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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-014158
Issue No.: 4009
Case No.: [redacted]
Hearing Date: November 26, 2014
County: Genesee-District 2

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Wednesday, November 26, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [redacted], Hearing Facilitator.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the medical review of 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 Claimant was approved for MA-P and SDA by the Medical Review Team (MRT) with medical review due on August 2014 because he met a listing 13.18A.

2. On September 9, 2014, the MRT denied the Claimant's medical review for SDA stating that the Claimant had medical improvement.

3. On September 10, 2014, the Department Caseworker sent the Claimant a notice that he was denied for SDA because he had had medical improvement.

4. On October 17, 2014, the Department received a hearing request from the Claimant, contesting the Department's negative action.

5. During the hearing on November 26, 2014, the Claimant requested permission to submit additional medical information that needed to be reviewed. Additional medical information was received on February 20, 2015 and the record was closed.

6. The Claimant is a 55 year-old man whose date of birth is [redacted]. The Claimant is 6' 1" tall and weighs 227 pounds. The Claimant has completed the 9th grade of High School and has a GED. The Claimant can read and write and do basic math. He was in special education in all classes. The Claimant was last employed as an assembly worker in 2002 at the medium to heavy level. The Claimant has also been employed as a line worker, furniture deliveryman at the medium to heavy level, and quality line worker at the light level.

7. The Claimant's alleged impairments are a bullet in back in 1983, sleep apnea, depression, anxiety, PTSD, chronic nerve and back pain, COPD, emphysema, arthritis in hands and knees, hypertension, and enlarged heart.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

> **DISABILITY – SDA**
>
> **DEPARTMENT POLICY**
>
> **SDA**
>
> To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.
> **Note:** There is no disability requirement for AMP. PEM 261, p. 1.
>
> **DISABILITY**
>
> A person is disabled for SDA purposes if he:
>
> - receives other specified disability-related benefits or services, 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.

- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.

- Supplemental Security Income (SSI), due to disability or blindness.

- Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:

  - a DE/MRT/SRT determination, or
  - a hearing decision, or
  - having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

    Medicaid received by former SSI recipients based on policies in PEM 150 under **"SSI TERMINATIONS,"** INCLUDING **"MA While Appealing Disability Termination,"** does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See **"Medical Certification of Disability"** below.

- Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.

- Special education services from the local intermediate school district. To qualify, the person may be:

  - attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**

- not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

(1) Medical history.
(2) Clinical findings (such as the results of physical or mental status examinations);
(3) Laboratory findings (such as blood pressure, X-rays);
(4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).
Medical findings consist of symptoms, signs, and laboratory findings:

(a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

(c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

In general, Claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

Step 1

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Claimant is not engaged in substantial gainful activity and has not worked since 2002. Therefore, the Claimant is not disqualified from receiving disability at Step 1.

Step 2

In the second step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the Claimant is disqualified from receiving disability at Step 2.

Step 3

In the third step of the sequential evaluation, the trier of fact 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(s) 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 medical severity must be based on changes (improvement) in the symptoms, signs, and/or laboratory findings associated with Claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

On July 1, 2014, the Claimant was seen by his treating physician who completed a Medical Examination Report, DHS 49. The Claimant was diagnosed and had a history of debilitating left hip pain and depression. The Claimant was first examined today. His blood pressure was elevated at 148/94. His treating physician noted that the Claimant had an essentially normal physical examination except that he uses a cane due hip pain and tenderness. He was stable. The Claimant needed assistance with his needs in the home because he has difficulty ambulating. Department Exhibit 47-50.

On [redacted], the Claimant was seen by an independent medical examiner for a physical examination. His chief complaints were hypertension, emphysema, depression, and arthritis. He ambulates with some stiffness due to his arthritis. He had mild COPD with a normal EKG. The independent medical examiner's clinical impression was hypertension, mild COPD, degenerative joint disease, history of multiple gunshot wounds and trauma to his extremities via history, he had a colonic polyp status partial colon resection, and allergic rhinitis. The Claimant is capable of performing light work. Department Exhibit 29-30.

On [redacted], the Claimant's treating therapist completed Psychiatric/Psychological Examination Report, DHS 49D. He was diagnosed with major depressive disorder and PTSD. His mood ranged from guarded to labile to tearful during the session. There was no evidence of a severe thought disorder or risk factors. He was given a GAF of 45. He can manage his own benefit funds. Claimant Exhibit a-

c. His therapist completed a Mental Residual Functional Capacity Assessment, DHS 49E. He was markedly limited in 3 areas, moderately limited in 2 areas, not significantly limited in 7 areas, with no evidence of limitation in 8 areas. His psychiatric symptoms cause moderate impairments on daily functioning. His physical pain case a severe impairment to his functioning. Claimant Exhibit d-e.

At Step 3, this Administrative Law Judge finds that the Claimant does have medical improvement and his medical improvement is related to the Claimant's ability to perform substantial gainful activity. The Claimant was approved because he may have had colon cancer. He did not have colon cancer, but rather a polyp that was removed during surgery. He does have physical limitations due to past gunshot wounds. He does have arthritis that is physically limiting. As a result, the Claimant is able to perform light work. Therefore, the Claimant is disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where he can perform work.

At Step 4, the Claimant testified that he does perform most of his daily living activities. The Claimant testified that his condition has not gotten worse because of a nerve in his leg where a broken tail bone messed up nerve in the leg and his breathing. He does have a mental impairment where he is taking medications and in therapy. The Claimant does smoke a ½ a pack of cigarettes a day. He stopped using illegal or illicit drugs of cocaine in 2005. He stopped drinking alcohol 8 years ago where before he was an alcoholic. The Claimant did not think that there was any work that she could perform.

This Administrative Law Judge finds that the Claimant's medical improvement is related to his ability to do work. The Claimant should be able to perform at least light work. He had a successful surgery where a colon polyp was removed that was not cancerous. He does have physical limitations due to arthritis. He is in therapy and taking medications for his mental impairments. Therefore, the Claimant is disqualified from receiving disability at Step 4 where the Claimant can perform light work. If there is a finding of medical improvement related to Claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

Step 6

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Claimant's current impairment(s) is not severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Claimant can perform at light work. See Steps 3 and 4. He has improved. He still has limitations with his arthritis. Therefore, the Claimant is disqualified from receiving disability at Step 6 where the Claimant passes for severity.

Step 7

In the seventh step of the sequential evaluation, the trier of fact is to assess a Claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Claimant's current residual functional capacity based on all current impairments and consider whether the Claimant can still do work he/she has done in the past. At Step 7, The Claimant was last employed as an assembly worker in 2002 at the medium to heavy level. The Claimant has also been employed as a line worker, furniture deliveryman at the medium to heavy level, and quality line worker at the light level. In this case, this Administrative Law Judge finds that Claimant should be able to perform light work. The Claimant is capable of performing past, relevant work at the light level. See Steps 3 and 4. Therefore, the Claimant is disqualified from receiving disability at Step 7 where the Claimant is capable of performing his past, relevant work.

Step 8

The objective medical evidence on the record is insufficient that the Claimant lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The Claimant's testimony as to his limitation indicates his limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Claimant testified that he has depression and anxiety. The Claimant is taking medication and in therapy for his mental impairments. See MA analysis step 2. The medical evidence on the record is insufficient to support a mental impairment that is so severe to prevent the Claimant from performing skilled, detailed work.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Claimant can do any other work, given the Claimant's residual function capacity and Claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the Claimant's vocational profile of a closely approaching advanced age individual, with a high school equivalent education, and a history of semi-skilled and unskilled work, MA-P is denied using Vocational Rule 202.07 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression and anxiety. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. This Administrative Law Judge finds that Claimant does have medical improvement in this case and the Department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it proposed to closed Claimant's SDA

case based upon medical improvement. Because the Claimant does not meet the disability criteria for SDA, he has had medical improvement making him capable of performing light work.

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 disabled for purposes of the medical review of SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.

Carmen G. Fahie

Carmen G. Fahie
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/30/2015**

Date Mailed: **3/30/2015**

CGF/las

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: [redacted]