

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: 2007-26107

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 3, 2008

Mason 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 Thursday, January 3, 2008. The claimant personally appeared and testified on her own behalf with her husband, [REDACTED] as a witness.

ISSUE

Did the department properly determine that the claimant had not established disability for continued eligibility 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 was a recipient of MA-P and SDA with a medical review required August 2007.

(2) On August 9, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P stating that the claimant was no longer disabled for purposes of MA and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On August 14, 2007, the department caseworker sent the claimant a notice that her medical review had been denied.

(4) On August 21, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On November 28, 2007, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of medical review for MA-P and SDA eligibility for the claimant. The SHRT report reads in part:

The impairments have improved. A severe impairment was not clinically documented.

The claimant's impairments have improved and do not prevent all work. The claimant retains the capacity to perform at least unskilled, sedentary work. Therefore, MA-P is denied per the provisions of 20 CFR 416.994, medical improvement. SDA is denied per PEM 261.

(6) During the hearing on Thursday, January 3, 2008, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. The additional medical information was received from the local office on January 14, 2008 and forwarded to SHRT for review on January 18, 2008.

(7) On January 24, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant was initially approved for benefits in [REDACTED] due to left hemiparesis and speech difficulties as a result of a stroke. In [REDACTED], her exam showed she only had residual of the CVA, which was mild decreased sensation on the left side. Therefore, the claimant has had medical improvement. The claimant has a history of alcohol abuse. In [REDACTED], the claimant had large esophageal varices and GI bleed, but there was no active bleed from the esophageal varices and there was no hemorrhaging. Therefore, she does not meet or equal a listing. The ascites were starting to improve with treatment. The claimant would be able to do at least simple, unskilled, medium work.

The claimant has had significant medical improvement since her [REDACTED] approval. 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 simple, unskilled, medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (a younger individual, 12 years of education, and history of unskilled work), MA-P is denied due to medical improvement and using Vocational Rule 203.28 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would no longer preclude work activity at the above stated level for 90 days.

(8) The claimant is a 50 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4" tall and weighs 144 pounds. The claimant has a GED. She last worked as a laborer in [REDACTED]. The claimant has also been employed as a housekeeper and office manager.

(9) The claimant's alleged impairments are anxiety attacks, bulging disc, right sided cerebral vascular bleed, degenerative disc disease, and liver failure.

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). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since [REDACTED]. 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). 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. The claimant was initially approved for benefits in [REDACTED] due to left hemiparesis and speech difficulties as a result of a stroke.

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, MRT approved the claimant for MA-P and SDA on November 8, 2006 based on that the claimant was not capable of performing other work. Where the condition began on [REDACTED] and a medical review was requested in August 2007 which required updated medical to be submitted at the time of the medical review.

On [REDACTED], the claimant's treating physician submitted a progress note on the claimant. The claimant was seen for flu where she had liver failure and anxiety. The claimant had increased anxiety since there was an increase of people in the area where she did not want to go outside. She felt that the area was too crowded, but fine during the winter. The treating physician noted that her insight was appropriate with good eye contact and pleasant. Neurologically, she appeared to be intact. (Department Exhibit 24)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant's final diagnosis was upper gastrointestinal bleeding, large esophageal varices extending to the lower two thirds of the esophagus, mild chronic gastritis with superficial erosions, ascites, and history of alcoholism. Chest x-ray on the 17th of [REDACTED] showed left lateral basilar atelectasis where on the 19th the chest x-ray has worsened with interval bilateral perihelia infiltrates extending into the

left lobe with left pleural effusion. A CT of the abdomen and pelvis on the [REDACTED], [REDACTED], [REDACTED] showed hepatic cirrhosis with extensive varices and abdominal and pelvic ascites, lung parenchymal infiltrates and atelectasis. There was a slight decrease on the [REDACTED] with a slight clearing on the [REDACTED].

An ECG on [REDACTED] showed sinus tachycardia, short PR interval, extensive ST changes. On the [REDACTED], the sinus tachycardia, junctional depression, nonspecific for the SC wave, but on the [REDACTED] sinus rhythm was returned. The claimant underwent an esophagogastroduodenoscopy with gastric biopsies on [REDACTED]. Steroids were given because of her ascites, which did improve during her stay. The claimant appeared to have quit bleeding, tolerated a soft bland diet, and was beginning to have more normal stools. The claimant had no further nausea and vomiting. (Department Exhibit 8A-10A)

On [REDACTED], the claimant underwent several procedures at [REDACTED] [REDACTED]. (Department Exhibits 45-47):

- . MRI of the cervical spine. The radiologist's impression was that there were degenerative changes at multiple levels. At the C6-7, there was mild to moderate spinal canal and neuroforaminal stenosis. There were degenerative changes elsewhere.
- . A carotid doppler ultrasound was performed using the standard technique. The radiologist's impression was the studies demonstrate no evidence of hemodynamically significant stenosis bilaterally.
- . CT of the temporal bone. The radiologist's impression was a normal bilateral temporal bone.

On [REDACTED], the claimant was given a CT of the brain without contrast from [REDACTED]. The radiologist's impression was no evidence of

acute intracranial hemorrhage. There was an encephalomalacia involving the right frontal lobe at the claimant's known site of a prior intraparenchymal hemorrhage.

On [REDACTED], the claimant was given a disability examination for Social Security with [REDACTED]. The independent medical consultant noted that the claimant's residual from her CVA bleed on the right side has left her currently only with mild decreased sensation on the left side. The claimant states that this does not necessarily interfere with her activities of daily living. The claimant has a history of mild cirrhosis, but has quite consuming alcohol so that should stabilize. The independent medical examiner noted that the claimant was able to perform regular duties without any significant restriction. The claimant has done well throughout the functional assessment given. The claimant will have confusion about minor details, but she is able to sort them and straighten them out. The independent medical examiner stated that he did not think that the confusion would be a hindrance. (Department Exhibit 5A-7A)

At Step 3, the claimant has had medical improvement. She has only decreased sensation in the left side as the result of her stroke as noted by the independent medical consultant examination on [REDACTED]. The claimant was currently abstaining from alcohol consumption so her mild cirrhosis should stabilize. The claimant was able to perform her daily living activities with only confusion about minor details. The claimant was able to sort and straighten out and complete the task. The claimant did have an upper gastrointestinal bleed that was resolved with treatment with the recommendation that she stop drinking on [REDACTED]. The claimant's MRI showed degenerative changes, but only mild to moderate spinal canal and neuroforaminal stenosis on [REDACTED]. A carotid doppler ultrasound on [REDACTED] showed no evidence of a hemodynamically significant stenosis bilaterally. A CT of the brain on

██████████ showed no new evidence of acute intracranial hemorrhage. Therefore, the objective medical evidence of record at Step 3 is sufficient to establish that the claimant's cognitive and mental 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. The claimant only has a mild decreased sensation on the left side. She is able to perform her daily living activities. The MRI of her cervical spine only showed degenerative changes with mild to moderate stenosis. The claimant is able to perform her daily living activities with the only confusion at minor details which she corrects and is able to proceed with the task. (Please see analysis at Steps 2 and 3) Thus, this Administrative Law Judge finds that the claimant's medical improvement is related to the claimant's ability to do work. If there is a finding of medical improvement related to the claimant's ability to perform work, the trier of fact—is to move 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 that claimant retains the residual functional capacity to perform simple, unskilled, light work. The claimant's prior past

work as a laborer, housekeeper, and office manager, is performed at the light to sedentary level. Therefore, the claimant retains the capacity to perform her past relevant 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, the claimant does retain the residual functional capacity to perform simple, unskilled, light work. (See analysis at Steps 2, 3, 6 and 7) Therefore, the claimant is disqualified from receiving MA-P and SDA benefits because the claimant does have medical improvement.

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 on the record that it was acting in compliance with department policy when it denied the claimant's application for continued eligibility for MA-P and SDA. The claimant should be able to perform a wide range of simple, unskilled, 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: February 23, 2009

Date Mailed: February 24, 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.

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:

