

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

IN THE MATTER OF:



Reg. No.: 2014-33559
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: May 8, 2014
County: Wayne (15)

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 May 8, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly terminated Claimant's eligibility for Medical Assistance (MA) and State Disability Assistance (SDA) 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 MA and SDA benefit recipient.
2. Claimant's only basis for MA and SDA eligibility was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of SDA eligibility.

4. On an unspecified date, the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of MA eligibility.
5. On [REDACTED], DHS terminated Claimant's eligibility for MA benefits, effective [REDACTED] and mailed a Notice of Case Action informing Claimant of the termination.
6. On [REDACTED], DHS terminated Claimant's eligibility for SDA benefits, effective [REDACTED], and mailed a Notice of Case Action informing Claimant of the termination.
7. On [REDACTED], Claimant requested a hearing disputing the termination of MA and SDA eligibility.
8. On [REDACTED], the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by reliance on an unfavorable SSA administrative decision (Exhibits 26-44) which determined that Claimant was not disabled.
9. On [REDACTED], an administrative hearing was held.
10. During the hearing, Claimant waived the right to receive a timely hearing decision.
11. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
12. On [REDACTED], an Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit spine radiology and arthritis treatment records.
13. On [REDACTED], Claimant submitted additional documents (Exhibits A1-A6).
14. On [REDACTED], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.
15. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by determining that Claimant can perform light employment and all applicable Medical-Vocational Rules would justify a finding of not disabled.
16. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

17. As of the date of the administrative hearing, Claimant was a 50-year-old male with a height of 6'0" and weight of 160 pounds.
18. Claimant has no relevant history of substance abuse.
19. Claimant's highest education year completed was the 10th grade.
20. Claimant alleged disability based on impairments and issues including chronic arthritis and schizophrenia.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.*, p. 2.

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. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.*, p. 9.

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.*

The person claiming a physical or mental disability has the burden to establish a disability 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).

The analysis of Claimant's MA benefit eligibility depends on whether Claimant was an applicant or an ongoing recipient. 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.

In evaluating a claim for ongoing MA 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 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.

A radiology report dated [REDACTED] was presented. It was noted that an MRI of Claimant's lumbar was taken in response to complaints of back pain. An impression of L4-L5 disc protrusion, which contacts the L5 intra-spinal nerve root, was noted. It was also noted that an L5-S1 disc protrusion contacted the intra-spinal nerve root.

A Medical Examination Report (Exhibits 9-11) dated [REDACTED] was presented. The form was authored by a family medicine physician with an approximate nine month history of treating Claimant. The physician provided diagnoses of schizophrenia, L4-L5 stenosis, degenerative joint disease, left collarbone pain, and right knee pain. Positive straight leg raising test results were noted. It was noted that Claimant used a cane. An impression was given that Claimant's condition was stable. It was noted that, for an 8 hour workday, Claimant was restricted to less than 6 hours of standing/walking and less than 2 hours of sitting. It was noted that Claimant can meet household needs. It was noted that Claimant had restrictions with social interactions and sustaining concentration.

A Psychiatric/Psychological Examination Report (Exhibits 12-14) dated [REDACTED] was presented. The form was noted as completed by a social worker and psychiatrist with an approximate 3 ½ year history of treating Claimant. A history of reported auditory hallucinations and feelings of paranoia was noted. An Axis I diagnosis of schizoaffective disorder was noted. Claimant's GAF was noted to be 40.

A Mental Residual Functional Capacity Assessment (Exhibits 15-16) dated [REDACTED] was completed by Claimant's treating psychiatrist. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. Claimant was found moderately and moderately-to-markedly restricted in several work-related abilities. Claimant was found markedly restricted in the following abilities:

- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Sustaining an ordinary routine without supervision
- Completing a normal workday without psychological symptom interruption
- Accepting instructions and responding appropriately to criticism
- Traveling to unfamiliar places including use of public transportation

Claimant's primary impairment involved back pain and restrictions. Spinal disorders are covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease,

facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The records verified two lumbar nerve root impingements, at L5 and S1. The records verified that Claimant requires use of a cane. A positive straight leg raising test was also positive.

There was also evidence that Claimant suffers schizoaffective disorder. The listing for schizoaffective disorders is covered by Listing 12.03 and reads:

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
4. Emotional withdrawal and/or isolation;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration;
- OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

It was established that Claimant had severe psychiatric symptoms despite a lengthy history of psychological treatment. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that Claimant's GAF of 40 is representative of "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood."

It is debatable whether Claimant meets all of the requirements for Listing 1.04 or 12.03(B). It is less debatable that Claimant is essentially unemployable, after factoring back pain and psychiatric symptom.. It is found that Claimant meets the functional equivalent of Listings 1.04 and/or 12.04(B). Accordingly, it is found that Claimant is a disabled individual and that DHS erred in terminating Claimant's MA eligibility.

Even if it had been found that Claimant did not meet the listing for spinal disorders or psychotic disorders, it would have been found that DHS failed to establish any medical improvement in Claimant's condition. In this scenario, Claimant would have also been found disabled at step four of the disability analysis.

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 (1/2012), 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.


It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet SSA Listings 1.04 or 12.03. The analysis and finding applies equally for Claimant's SDA eligibility. It is found that Claimant is a disabled individual for purposes of SDA eligibility and 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 terminated Claimant's MA and SDA eligibility. It is ordered that DHS:

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

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


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/24/2014

Date Mailed: 7/24/2014

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

CG/hw

cc:

