

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: 2008-24528

Issue No: 2009; 4031

Case No: [REDACTED]

Hearing Date:

December 10, 2008

Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Jana Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, an in-person hearing was held on December 10, 2008.

ISSUE

Whether the Department of Human Services (department) has properly determined that claimant is no longer disabled for purposes of Medical Assistance (MA) and State Disability Assistance (SDA).

FINDINGS OF FACT

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

(1) During February 2008, claimant was the recipient of MA and SDA. Claimant's assistance was due for medical review.

(2) May 28, 2008, the Medical Review Team (MRT) denied claimant's medical review. Department Exhibit A.

(3) May 30, 2008, the department sent claimant written notice that her assistance would terminate.

(4) June 9, 2008, the department received claimant's timely request for hearing.

(5) July 17, 2008, the State Hearing Review Team (SHRT) denied claimant's medical review.

(6) December 10, 2008, the in-person hearing was held.

(7) Claimant asserts disability based on impairments caused by gunshot wound to the right leg, chronic pain in leg, poor sleep and fibromyalgia.

(8) Claimant testified at hearing. Claimant is 46 years old, 5'3" tall, and weighs 220 pounds. Claimant completed high school and one year of college. Claimant is able to read, write, and perform basic math. Claimant's driver's license is expired. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been in clerical work and telemarketing.

(10) At last positive decision in January 2007, claimant had suffered a gunshot wound to the right thigh in May 2006. Claimant's recovery was complicated by methacillin resistant staphylococcus infection. She required incision and drainage of the wound twice to clear the infection. During recovery period claimant was assessed for a DVT in the right lower leg but Doppler was negative. Claimant was on crutches in December 2006 due to this injury. Claimant could not perform weight bearing activity on the right leg due to pain and reduced range of motion. Department Exhibit A, pgs 67-70.

(11) At review, medical treatment records indicate that claimant had infected non-union in the right femur that required multiple surgeries ultimately requiring bone grafting, bone stimulation and open reduction with internal fixation. Claimant still complains of weakness as well as some pain in the right thigh. X-rays taken in February 2008 reveal status post bone grafting and open reduction, and internal fixation as well as placement of a bone stimulator for an infected non-union to the right femur. Department Exhibit A, pgs 12-13. At review in May 2008, claimant underwent an independent physical examination. The narrative report indicates objective physical examination revealed extremities to have good pulses and no pedal edema. Dimple scar on right hip to knee is well healed. She has some decreased sensation in the distal dorsal aspect of the quadriceps. She has minimally decreased range of motion. She reports that she is hypersensitive in the area of the scar. Neurologically, cranial nerves 2 through 12 grossly tested intact without any overt motor or sensory abnormality. DTRs are +1 to +2 and symmetrical. Gait is mildly antalgic. Patient has some weakness in the lower right leg compared to the left and it does appear reasonable that she uses an assistive ambulatory device. Doctor's assessment is as follows: Claimant has insulin dependent diabetes mellitus with an uncertain level of control; history of shattered right femur, secondary to gunshot wound to the right thigh with multiple surgical interventions. She currently has bone growth stimulator implanted with evaluation slated with her orthopedic surgeon in August. Methacillin resistant staphylococcus aureus has apparently been resolved. Patient continues to have some weakness although she is working on a home exercise plan; history of hypertension well controlled; symptoms consistent with irritable bowel syndrome/gastroesophageal reflux disease. Patient is noted to report she has had fibromyalgia. She appears to have current depression and anxiety

and may have some element of post traumatic stress disorder. Doctor recommends mental health consultation. Department Exhibit A, pgs 7-10.

(12) When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical condition has occurred. At last positive decision, claimant continued to be treated for the gunshot wound to the right thigh. She was yet to undergo some corrective surgery. She was being treated for a staph infection that was resistant to medication. At review, claimant's staph infection was healed. Claimant still had the bone stimulator in the right lateral thigh but was expected to have that removed within the coming few months. Claimant's extremity had good pedal pulses and no pedal edema. She had minimally decreased range of motion and some decrease sensation in the area. Cranial nerves were grossly intact. Doctor opined claimant some weakness in the right lower leg compared to the left and it appeared reasonable that she use an assistive ambulatory device.

(13) Claimant's medical improvement is related to the ability to work.

(14) Claimant is capable of performing sedentary work activities.

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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...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).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s)... 20 CFR 416.994(b)(1)(i).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

Functional capacity to do basic work activities. Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s)... 20 CFR 416.994(b)(1)(iv).

In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do this by looking at how your functional capacity for doing basic work activities has been affected.... 20 CFR 416.994(b)(1)(iv).

Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and non-exertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes and dealing with both supervisors and fellow workers.... 20 CFR 416.994(b)(1)(iv).

A person who has no impairment(s) would be able to do all basic work activities at normal levels; he or she would have an unlimited functional capacity to do basic work activities. Depending on its nature and severity, an impairment will result in some limitation to the functional capacity to do one or more of these basic work activities.... What a person can still do despite an impairment is called his or her residual functional capacity. 20 CFR 416.994(b)(1)(iv).

...A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities.... 20 CFR 416.994(b)(1)(iv)(A).

When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled.... 20 CFR 416.994(b)(1)(iv)(A).

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).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
 - (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
 - (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.

- (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.
- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

At Step 1, claimant's impairments do not meet or equal any Social Security Listing.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has medically improved at medical review. At last positive decision, claimant was still undergoing surgeries to repair a gunshot wound to the right thigh. She was being treated for an antibiotic resistant infection. At medical review, claimant's infection has resolved. She continues to have a bone stimulator implanted in her right femur. Otherwise, claimant has mildly reduced range of motion and some diminished sensation in the right leg. Claimant should

use an assistive device to ambulate. Otherwise, claimant's physical exam was within normal limits. Finding of Fact 10-12.

At Step 3, claimant's medical improvement is related to her ability to perform work. At last positive decision, claimant was unable to perform any weight bearing activity on her right leg. The wound was infected and claimant was to undergo additional surgeries to assist in healing. At medical review, most issues relating to claimant's gunshot wound to the right thigh have resolved. Claimant is able to weight bear on the right leg with an assistive device. She has slight diminishment in range of motion and some reduced sensation. Improved ability to ambulate and resolution of infection and non-union of fractured femur enables claimant to better perform work activities. Finding of Fact 10-12.

At Step 4, claimant's medical improvement is related to the ability to perform work. See Step 3 above.

At Step 5, claimant does have current severe impairments. Claimant has a bone stimulator implant in her right femur. However, claimant's severe impairment does not appear to prevent all work for a period of 12 months or more. See discussion at Step 2 and 3 above. Finding of Fact 10-14.

At Step 6, claimant's past relevant employment has been doing clerical work and telemarketing. Finding of Fact 9. The objective evidence of record does not appear to establish that claimant is incapable of performing the tasks required by these jobs. See discussion at Steps 1-5 above. Finding of Fact 10-14.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the

national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 7, the objective medical evidence of record establishes that claimant is capable of performing at least sedentary work activities. Considering claimant's vocational profile (younger individual, high school education, and history of unskilled work) and relying on Vocational Rule 201.21, claimant is not disabled. Finding of Fact 10-14.

After careful examination of the record and for the reasons discussed at Steps 1 through 7 above, the Administrative Law Judge decides that claimant does not meet the federal statutory requirements for disability. Therefore, claimant does not meet disability requirements for Medical Assistance based on disability. For reasons discussed at Steps 1 through 7 above, claimant does not have severe impairments that prevent all work for 90 days or more at medical review. Therefore, claimant does not meet the disability requirements for SDA based on disability.

DECISION AND ORDER

The Administrative Law Judge decides that the Department of Human Services properly determined that claimant is no longer disabled for Medical Assistance and State Disability Assistance at medical review.

Accordingly, the department's action is, hereby, UPHELD.

/S/

Jana Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 30, 2010

Date Mailed: August 31, 2010

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.

JB/sd

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