

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

IN THE MATTER OF:



Reg. No.: 14-004262
Issue No.: SDA - DISABILITY
Case No.: [REDACTED]
Hearing Date: October 07, 2014
County: WAYNE-DISTRICT 55

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 October 7, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant, and [REDACTED], Medical Case Manager. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

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 no longer 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. On January 14, 2014, Claimant was found disabled and was eligible for a November 25, 2013, SDA application.
2. In April 2014, the Department was to review Claimant's ongoing eligibility for MA-P and SDA benefits.
3. On May 30, 2014, the Medical Review Team (MRT) found Claimant not disabled.

4. On June 5, 2014, the Department notified Claimant of the MRT determination.
5. On June 11, 2014, the Department received Claimant's timely written request for hearing.
6. Claimant alleged disabling impairments including AIDS, chronic hydronitis, rashes, COPD, sleep apnea, rectal surgeries, depression and anxiety.
7. At the time of hearing, Claimant was 42 years old with a [REDACTED], birth date; was 5'11" in height; and weighed 220 pounds.
8. Claimant completed the 12th grade, and has a work history including housekeeping/janitorial as well as furniture truck driver and delivery assembler.
9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days 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.

On January 14, 2014, Claimant was found disabled and was eligible for a November 25, 2013, SDA application. The MRT found that Claimant met listing 14.07A3.

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

A March 19, 2014, initial psychiatric evaluation documented moderate recurrent major depressive disorder, generalized anxiety disorder, and obstructive sleep apnea. It was noted that the AIDS medications add to emotional instability, Claimant only sleeps 3-4 hours per night, and he is not motivated to do a lot of things, including daily grooming. Claimant reported moderate mental health symptoms and deficits in daily functioning.

A May 22, 2014, consultative psychiatric evaluation documented diagnoses of mood disorder secondary to general medical condition and rule out major depressive disorder, single episode, with psychotic features. Claimant seemed to be able to understand, retain, and follow simple instructions. Due to his depression with physical limitations, Claimant is restricted to work that involves brief superficial interactions with coworkers, supervisors and the public.

A May 22, 2014, consultative medical evaluation noted a history of hypertension, COPD, HIV positive with treatment and stabilization, and chronic hidranitis suppurativa requiring multiple surgeries. Based on this exam, Claimant can sit, stand, and walk eight hours a day with intermittent rest periods at four hours for 15-20 minutes. Claimant can bend 40 degrees and lift 20 pounds. Claimant should avoid prolonged exposure to fumes, dust, pollens, and hot and humid environments to prevent asthma attacks.

August and September 2014, progress notes document diagnosis and treatment for HIV, multiple medical conditions, including foot and ankle pain, COPD, and gout. A depression screening indicated moderate depression. Recurrent pain and anal mass removal were also noted.

August 2013 through September 2014 records document treatment for anal condyloma, fistula, and anal mass. On August 30, 2013, Claimant underwent excision of a sebaceous cyst, laser ablation of perianal/anal/endoanal condyloma. An April 25, 2014, record documents a preoperative diagnosis of fistula tract to the left of the anus. It was

noted that Claimant has had draining pus for almost two years, it is very painful, and there have been three emergency room visits for this. The April 25, 2014, surgery included a fistulectomy, biopsy of mass in fistula tract, and seton placement. Another surgery was performed on August 15, 2014, an excision of right lateral anal mass and fulguration or anal warts. A September 10, 2014, pathology report indicated an anal pap showed epithelial cell abnormality, squamous.

A November 10, 2014, podiatry record documents that Claimant underwent injection for left painful bunion, debridement of painful nails and calluses, and was referred for an orthopedic evaluation of left knee.

On November 24, 2014, Claimant was seen at the orthopaedic clinic for bursitis of left knee in the prepatellar area. X-ray of the knees showed an old injury at the inferior patella and enthesopathic changes evident at the inferior patellar pole. It was noted that the ankle pain was more consistent with gout. Claimant was to get physical therapy. Additionally, the surgical history notes four surgeries secondary to anal mass and a surgery for a gunshot wound in the 1990s.

A December 1, 2014, letter from the clinical therapist documents diagnosis of major depressive disorder and generalized anxiety disorder.

Based on the objective medical evidence, Claimant appears to meet or equal listing 14.08 Human immunodeficiency virus (HIV) infection. Accordingly, the Claimant is found disabled.

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 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 July 1, 2014, 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 August 2015.

2. The Department shall supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

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

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

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:

