

**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.:

15-017456

Issue No.:

4009

Hearing Date:

December 09, 2015

**ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie**

**HEARING DECISION**

Following Petitioner'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 December 9, 2015, from Lansing, Michigan. The Petitioner was presented and testified on his own behalf. The Department was represented by [REDACTED], Lead Worker, who testified on the behalf of the Department.

**ISSUE**

Whether the Department properly determined that Petitioner 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. On February 6, 2014, the Claimant was approved for SDA by an Administrative Law Judge with medical review due on June 2015.
2. On September 15, 2015, the Medical Review Team (MRT) denied the Claimant's medical review for SDA stating that the Claimant had medical improvement.
3. On September 18, 2015, the Department Caseworker sent the Claimant a notice that he was denied for SDA because he had had medical improvement.
4. On September 24, 2015, the Department received a hearing request from the Claimant, contesting the Department's negative action.

5. During the hearing on December 9, 2015, the Claimant requested permission to submit additional medical information that needed to be reviewed. Additional medical information was received from the Local Office on January 5, 2016 and the record was closed.
6. The Claimant is a [REDACTED] year-old man whose date of birth is [REDACTED]. The Claimant is 6' 4" tall and weighs 260 pounds. The Claimant has completed the 11<sup>th</sup> grade of High School. The Claimant cannot read and write and can do basic math. He was special education in all of his classes in high school. The Claimant was last employed as a bistro cook for 2 months in 2012 at the light level. He was also employed as a tow truck driver at the light level in 2012.
7. The Claimant's alleged impairments are bipolar disorder, schizophrenia, and manic depression.

### **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.

**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 been employed since 2012. 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 April 20, 2015, the Claimant was seen by his treating physician due to copd and hypertension. His hypertension was currently stable. His copd is aggravated by smoking and mild to moderate activity. He had a normal physical examination. His medication was reviewed. He has been unable to lose weight. He smokes 2 cigarettes a day, but needs to quit completely. Department Exhibit 26-32.

On July 14, 2015, the Claimant underwent an independent psychiatric evaluations from Human Resource Associates. He was diagnosed with bipolar disorder per history and schizophrenia by history. His prognosis was guarded at this time. It was unclear to what degree the Claimant had mood, anxiety, or thought disorder experiences. He offered confusing accounts of his symptom experiences. He is not able to manage his own funds. There were no risk factors. The Claimant gave a confusing and not credible account of hearing voices and seeing things. He was not able to name a single United States city. He was unable to complete math calculations. Department Exhibit 101-105.

On August 20, 2015, the Claimant's treating psychiatrist submitted a medication review on behalf of the Claimant. He has been doing well overall. He has been experiencing some depression with the loss of aunt and uncle. He states that he continues to have auditory hallucinations, but feels that he is able to tolerate the current level and has been using coping techniques. His medications were reviewed and kept at their current levels. He will continue with outpatient therapy. He had a blunted affect. The Claimant had impaired short term memory. There was no evidence of risk factors. He was diagnosed with mood disorder, nos, cannabis dependence, and a tier 2 diagnosis of personality disorder, nos. Department Exhibit 6-11.

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. He is on medications and in therapy for his mental impairments. His mental impairments are being medically managed. As a result, the Claimant is able to perform simple and unskilled 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 worsened. He is taking medications, and in therapy for his mental impairments. The Claimant smokes marijuana occasionally. He smokes a ½ pack of cigarettes a day. He stopped drinking alcohol in 1992 where before he drank a lot. The Claimant did not think that there was any work that he 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 simple and unskilled work. His mental impairments are being medically managed with medications and therapy. Therefore, the Claimant is disqualified from receiving disability at Step 4 where the Claimant can perform simple and unskilled 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. His mental impairments are being medically managed with medications and therapy. In this case, this Administrative Law Judge finds Claimant can perform at simple and unskilled work. See Steps 3 and 4. Therefore, the Claimant is not 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 has as a bistro cook for 2 months in 2012 at the light level. He was also employed as a tow truck driver at the light level in 2012. In this case, this Administrative Law Judge finds that Claimant should be able to perform

simple and unskilled work. The Claimant is not capable of performing his past, relevant history, which was performed at the skilled and semi-skilled level. See Steps 3 and 4. Therefore, the Claimant is not disqualified from receiving disability at Step 7 where the Claimant is not 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 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 non-exertional and 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).

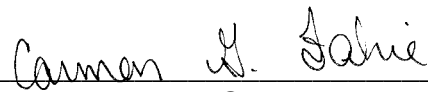
In the instant case, the Claimant testified that bipolar disorder, schizophrenia, and manic depression. However, the Claimant's treating psychiatrist diagnosed him with mood disorder, nos, cannabis dependence, and a tier 2 diagnosis of personality disorder, nos. The Claimant is taking medication and in therapy for his mental impairments. There was no evidence of a severe thought disorder or risk factors. See MA analysis step 2. The medical evidence on the record is sufficient to support a mental impairment that is so severe to prevent the Claimant from performing skilled, detailed work, so he will be limited to simple and unskilled 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 younger aged individual, with a limited education, and a history of skilled and semi-skilled pertinent work, MA-P is denied using Vocational Rule 202.20 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as that mood disorder, nos, cannabis dependence, and a tier 2 diagnosis of personality disorder, nos. 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 close 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 simple and unskilled 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**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

Date Mailed: **2/11/2016**

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**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:

