

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: 2008-6223
Issue No: 2009/4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 5, 2008
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 in Sterling Heights on March 5, 2008. Claimant personally appeared and testified under oath.

The department was represented by Terry Mrlink (FIM). The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence requested by the State Hearing Review Team (SHRT). Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT. Claimant did not submit new medical evidence by the Record Close Date.

ISSUE

Did the department establish medical improvement that enables claimant to perform substantial gainful activity (SGA) for MA-P/SDA purposes?

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 is a current MA-P/SDA recipient. The department proposes to close claimant's MA-P/SDA based on medical improvement. SHRT issued a decision (FIA-282) on February 6, 2008 stating that the medical record established medical improvement and that claimant was no longer eligible for MA-P/SDA due to her ability to work. The original approval date for MA-P was October 1, 2005; the original approval date of SDA was August 1, 2005. The basis for claimant's disability approval apparently was claimant's chronic colitis, with accompanying side-effects.

(2) Claimant's vocational factors are: Age 24; education -- high-school diploma; post high-school education -- currently enrolled as a freshman at [REDACTED] (biology/pre-med major); work experience -- retail clerk for a DVD store, retail clerk for a magazine stand at an airport and a telemarketer.

(3) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (February 6, 2008)

Claimant reported 8/1/2007 that since her surgery in 4/2006 her condition has worsened and she has been hospitalized seven to 10 times but has gone to the emergency room 10-15 times. No objective medical reports or information was submitted to show current physical functioning.

ANALYSIS: Current medical information is needed.

(4) The objective medical evidence (reports by physicians and claimant's testimony) shows that claimant has chronic colitis. On February 21, 2008, claimant was hospitalized for seven days and underwent bowel surgery.

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 (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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) 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).

Pursuant to federal rule 42 CFR 435.540, the Family Independence Agency 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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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).

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY (SGA)

Under current MA-P/SDA policy, **the department has the burden of proof** to establish that claimant is now medically able to return to work. PEM 260/261.

Claimant's original approval appears to have been based on her chronic colitis in combination with the side-effects which are secondary to this impairment. The medical record shows that claimant has been hospitalized on numerous occasions in 2006 and 2007 in order to obtain treatment (surgery) for claimant's colitis impairment.

After reviewing the records, SHRT decided that claimant had not submitted current medical records to establish the status of her colitis.

No additional medical evidence was provided after the March 2008 hearing. The medical evidence of record shows that claimant's colitis is currently being treated, although claimant is not able to lead a normal lifestyle because of the need for recurrent hospitalization. Claimant had bowel surgery in February 2008.

Although claimant has been enrolled as a pre-med student at [REDACTED], she had to withdraw from classes in 2006/2007 because she was hospitalized on numerous occasions to obtain treatment for her colitis.

Based on the current medical records, claimant is not, at this time, able to return to substantial gainful activity based on her chronic colitis, her inability to maintain a 40/week work schedule due to numerous hospital admissions and recent bowel surgery.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department **has not** established medical improvement, as required by PEM 260 and 261.

Accordingly, the department's decision to close claimant's MA-P/SDA is, hereby,
REVERSED.

SO ORDERED.

/S/ _____
Jay W. Sexton
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 11, 2009

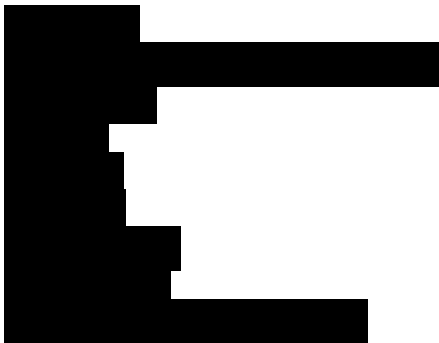
Date Mailed: September 14, 2009

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 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.

JWS/jj

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