

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 200812193
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: April 24, 2008
Newaygo 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on Thursday, April 24, 2008. The claimant personally appeared and testified on her own behalf with her friend, [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 a material fact:

1. On June 28, 2005, the claimant applied for MA-P and SDA without filing an application for retroactive MA-P.
2. On November 4, 2005, the Medical Review Team (MRT) approved the claimant for MA-P and retroactive MA -P citing not capable of performing other work and for SDA that the claimant was automatically eligible on the basis of her MA-P approval where the claimant was required to participate in psychiatric treatment where the condition began in March 2005 with a medical review required November 2006.

3. On December 13, 2007, MRT denied the claimant's application and determined she was no longer medically eligible for MA-P for disability and SDA based on the medical review date of November 2007.
4. On December 18, 2007, the department caseworker sent the claimant a notice that her application was denied.
4. On January 7, 2008, the department received a hearing request from the claimant, contesting the department's negative action.
5. On March 26, 2008, 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 is alleging disability due to fibromyalgia, ovarian cysts, and bipolar disorder. She is 32 years old and has a high school education with a history of unskilled work.

This claim is a medical review of SDA/MA-P benefits previously granted in November 2005 due to the inability of the claimant to perform work of any kind or meeting/equaling a listing. Medical improvement was found and benefits were terminated accordingly.

The MRT approval of November 2005 was made in error. The claimant never met or equaled listing 12.04 or 12.06. At that time, her mental status examination was entirely within normal limits with a diagnosis of anxiety and dysthymia (mild depression). Mentally, her condition was non-severe in November 2005. Her physical examinations have consistently been within normal limits. Currently, her impairments would not preclude basic work activity as there is no evidence of a disabling physical or mental condition.

The medical evidence of record does not document a mental/physical impairment(s) that significantly limits the claimant's ability to perform basic work activities. Therefore, MA-P is denied per 20 CFR 416.921(a). Retroactive MA-P was considered and is also denied. SDA is denied per PEM 261 due to lack of severity.

6. On Thursday, April 24, 2008, the record was left open for the claimant to provide additional information.
7. On October 19, 2010, the department sent an e-mail stating that the claimant did not provide any additional information and that the record could be closed.
8. The claimant is a 34 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 3" tall and weighs 190 pounds. The claimant has gained 20 pounds in the past year because she doesn't move around much. The claimant completed the 9th grade of high school and has a GED. The claimant stated she can read and write, but cannot do basic math. The claimant was last employed in 2000 as a pizza delivery person. The claimant has also been employed as a cashier, night stock person, gas station attendant, telemarketer, waitress, and bartender.
9. The claimant's alleged impairments are fibromyalgia, bipolar disorder, degenerative disc disease, and ovarian cysts.

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 the 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 (formerly known as the Family Independence Agency) 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 2000. 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, the claimant has had medical improvement resulting in a decrease in medical severity.

On [REDACTED] the claimant’s treating physician completed a clinical record on the claimant’s behalf. The claimant has pain in her first MTP joint of her left foot where she thinks she has a bunion. The claimant is tender in this area, but is not erythematous where the area is slightly swollen with some mild bony prominence but not severely so. The claimant has no signs or symptoms of infection in the area with no streaking, warmth, or erythema noted. The claimant had a normal physical examination. The claimant has tender points on bilateral hips and lower back, but otherwise other pressure points are completely normal. The claimant is taking medication for her fibromyalgia. The left toe pain is a mild suspicion of an attack of gout where she was

prescribed medication. The claimant is seeing a psychiatrist at [REDACTED] [REDACTED] for her anxiety and bipolar disorder. The claimant is being treated for posttraumatic stress disorder, anxiety disorder, borderline disorder, and bipolar disorder. The claimant will continue her treatment and seems to be doing well on her current medications. (Department Exhibit 40-41)

On [REDACTED], the claimant's treating psychiatrist submitted a progress note from [REDACTED]. The claimant was diagnosed by her treating psychiatrist of posttraumatic stress disorder, bipolar —not otherwise specified, panic disorder without agoraphobia with a Tier II diagnosis of borderline personality disorder. The claimant was given a GAF of 45-50. The plan was to have the claimant continue with therapy and medication. The claimant looked her stated age being slightly obese and dressed appropriately for the weather. The claimant states her mood is stable. She has flat, but reactive affect. The claimant denies depressive symptoms where she states that she has occasional panic attacks, but her anxiety and her panic are under control. The claimant denies auditory and visual hallucinations. She denies paranoia. She is alert and oriented x3. Her thoughts are clear and organized. Her eye contact is avoidant at times. Her thoughts are clear and organized. Her speech is unpressured. Her memory is intact, but her judgment and insight seem impaired. The claimant denies any suicidal or homicidal thoughts or plans. There is no indication of self injurious behavior and there does not appear to be a bulimic or anorexic condition present. (Department Exhibit 28-30)

On [REDACTED] the claimant treating physician completed a clinic record on behalf of the claimant. The claimant had a normal physical examination. The claimant has tender points on bilateral shoulders, left elbow, and left hip. Otherwise, the pressure points were completely normal. The claimant was counseled to continue aerobic non weightbearing types of exercise, get better sleep, continue counseling, and take her medication. The claimant is seeing someone at [REDACTED] (Department Exhibit 39)

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant is being treated at [REDACTED] [REDACTED] where she is in therapy and taking medication. The claimant has fibromyalgia that she is taking medication for. The claimant's physical conditions are medically managed successfully. Her mental impairments show no serious mental impairment in the line of a thought disorder where the claimant is being managed with therapy and medication. Therefore, the claimant is disqualified from receiving disability at Step 3.

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.

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to her ability to do work. The claimant is currently in therapy and taking medication for her mental impairments. In addition, her fibromyalgia is being medically managed. The claimant should be able to perform simple, unskilled, light work. Therefore, the claimant is disqualified from receiving disability at Step 4. 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. This Administrative Law Judge finds that the claimant's medical improvement is related to the claimant's ability to do work.

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 CF R 416.921. 20 CF R 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 should be able to perform simple, unskilled, light work. Therefore, the claimant is disqualified from receiving disability at Step 6.

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 CF R 416.960 through 416.969. 20 CF R 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.

The claimant does have a driver's license and does drive, but she does have a problem dozing off, has a hard time seeing, can't drive at night, and driving position hurts. The claimant does not cook. The claimant grocery shops at various times because she is homeless. The claimant does clean her own home by washing out the sink, washing dishes, cleaning the stove and counters. The claimant doesn't do any outside work or have any hobbies. The claimant felt her condition has worsened in the past year because she has more pain. The claimant is currently taking medication, but not in therapy for her mental impairments.

The claimant wakes up between 11:00 a.m. to 12:00 p.m. She takes her medication. She takes care of her personal needs. She sits in a truck and visits. She watches T.V. She uses the computer. The claimant goes to bed between 11:00 p.m. and 12:00 a.m.

The claimant felt she could walk 200 yards. The longest she felt she could stand was 10 minutes. The longest she felt she could sit was 60 minutes. The heaviest weight she felt she could carry and walk was 3 pounds. The claimant stated she is left-handed. Her level of pain on a scale from 1 to 10 without medication is a 10 that decreases to a 4 with medication.

The claimant smokes a pack of cigarettes every 4 days. She stopped drinking alcohol in 2008 where before she drank occasionally. She stopped smoking marijuana in 2004. The claimant stated that there was no work that she felt she could do.

In this case, the Administrative Law Judge finds that the claimant retains the capacity to perform at least simple, unskilled light work. The claimant's past work as a cashier and telemarketer was performed at the light level and was simple and unskilled. The claimant should be able to perform those past relevant jobs. Therefore, the claimant does retain the capacity to perform her past relevant work and is denied at Step 7.

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 under Medical-Vocational Rule 202.20. Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because she does have medical improvement. The record does not establish that the claimant is unable to work for a period exceeding one year and the claimant does not meet the disability criteria for continued MA-P.

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/him 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 I EPC 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 disability criteria for continued 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 application for continued disability for MA-P and SDA. The claimant should be able to perform 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 Duane Berger, Interim Director
Department of Human Services

Date Signed: January 19, 2011

Date Mailed: January 20, 2011

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 / vc

cc:

