

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: 2008-2808
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 15, 2009
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 hearing was held on January 15, 2009. Claimant appeared and testified. The hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUES

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of 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) Claimant has been an on-going recipient of SDA benefits based upon disability based upon an application of June 7, 2006.

- (2) Claimant has been an on-going recipient of MA-P benefits based a January 12, 2007 application. At approval, the Medical Review Team (MRT) indicated that the onset of claimant's disability began in April 2006.
- (3) The most recent medical approval by the MRT occurred on April 16, 2007.
- (4) On September 17, 2007, the department notified claimant that effective October 3, 2007, the department intended to terminate claimants MA-P and SDA benefits based upon the belief that claimant no longer met the requisite disability criteria.
- (5) On September 27, 2007, Claimant filed a timely hearing request to protest the department's proposed negative action.
- (6) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.
- (7) Claimant, age 29, has a high school education and some college.
- (8) Claimant last worked in October 2005 as the manager of an adult foster care home. Claimant has also performed relevant work as a cashier, fast food manager, and factory worker which included assembly line work and work as a machine operator.
- (9) Claimant has a history of left knee problems.
- (10) On February 4, 2008, Claimant underwent arthroscopically assisted posterior cruciate ligament (PCL) reconstruction with allograft and anterior cruciate ligament (ACL) reconstruction with allograft.
- (11) Claimant currently suffers with post ACL and PCL reconstruction of the left knee, traumatic osteoarthritis of the left knee, and left MCL sprain with lateral meniscus tear.
- (12) Claimant was scheduled for arthroscopy for April 8, 2009 to evaluate articular surfaces, lateral meniscus, and ACL/PCL reconstruction.

- (13) Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who continues to be so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

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).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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

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, claimant is not currently working. Accordingly, claimant may not be disqualified for MA at this point in the sequential evaluation process.

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 claimant's impairment(s) is not a "listed impairment" or equal to a listed impairment. Accordingly, the sequential evaluation process must continue.

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 Administrative Law Judge, after comparing past medical documentation with current medical documentation finds that there has been medical improvement. On February 4, 2008, claimant underwent reconstruction of her left ACL and PCL. The record certainly supports a finding that, with respect to claimant's left ACL and PCL, her condition has improved.

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 claimant's residual functional capacity based on the impairment that was present at the time of the most favorable medical determination. Certainly, claimant's left knee function has improved with respect to the surgical reconstruction of her ACL and PCL.

Thus, this Administrative Law Judge finds that claimant's medical improvement is related to 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 undersigned Administrative Law Judge finds that claimant continued problems with her left knee significantly impacts upon her ability to engage in basic work activities. 20 CFR 416.921. On December 18, 2008, claimant's treating orthopedic

surgeon [REDACTED] reported that, following claimants reconstructive surgery, claimant continued to have “significant left leg core weakness contributing to a stiff legged gait, severe muscle weakness and atrophy due to long standing injury and then complete reconstructive surgery leaving to poor endurance.”

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. In this case, Claimants ongoing problems with her left knee continue to seriously impact upon her ability to engage in past work activities.

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, an MRI of the left knee on February 20, 2009 indicated a potential meniscal tear as well as tricompartmental osteoarthropathy. On February 29, 2009, [REDACTED] diagnosed claimant with left MCL sprain and lateral meniscus tear. The treating orthopedic surgeon limited claimant to occasional lifting less than 10 lbs, and standing and walking less than 2 hours in an 8 hour work day and sitting less than 6 hours in an 8 hour work day. The surgeon indicated that claimant was incapable of repetitive activities with the left lower extremity. The physician indicated that claimant was expected to be capable of returning to work possibly in March 2010. On March 11, 2009, orthopedic surgeon [REDACTED] diagnosed claimant with left lateral meniscus tear and left MCL sprain. This surgeon limited claimant to occasional lifting less than 10 lbs and standing and walking less than 2 hours in an 8 hour work day and sitting less than 6 hours in an 8 hour

work day. The physician indicated that claimant might be expected to return to work in January 2010. On March 3, 2009, [REDACTED] indicated that claimant continued to suffer with left MCL sprain, post traumatic arthritis, lateral meniscus tear, and post traumatic osteoarthritis. The surgeon indicated that an arthroscopy was scheduled for April 7, 2009 to evaluate claimant's articular surfaces, lateral meniscus, and ACL/PCL reconstructions. Based upon the hearing record, the undersigned finds that claimant continues to suffer with ongoing limitations from her left knee such that she is incapable of substantial gainful activity on a regular and continuing basis. Accordingly, the undersigned finds that claimant continues to be disabled for purposes of the MA program.

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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In as much as claimant continues to be "disabled" for purposes of MA, she must also be found to continue to be "disabled" for purposes of the SDA program.

DECISION AND ORDER

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The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to be “disabled” for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department’s determination in this matter is hereby REVERSED. The department is ordered to maintain claimant’s eligibility for Medical Assistance and State Disability Assistance program benefits if she is otherwise eligible. The department should review claimant’s continued eligibility for program benefits in July 2009.

/s/
Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 05/07/09

Date Mailed: 05/07/09

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 receipt 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.

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