

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: 2008-26444

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 11, 2008

Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. 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 11, 2008.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant is no longer disabled for 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 October, 2007, claimant was the recipient of MA and SDA. Claimant's assistance was due for Medical Review.

(2) July 1, 2008, the Medical Review Team (MRT) denied claimant's application.

Department Exhibit A.

(3) July 8, 2008, the department sent claimant written notice that the application was denied.

(4) July 16, 2008, the department received claimant's timely request for hearing.

(5) August 7, 2008, the State Hearing Review Team (SHRT) denied claimant's Medical Review. Department Exhibit B.

(6) December 11, 2008, the in-person hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. December 23, 2008, after reviewing all medical evidence, the SHRT again denied claimant's Medical Review. SHRT Decision, 12-23-08.

(7) Claimant asserts disability based on impairments caused by third degree burns on back, pain hematuria, restless leg syndrome, and insomnia.

(8) Claimant testified at hearing. Claimant is 49 years old, 5'3" tall, and weighs 157 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant is independent in her activities of daily living with the exception of a needed assistance to get in and out of her compression vest.

(9) Claimant's past relevant employment has been working in a bakery and a deli counter.

(10) At last positive date of decision, December 2006, claimant was having frequent bilious vomiting and intractable pain in the right flank. Claimant had undergone numerous medical tests, the doctor's were unable to obtain a diagnosis or achieve symptom relief with treatment. Department Exhibit A, pgs 94-163.

(11) At Medical Review, the SHRT indicates that the MRT approval in December 2006 was made in error. Claimant does not have a disabling physical or mental

impairment or combination of impairments that would preclude medium unskilled work. This assessment would have been applied in December 2006. SHRT Decision 8-7-08.

(12) At review the objective medical evidence of record indicates that in August 2007, claimant was treated at hospital for malabsorption syndrome and third degree burns from the back. Claimant was being fed through a J-Tube. She continued to have intractable flank pain. Department Exhibit A, pgs 78-79. October 29, 2007 treatment notes indicate claimant's back is completely healed. There is some hypertrophy to the scar but not a big problem. No signs of any infection or contractures. A compression garment was prescribed but due to enlarged epigastric incisional hernia, no garment was provided. Department Exhibit A, pg 81. June 5, 2008, claimant underwent an independent physical examination. A narrative report was prepared that indicates the following in pertinent part: Abdomen is soft and non-tender. There is no rebound, guarding, or hepatosplenomegaly. Bowel sounds are positive. Patient is alert, awake, and oriented x3. Speech is normal. Cranial nerves 3 through 12 appear intact. Power is 5/5 in the bilateral upper and lower extremities. Muscle bulk and tone is normal. Deep tendon reflexes are intact and symmetrical. Patient can tie shoe laces and button clothing. Patient can get on and off exam table independently. Patient is able to walk on heels and toes. Hands do not show any synovitis. Wrists, elbows, and shoulders do not show any swelling, redness, or tenderness. Range of motion is normal at these areas however patient complained of stiffness in the back soft tissue on abduction of the shoulders. Cervical spine does not show tenderness or muscle spasms. Range of motion is normal. Lumbosacral spine shows tenderness mostly on the right side and goes up to the right mid-back region with muscle spasms and reduced range of motion due to pain. Leg raising was 80 degrees on the right and 90 degrees on the left. Hips, knees, and ankles do not show any redness, swelling, or tenderness. Range of motion is normal.

Doctor's assessment is claimant has back pain, recurrent kidney stones, burned back in the past, numbness in the left arm, restless leg syndrome, difficulty with sleep, vocal cord problems and dysphasia in the past. Department Exhibit A, pgs 9-15.

March 20, 2008, claimant underwent an independent psychological examination and a narrative report was prepared. The report indicates that there is no Axis I diagnosis. GAF is assessed at 60. Cognitive functions, socially and behaviorally, were determined to be within normal limits. Department Exhibit A, pgs 5-8.

(13) When combining the objective medical evidence at review, the medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical condition has occurred. At last positive decision, claimant had intractable vomiting and right flank pain. She was undergoing tube feedings and had malabsorption syndrome. At review in June 2008, claimant's abdomen was soft and non-tender with no rebound, guarding or hepanosplenamy. Bowel sounds were positive. The objective medical evidence does not indicate claimant continues to have the severe problems that she was having at the time of the last positive decision. At review, claimant had burned her back during August 2007. At review in June 2008, claimant's back was healed. She continued to wear a compression vest.

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

(15) Claimant is capable of performing at least light 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).

...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).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b)(1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or

laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

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

Finding of Fact 11-14.

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 had intractable flank pain and vomiting. She was being fed through a tube; claimant was later diagnosed with malabsorption syndrome. At Medical Review, claimant's vomiting and pain had improved. During August 2007, claimant had third degree burns on her back. At review in March 2008, claimant's burns were healed. She was to continue to wear a compression vest. Finding of Fact 10-12.

At Step 2, at hearing claimant and witnesses credibly testified to claimant's difficulty getting in and out of her compression vest, continued pain, and fatigue. Claimant credibly testified that she had undergone emotional stress and turmoil and was seeing a counselor. However, the objective medical evidence of record does not corroborate claimant and witnesses testimony. Independent Psychological Assessment revealed all cognitive functions to be within normal limits. Objective medical evidence including the physical exam reports do not indicate severity of impairment as so stated by claimant and witnesses. Claimant's treating physician opined that claimant must wear a compression vest body suit 23 out of 24 hours per day, making it impossible for claimant to be exposed to excessive heat. She is susceptible to infections and should avoid contact with the public. Loin pain hematuria and back pain from the burn require long-term daily narcotic use. (Claimant Exhibit A). These opinions as well are not consistent with the objective medical evidence of record. The objective medical evidence must be given greater legal weight.

At Step 3, claimant's impairments is related to her ability to perform work. Improvement in claimant's vomiting and pain result in improved functioning. Improved functioning allows claimant to perform work activities. The record does not establish that claimant has severe physical and/or cognitive impairments. Department Exhibit A; Claimant Exhibit A; Finding of Facts 10-14.

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

At Step 5, claimant does not have current severe impairments; see discussion at Step 2 above. Finding of Fact 10-12.

At Step 6, claimant's past relevant employment has been working in a bakery and at a deli counter. Finding of Fact 9. Taking claimant's physician opinion at face value, it would appear claimant would have difficulty working with the public at the deli counter and difficulty working in the heat of a bakery. Accordingly, claimant does not appear capable of performing the duties required by her past relevant employment. 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, see discussion at Step 2 above. Finding of Fact 10-14. The objective medical evidence of record establishes that claimant is capable of performing unskilled light work duties that avoid meeting the public and being in areas where there is extreme heat. Considering claimant's Vocational Profile (Closely approaching advanced age, high school graduate and history of unskilled work) and relying on Vocational Rule 202.13, claimant is not disabled.

After careful examination of the record and for reasons discussed at Steps 1-7 above, the Administrative Law Judge decides that claimant does not meet the Federal statutory

requirements for disability effective June 2008. Therefore, claimant does not meet the disability requirements for MA based on disability effective 2008.

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.

For reasons discussed at Steps 1-7 above, claimant does not have severe impairments that prevent all work for 90 days or more effective June 2008. Therefore, claimant does not meet the disability requirements for SDA based on disability effective June 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant is no longer disabled for Medical Assistance and State Disability Assistance.

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

/s/
Jana A. Bachman
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 29, 2010

Date Mailed: November 30, 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

cc:

