

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2007-25913

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 19, 2007

Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on Wednesday, December 19, 2007. The claimant personally appeared and testified with her mother, [REDACTED] as a witness.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) The claimant applied for MA-P and SDA benefits.

(2) On July 11, 2006, Administrative Law Judge [REDACTED] approved the claimant for Medical Assistance and State Disability Assistance benefits where she was to undergo the hip replacement surgery recommended by her physician and substance abuse treatment. In addition, the claimant was to participate in any physical therapy prescribed by her doctor if financially able to do so. It was expected that the claimant would experience significant medical improvement following her hip surgery where a medical review was to take place one year from the date the order was signed. (Department Exhibit 111-123)

(3) On July 12, 2007, MRT denied the claimant for MA-P based on medical review of continued eligibility for MA disabled under 20 CFR 416.994 and for SDA that the claimant's physical or mental impairment does not prevent employment for 90 days or more. Failure to cooperate with prescribed treatment for alcohol abuse was the basis for the MRT denial.

(4) On July 18, 2007, the department caseworker sent the claimant a notice that her application was denied.

(5) On August 10, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(6) On November 21, 2007, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant was approved by the ALJ in July 2006 because of advanced degenerative joint disease of her right hip, resulting in severe pain and physical limitations. Her alcohol abuse was not material to her impairment. However, the judge did order her to have the hip replacement surgery and substance abuse treatment. The DHA-49-BU does indicate that the claimant has not been to mental health since about [REDACTED]. The claimant stated that she has not attended any alcohol abuse program since the hearing. The claimant did indicate that she did have the hip replacement and had medical sources at least since the ALJ decision. There was

no currently medical information in file to make a medical determination. Being that the claimant was actually approved for benefits based on her physical impairment, medical information would be needed to determine if the claimant has had medical improvement with the hip replacement or not. The Judge may decide to deny the claimant's benefits based on her failure to follow through with alcohol abuse treatment. However, for the medical decision (which is what SHRT is instructed to make) more information would be needed.

Additional medical information is suggested for a medical decision to assess the severity of the claimant's impairments unless the Judge chooses to deny the claimant for failure to follow the Judge's order to have substance abuse treatment. Please obtain copies of the claimant's hospital records from her hip replacement surgery. Also, please obtain any updated medical records, including physical and mental health records from [REDACTED] to present. If current medical records are not available, please obtain a complete physical examination by a licensed physician, M.D. or D.O., in narrative format and also obtain a mental status exam with a psychiatrist or a psychologist in narrative format. Standardized and projective testing is not necessary for the purpose of this evaluation. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. SDA is denied per PEM 261 because the information in the file is inadequate to ascertain whether the claimant is or would be disabled for 90 days.

(7) During the hearing on December 19, 2007, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on February 11, 2008 and forwarded to SHRT for review on February 19, 2008.

(8) On February 25, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and SDA. The SHRT report reads in part:

The claimant has a severe mental or physical impairment, but a review of the medical evidence of record shows that the alleged impairments do not meet or equal a Social Security listing. Objective medical evidence in file demonstrates the physical residual capacity to perform a wide range of unskilled, light work.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled, light work. Therefore, based on the claimant's vocational profile (younger individual, high school graduate, and an unskilled work history), MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(9) The claimant is a 42 year-old woman whose date of birth is [REDACTED].

The claimant is 5' 6" tall and weighs 155 pounds. The claimant has lost 10 pounds in the past year because of depression. The claimant has a high school diploma. The claimant can read and write and do basic math. The claimant was last employed as a hostess in May 2004. The claimant has also been employed as a cashier, deli worker, and waitress.

(10) The claimant's alleged impairments are depression, anxiety, alcoholism, [REDACTED] hip replacement, and pinched nerve in back.

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative

Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

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

substantially gainfully employed and has not worked since May 2004. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii). In this case, the claimant's impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the claimant is disqualified from receiving disability at Step 2.

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.

In this case, there has been a decrease in medical severity. On July 11, 2006, the claimant was approved for benefits by the Administrative Law Judge to have hip replacement surgery and substance abuse treatment. On [REDACTED], the claimant had right total hip cementless arthroplasty at the [REDACTED] as the result of degenerative joint disease of the right hip. The claimant was transferred in stable condition to the recovery room.

The claimant has had medical improvement since her last positive decision by an Administrative Law Judge on July 11, 2006. On [REDACTED], the claimant's psychiatrist did a diagnosis and multi-axis assessment for [REDACTED]. The claimant was given a diagnosis of major depressive disorder single episode moderate and alcohol dependence. The claimant was given a current GAF of 45, which is related to serious symptoms or any serious impairment in social, occupational, or school functioning. (Department Exhibit 189-188)

On [REDACTED], the claimant's treating physician completed a Medical Examination Report, DHS-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of chronic back pain, started after right hip arthroplasty where the pain is chronic, worse when lying down where she had painful standing and walking for greater than 30 minutes. Also, chronic left shoulder pain secondary to motor vehicle accident. The claimant had a current diagnosis of chronic back pain secondary to lumbar degenerative joint disease, history of motor vehicle accident in [REDACTED] with right hip arthroplasty in [REDACTED], history of alcohol abuse, depression, and chronic left shoulder pain secondary to a motor vehicle accident. Claimant had a normal physical examination except that the claimant does not appear to be in pain, faint odor of alcohol, and a mild limp on the right side. Musculoskeletally, the treating physician noted pain with internal and external rotation of the right hip. There was no pain with straight leg rising bilaterally. There was mild swelling on right MTP joints with decreased range of motion in the right hip and left shoulder. The claimant also had decreased range of motion of the lower back with flexion 90 percent and extension 20 percent. Mentally, the claimant had a very labile affect. She had

tangential speech. The claimant was tearful at times. MRI of the lower lumbosacral spine of [REDACTED] was attached. (Claimant Exhibit 213)

The treating physician's clinical impression was that claimant was deteriorating with limitations expected to last more than 90 days. The claimant could frequently lift/carry less than ten pounds. She could stand and/or walk less than two hours of an eight hour workday and sit less than six hours of an eight hour workday. The claimant occasionally uses a cane for ambulation, which this assistive device is medically required and needed for ambulation. The claimant could use both hands/arms for fine manipulation, but only her right hand/arm for simple grasping, reaching, and pushing/pulling. The claimant could only use her left foot/leg for repetitive action. The medical findings that support the above physical limitations were chronic back pain, right hip pain, and left shoulder pain. The claimant was mentally limited on comprehension, memory, sustained concentration, and social interaction. The findings that support the above mental limitations were depression and alcohol abuse. In addition, the claimant can meet her needs in the home. (Department Exhibit 212)

On [REDACTED], the claimant was sent to an independent medical examiner, [REDACTED] [REDACTED]. based on an examination conducted on [REDACTED]. The claimant was diagnosed with alcohol dependence with panic disorder with agoraphobia. The claimant was given a GAF of 45. Her prognosis was guarded where it would improve if the claimant was able to abstain from drinking alcohol. The claimant was not able to manage her own budget funds due to the claimant's alcohol dependence. (Department Exhibit 179-183)

The claimant appeared to be in contact with reality. There was no unusual motor activity or hyperactivity. She did appear to have a tendency to exaggerate or minimize symptomology. Insight and judgment appeared to be intact. Mental activity was spontaneous with organized

speech. The claimant denied presence of any auditory or visual hallucinations, delusions, persecutions, obsessions, or unusual powers. The claimant did admit to feelings of worthlessness because she was not able to do the things that she used to do after having her hip replaced.

(Department Exhibit 179-183)

The claimant did admit that she has been depressed lately, but does not have any suicidal intent. She did state that when she gets depressed that she talks it over with her counselor. The claimant reported that her pain was at a seven. She did report that she had some difficulty sleeping at night. The claimant was anxious with a depressed mood. The claimant was oriented x3. (Department Exhibit 179-183)

The independent medical examining psychologist stated that it appears that the claimant meets the criteria for diagnosis of alcohol dependence. The claimant reports having drunk alcohol for many years where she still drinks on a daily basis. The claimant appears to have built up a tolerance. She reported that she drinks a pint of whiskey a day, but she can drink more. The claimant stated that she has withdrawal symptoms if she does not drink alcohol her hands will shake which is evident by the evaluation today. It appears that she continues to drink in spite of having many consequences such as five drinking and driving arrests and spending three years in prison for vehicular manslaughter. The claimant has attempted treatment in the past with limited success. (Department Exhibit 179-183)

The independent medical examining psychologist stated that in addition to alcohol dependence that the claimant meets the criteria for panic disorder with agoraphobia. The claimant appears to have panic attacks that are evident by a racing heart, sweating, feeling dizzy, feelings of nauseous, feels like she is losing control, becomes extremely scared and has to get out of the situation. The claimant has anxiety over being in a situation which escape may be difficult

such as going into grocery stores and being in large crowds. She generally tries to avoid these situations. (Claimant Exhibit 179-183)

This Administrative Law Judge finds that the claimant has had the hip replacement surgery and has not participated in the substance abuse treatment as was required by the ALJ decision on July 11, 2006. As far as the claimant's medical condition, which was the basis for the ALJ approval in July 2006, she has had medical improvement. The claimant has failed to follow through with substance abuse treatment although she has had Medicaid for over a year. Therefore, the objective medical evidence in the record is sufficient to establish that claimant's cognitive impairments have medically improved since her last positive decision.

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 an increase in the claimant's residual functional capacity based on the impairment that was present at the time of the most favorable medical determination. The claimant's medical improvement is related to her ability to perform work. (See analysis at Steps 1, 2, and 3.) Thus, this Administrative Law Judge finds that claimant's medical improvement is related to the claimant's ability to do 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.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is 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, the Administrative Law Judge finds the claimant retains the residual functional capacity to perform at least light work. The claimant did have her hip surgery in [REDACTED]. There was no objective medical evidence submitted stating that the claimant was not fully recovered. The objective medical evidence does state that she has a mild limp on the right side. The claimant has failed to enter the substance abuse treatment and continues to drink. She has had a drinking problem for several years, but has continued to work. Her last job was as a hostess in May 2004.

The claimant's approval was based on her need to have hip replacement surgery, which she did, not on the basis of her alcohol abuse. The claimant's prior past work was as a hostess in May 2004. The claimant has also worked as a cashier, which is performed at the sedentary to light level. The claimant work as a deli worker or waitress, which would require standing for her whole shift may be difficult with the claimant's hip replacement surgery. However, the claimant could perform the jobs of a cashier and a hostess which is performed at the sedentary to light level in the national economy. The claimant does retain the capacity to perform her past relevant work. (See analysis at Steps 1, 2, 3, 4, and 6.)

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, the claimant does retain the residual functional capacity to perform at least light work. Therefore, she is disqualified from receiving continued Medical Assistance benefits because she does have medical improvement.

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.

Because the claimant does not meet the definition of continued disability under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the eligibility for continued disability criteria for SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's medical review for MA-P and SDA to determine the claimant was no longer eligible for continued disability benefits. The claimant should be able to perform any level of light work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/

Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 11, 2009

Date Mailed: May 12, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CGF/vmc

cc:

