

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-005014
Issue No.: 4009
Agency Case No.: [REDACTED]
Hearing Date: June 23, 2015
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 June 23, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant; and [REDACTED], father. Participants on behalf of the Department of Health and 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 February 21, 2013, application for MA-P and SDA.
2. In September 2014, the Department was to review Claimant's ongoing medical eligibility.
3. In December 2014, Claimant's case was sent to the Medical Review Team (MRT) for review for the SDA program only.

4. On January 7, 2015, the MRT requested a consultative mental status examination.
5. On [REDACTED], the consultative mental status examination was completed.
6. On March 5, 2015, the MRT found Claimant not disabled for SDA.
7. On March 5, 2015, the Department notified Claimant of the MRT determination.
8. On March 16, 2015, the Department received Claimant's timely written request for hearing.
9. Claimant alleged disabling impairments including leg pain with history of prior injury and surgeries involving both legs as well as hypertension, bipolar disorder, post-traumatic stress disorder (PTSD), and anxiety.
10. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; was 6' in height; and weighed 175 pounds.
11. Claimant completed the 8th grade, obtained a GED, and has a work history including laborer for a concrete company.
12. 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 Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and 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 Department of Human Services) 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 requires 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 leg pain with history of prior injury and surgeries involving both legs as well as hypertension, bipolar disorder, PTSD, and anxiety.

A [REDACTED], record from the sports medicine provider documented that in 2010, Claimant jumped from a third story and landed on his feet, but sustained a severe left open tibial shaft and pilon fracture as well as a displaced right navicular fracture of the foot. As of this visit, Claimant reported no significant pain or disability with the right foot; and on exam, the right foot motion was pretty much normal. Claimant stated that what was really bothering him was the left leg and ankle. The exam findings regarding the left ankle included limited range of motion. X-rays were taken of the right foot, left ankle, and left leg. The plan indicated left lower extremity surgery to remove hardware as well as a kind of a dorsal cheilectomy to establish better range of motion of the left ankle and hopefully relieve some pain.

An [REDACTED], record from the sports medicine provider document that Claimant was 13 days post removal of the large plate and screws from the anterolateral aspect of the left tibia as well as a kind of a dorsal cheilectomy procedure on the talus and distal tibia to try to help him regain a little bit of motion of his ankle. Claimant had been walking on it, but also having a fair amount of ankle pain. There was inflammation around part of one of the wounds. An [REDACTED], record documented follow up for a wound infection that was doing better. A [REDACTED], record indicates continued improvement with the wound and that Claimant was moving the ankle relatively well.

The problem list/past medical history printed on [REDACTED], by the family practice office listed bipolar disorder, essential hypertension, tobacco use disorder, chronic pain syndrome and agoraphobia. In part, the [REDACTED], office visits records note: the chronic pain syndrome was from comminuted leg fractures with surgery including fasciotomy in [REDACTED]. Claimant recently had surgery to remove hardware in the left leg; Claimant had an infection in his ankle being treated by the surgeon; and Claimant had not yet started rehab.

A [REDACTED], consultative psychological evaluation documented diagnoses of bipolar I disorder, most recently depressed; PTSD; antisocial personality traits and a provision diagnosis of opioid use disorder. It was noted that the last issued is being supervised by his medical provider rather closely. Claimant's prognosis was guarded. In part, it was suspected that Claimant would have challenges maintaining attention and concentration for extended periods of time; reliability and dependability would be ongoing issues; it would be difficult for Claimant to complete the normal workday without breakthrough symptoms; and it was suspected that Claimant would not be able to perform at a consistent pace, without a number of rest breaks or some psychological support from his work environment.

An [REDACTED], record from the sports medicine provider documented that the left ankle wound eventually healed. It was noted that Claimant had attended physical therapy, both pool and then land therapy. The examination findings indicated Claimant had some ankle tenderness and loss of range of motion in the ankle. An x-ray of the left ankle showed degenerative changes about the left ankle with a little bit of joint space narrowing and some osteophyte formation about the ankle. The impression was posttraumatic arthritis with some limitation in dorsiflexion that is probably where Claimant gets the majority of pain with trying to walk. The plan included trying to fit an ankle brace and get a rocker bottom sole for Claimant's shoe.

A [REDACTED], DHS-49 E Mental Residual Functional Capacity Assessment form indicated Claimant has marked limitations with 5 of the 20 listed abilities, and moderate limitations with another 6 of the 20 listed abilities. Many of these impaired abilities would affect Claimant's ability to work on a sustained basis, including the marked limitation with the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods.

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 [REDACTED], the MRT found Claimant disabled based on non-exertional impairment(s).

Comparison of the older and recent medical records indicates there has not been significant medical improvement with either the physical or mental health impairments. For example, the records indicate Claimant had another surgery on the left ankle and has ongoing limitations after attending physical therapy post-surgery. The recent treating and consultative mental health records both indicate significant limitations with abilities that would affect Claimant's ability to work on a sustained basis, including the ability to complete a normal workday without interruptions from psychologically based

symptoms and to perform at a consistent pace without rest breaks or some psychological support from his work environment.

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 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 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 SDA case retroactive to the April 1, 2015, 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 February 2016.
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, Director
Department of Health and Human Services

Date Mailed: **7/28/2015**

CL/jaf

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:

