

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

IN THE MATTER OF:



Reg. No.: 14-003564-RECON
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: August 7, 2014
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

**DECISION AND ORDER ON REMAND
FROM WASHTENAW COUNTY CIRCUIT COURT**

This case is before an Administrative Law Judge of the Michigan Administrative Hearing System pursuant to a Stipulated Order for Remand and Dismissal dated February 26, 2015, from the Honorable Timothy P. Connors, Circuit Court Judge, Washtenaw County Circuit Court and pursuant to the provisions of MCL 400.9, MCL 400.37, MCL 400.43(a), MAC R 400.941 and MCL 24.201, *et seq.*

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the 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. The Findings of Fact Numbers 1-4 under Registration Number 14-003564 are incorporated by reference.
2. On May 28, 2014, the Department received Claimant's hearing request, protesting only the denial of SDA benefits.
3. The Findings of Fact Numbers 6-12 under Registration Number 14-003564 are incorporated by reference.
4. On August 7, 2014, a hearing was held under Registration Number 14-003564.
5. On August 27, 2014, a Hearing Decision was generated and mailed in this case that upheld the Department's denial of State Disability Assistance (SDA).

6. On September 26, 2014, the Michigan Administrative Hearing System (MAHS) received Claimant's Authorized Representative's (AR) Motion for Reconsideration on the basis of newly discovered evidence and a misapplication of law or policy that led to an erroneous decision.
7. On December 11, 2014, MAHS issued an Order Denying Request for Rehearing/Reconsideration because there was no legal basis upon which to grant a rehearing/reconsideration.
8. On February 25, 2015, the Hon. Timothy P. Connors, Circuit Court Judge for Washtenaw County, entered a Stipulated Order for Remand and Dismissal for the purpose of reconsideration by the Administrative Law Judge (ALJ). The review is limited to the evidence submitted prior to or during the August 7, 2014, administrative hearing, including the Medical Examination Report (DHS-49) completed by [REDACTED].
9. On March 12, 2015, MAHS mailed Scheduling Order and Notice of Telephone Hearing on Remand to Respondent's AR scheduling the Rehearing for April 2, 2015, at 1:30pm.

CONCLUSIONS OF LAW

As a preliminary matter, this case was scheduled for a hearing on April 2, 2015. This Administrative Law Judge reviewed Washtenaw Circuit Court Judge Timothy P. Connors' Order for Remand and Dismissal prior to the hearing. The Circuit Court ordered reconsideration but did not order a rehearing in this matter. Thus, in accord with the Circuit Court Judge's Order to remand this case back to the Michigan Administrative Hearing System for the purpose of reconsideration, the hearing was dismissed.

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.

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first questions asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because he has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement.

Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

Pursuant to the federal regulations, at medical review, the Department has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The Department has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

On [REDACTED], Claimant's treating physician completed a Medical Examination Report on behalf of the Department. Claimant was diagnosed with hypertension, impotence, GERD, depression, reactive airway disease, hyperlipidemia, diabetes mellitus, urinary tract infection, vitamin D deficiency, and chest pain. The physician indicated Claimant had no mental limitations. Claimant was physically limited to occasionally lifting less than 10 pounds, standing or walking less than 2 hours in an 8-hour workday, and no grasping, reaching, pushing, pulling, fine manipulation or operating foot or leg controls. The physician noted Claimant was able to meet his own needs in his home.

On [REDACTED], the Department's Medical Review Team approved Claimant for MA and SDA.

On [REDACTED], Claimant followed up with his treating physician concerning his diabetes, hypertension and hyperlipidemia. The physician noted Claimant had an episode in November, 2013, where he was seen in the emergency room for atypical chest pain in which his EKG, chest x-ray and troponin values were found to be normal. He was also found to have a urinary tract infection which was treated, but Claimant was complaining of a return of the symptoms.

On [REDACTED], Claimant's treating psychiatrist completed a Psychiatric Examination Report on behalf of the Department. The psychiatrist indicated Claimant

had fair grooming, he was cooperative and engaged. His speech and kinetics were normal. He had a depressed mood and blunted affect. His thought process was organized. He had no delusions, preoccupations, obsessions, or homicidal ideation. There was no current suicidal ideation, but historically it had been an issue. His basic activities of daily living were intact. The psychiatrist opined Claimant's depression and anxiety (PTSD like in quality) interfere with/limit his ability to consistently meet work/volunteer responsibilities. Diagnoses: Axis I: major depressive disorder, recurrent, severe; anxiety, PTSD; Axis II: deferred; Axis III: asthma, hypertension, gout; Axis IV: moderate – severe; unemployed, social isolation, financial issues; Axis V: current GAF=45; last year GAF 40-50. According to the Mental Residual Functional Capacity Assessment, Claimant is markedly limited in his ability to accept instructions and respond appropriately to criticism from supervisors. The psychiatrist included a letter opining that Claimant "continues to have some impairment related to his psychiatric conditions, with social deficits being primary, and concentration/persistence deficits being secondary. He has shown the desire to overcome these impairments, but has not been able to do so in a consistent manner that would be necessary to maintain any meaningful employment."

In this case, the Department has not met its burden of proof. The Department has provided no evidence that indicates Claimant's condition has improved since the approval of MA and SDA on May 21, 2013. As indicated above, Claimant's treating psychiatrist has opined that Claimant is unable to maintain any meaningful employment in a consistent manner.

Furthermore, the Department provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the ALJ erred in upholding the Department's decision on August 27, 2014, and the Department's SDA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

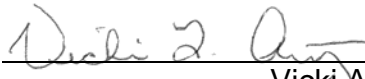
Based on the above findings of fact and conclusions of law, it is determined that the Administrative Law Judge erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on August 27, 2014, under registration Number 14-003564 which found Claimant not disabled is VACATED.
2. The Department's determination which found Claimant not disabled is REVERSED.

3. The Department shall initiate processing of the May 31, 2014, Redetermination to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
4. The Department shall supplement for any lost SDA benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review Claimant's continued SDA eligibility in July, 2015, in accordance with Department policy.

IT IS SO ORDERED.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/6/2015**

Date Mailed: **4/6/2015**

VLA/sw

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:

