

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007840
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: September 23, 2014
County: KALAMAZOO

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 23, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], Case Manager with InterAct of Michigan and Authorized Hearing Representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Hearing Facilitator.

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The evidence was received and reviewed.

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 had been found disabled and was eligible for Medicaid (MA-P) and SDA based on a June 20, 2013, application for MA-P, retroactive MA-P and SDA.
2. In June 2014, the Department was to review Claimant's ongoing eligibility for MA-P and SDA benefits.
3. On July 2, 2014, the Medical Review Team (MRT) found Claimant not disabled.

4. On July 11, 2014, the Department notified Claimant of the MRT determination.
5. On July 18, 2014, the Department received Claimant's timely written request for hearing.
6. Claimant alleged disabling impairments including herniated lumbar discs, mood disorder, paranoid schizophrenia, and depression.
7. At the time of hearing, Claimant was 46 years old with a [REDACTED], birth date; was 6'1" in height; and weighed 168 pounds.
8. Claimant completed the some college and has a work history including factory worker.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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.

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(a). The person claiming a physical or mental disability has the burden to establish it 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 416.913. 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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 regulation 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 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 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.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 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 no exception applies (see listed exceptions below), then an individual's disability is found to continue.

Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the 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).

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv). If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v). If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi). If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v). Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii). Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement 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.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

In the present case, Claimant alleged disabling impairments including herniated lumbar discs, mood disorder, paranoid schizophrenia, and depression.

While some older medical records were submitted and have been reviewed, the focus of this analysis will be on the more recent medical evidence.

Claimant was hospitalized on April 21-26, 2013, for suicidal thoughts. Claimant described worsening depressive symptoms, especially auditory hallucinations telling him to harm himself. Recent events of driving into a tree and stepping in front of a bus were noted. Claimant was discharged to crisis housing. Claimant's Global Assessment of Functioning (GAF) was 35 at admission and 58 at discharge.

Claimant was seen in the emergency department on May 2, 2013, for suicidal feelings. Claimant had been transferred from crisis housing, where he had been residing. Diagnoses included bipolar disorder with psychotic features per history and opioid dependence per history. Claimant's GAF was 45. Claimant was to have follow up for outpatient counseling options and return to the crisis housing.

Claimant was seen in the emergency department on May 9, 2013, for acute headache and acute exacerbation of chronic low back pain. Records also document depression with concern of suicidal thoughts.

Claimant was seen in the emergency department on May 14, 2013, for chronic back pain and narcotic seeking behavior.

Claimant was seen in the emergency department on May 18, 2013, for chronic back pain.

Claimant was seen in the emergency department on May 28, 2013, for back pain.

Claimant was seen in the emergency department on June 4, 2013, for chronic back pain.

Claimant was seen in the emergency department on June 10, 2013, for back pain. Narcotic pain medications were not given. Claimant also requested to speak with a social worker regarding hearing voices.

Claimant was seen in the emergency department on June 13, 2013, for accidental fall from ladder, ankle pain, psychosis, mental health problem and chronic back pain. Inpatient admission was recommended due to psychiatric issues. The records indicate a social worker was working on placement.

Claimant was seen in the emergency department June 17-18, 2013, for pain after the fall two days prior. A CT of the cervical spine showed degenerative disc disease and spinal stenosis.

Claimant was seen in the emergency department on June 18, 2013, for rib fractures after a fall from a ladder. A history of narcotic use and abuse was also noted.

Claimant was seen in the emergency department on June 20, 2013, for back pain.

Claimant was seen in the emergency department on June 24, 2013, for musculoskeletal chest pain. The recent visit for broken ribs was noted. However, drug seeking behavior was also noted.

Claimant was seen in the emergency department on December 15, 2013, for back muscle spasm.

Claimant was seen in the emergency department December 27, 2013. It appears this may have been for complaints of chest pain.

A January 28, 2014, office visit note documents Claimant had been in the emergency department on January 8, 2013. Claimant has a history of back pain since 2000, when he was run over with a fork lift and herniated some discs and fractured his left femur. The assessment indicated radicular lower back pain, depression and hypertension.

January through May 2014 mental health treatment records document diagnoses of schizophrenia, mood disorder, cannabis abuse and personality disorder. Claimant's GAF ranged from 33 to 35. A May 8, 2014, medication review noted difficulties with taking medications, anxiety, jitteriness, inability to sleep, tremors, and weight loss. It was indicated Claimant's oral Haldol may have been stopped a bit too quickly. Earlier records indicate additional symptoms including a history of hearing voices telling him to hurt himself or others, suicidal ideation, and extremely limited coping skills.

Claimant was seen in the emergency department April 23, 2014, for chronic pain, low back pain acute on chronic, and chest wall pain.

Claimant was seen in the emergency department May 12, 2014, for acute exacerbation of chronic low back pain.

Claimant was seen in the emergency department June 9, 2014, for back pain.

Claimant was seen in the emergency department on July 1, 2014, for corneal abrasion left eye. This history of chronic back pain and schizophrenia was also noted.

Claimant was seen in the emergency department July 11, 2014, for feeling suicidal and back pain. Diagnoses included bipolar disorder with psychotic features per history, opioid dependence per history, and personality disorder. Claimant's GAF was 40. Claimant requested a medication change due to adverse effects with Haldol injections and agreed to be placed at crisis stabilization.

Claimant was seen in the emergency department July 12, 2014, for erratic behavior and altered mental status. Drug and alcohol evaluation was requested. A urine drug screen was positive for cocaine, opiates, and cannabinoids. Serum alcohol was negative. Claimant's behavior was likely secondary to street drug use with prescribed medications that had likely not been taken regularly based on lab results. The crisis placement was unable to take Claimant back due to his current mental status. Claimant eventually left against medical advice.

June through August 2014 mental health treatment records document diagnoses including PTSD, schizoaffective disorder, cannabis abuse, cocaine abuse, personality disorder, schizophrenia, and mood disorder. GAF scored ranged from 30-46.

Based on the objective medical evidence, considered listings included: 1.00 Musculoskeletal System and 12.00 Mental Disorders. However, the medical evidence was not sufficient to meet the intent and severity requirements of any listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled at this step.

Step 2 requires a determination of whether there has been medical improvement. On October 29, 2013, the MRT found Claimant disabled based on non-exertional impairment(s), a psychological vocational allowance.

There is a serious ongoing concern regarding substance abuse and drug seeking behavior as frequently documented in hospital records. However, overall the mental health treatment records do not show improvement. Claimant's Case Manager confirmed Claimant had been admitted to crisis housing in July 2014, stayed 11-12 days; there have been severe complications and side effects from medications, such as her own observations of the side effects with the injectable Haldol; and definite depressive symptoms. In consideration of all medical evidence, it is found that, overall, there has been no medical improvement. The exceptions contained in 20 CFR 416.994(b)(3) and 20 CFR 416.994(b)(4) are not applicable.

Accordingly, Claimant is found disabled for purposes of continued MA-P entitlement; therefore the Claimant's is also found disabled for purposes of continued SDA benefits.


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 disabled for purposes of the MA and/or SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is 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. Reinstate Claimant's MA and/or SDA case(s) retroactive to the effective date of the closure, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for June 2015.



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **11/12/2014**

Date Mailed: **11/12/2014**

CL/hj

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.

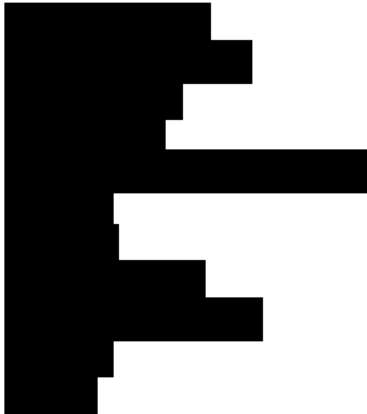
A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

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 contact information of the recipients listed in the 'cc:' field.