disabled in those limited situations where, even though there has been no decrease in severity of the impairment(s), evidence shows that the person should no longer be considered disabled or never should have been considered disabled. If one of these exceptions applies, it must also be shown that, taking all current impairment(s) into account, not just those that existed at the time of the most recent favorable medical decision, you are now able to engage in substantial gainful activity before disability can be found to have ended. 20 CFR 416.994(b)(3).

The first group of exceptions, found in 20 CFR 416.994(b)(3), are as follows:

(i) Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work);

(ii) Substantial evidence shows that you have undergone vocational therapy (related to your ability to work);

(iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision;

(iv) Substantial evidence demonstrates that any prior disability decision was in error. This exception to medical improvement based on error is considered if substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) demonstrates that a prior determination was in error. A prior determination will be found in error only if:

(A) Substantial evidence shows on its face that the decision in question should not have been made (e.g., the evidence in your file such as pulmonary function study values was misread or an adjudicative standard such as a listing in appendix 1 of subpart P of part 404 of this chapter or a medical/vocational rule in appendix 2 of subpart P of part 404 of this chapter was misapplied), or;

(B) At the time of the prior evaluation, required and material evidence of the severity of your impairment(s) was missing. That evidence becomes available upon review, and

substantial evidence demonstrates that had such evidence been present at the time of the prior determination, disability would not have been found, or;

(C) Substantial evidence which is new evidence which relates to the prior determination (of allowance or continuance) refutes the conclusions that were based upon the prior evidence (e.g., a tumor thought to be malignant was later shown to have actually been benign). Substantial evidence must show that had the new evidence, (which relates to the prior determination) been considered at the time of the prior decision, the claim would not have been allowed or continued. **A substitution of current judgment for that used in the prior favorable decision will not be the basis for applying this exception.**

In examining the record, the undersigned finds that no exceptions of the first group apply.

In addition to the first group of exceptions to medical improvement, the following exceptions may result in a determination that the claimant is no longer disabled. In these situations the decision will be made without a determination that the claimant has medically improved or can engage in substantial gainful activity. 20 CFR 416.994(b)(4). The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

i) A prior determination or decision was fraudulently obtained;

ii) Claimant did not cooperate;

iii) Claimant is unable to be located;

iv) Claimant failed to follow prescribed treatment which would be expected to restore the ability to engage in substantial gainful activity.

The undersigned has considered the record and finds no evidence that the claimant meets any of these exceptions.

Therefore, as no exceptions apply, disability must be found to continue. 20 CFR 416.994(b)(5)(v). As claimant is found disabled at this step, no further evaluation is needed, and the undersigned declines to do so. Finally, as disability must be found to continue, the Department was in error when in closed claimant's MA-P and SDA benefit cases for medical improvement.

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 ☒ not medically improved for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is ☐ AFFIRMED ☒ 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. The Department is ORDERED to remove all negative actions against claimant's benefit case in question. The Department is further ORDERED to initiate a review of claimant's disability case in August, 2015.

Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 7, 2014

Date Mailed: August 7, 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:

- 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

RJC/tm

cc: [redacted]