

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: 2008-6234

Issue No: 2009/4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 27, 2009

Kalamazoo 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 upon claimant's request for a hearing. After due notice, a telephone hearing was held on February 27, 2009.

ISSUE

Whether the Department of Human Services (department) properly determined that claimant is not 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 August 2007, claimant was a recipient of MA and SDA. Claimant's assistance was due for medical review. Claimant submitted updated medical records for department consideration.

(2) August 22, 2007, the Medical Review Team (MRT) denied claimant's medical review. Department Exhibit A.

(3) October 4, 2007, the department sent claimant written notice that assistance would terminate.

(4) October 9, 2007, the department received claimant's timely request for hearing.

(5) January 30, 2008, the State Hearing Review Team (SHRT) denied claimant's medical review. Department Exhibit B.

(6) February 27, 2008, the telephone hearing was held. Prior to the close of the record, the department and claimant requested the record be extended for submission of additional medical evidence. Claimant waived the right to a timely hearing decision.

July 3, 2008, after review of all medical evidence the SHRT again denied claimant's application. SHRT Decision, 7-3-08.

(7) Claimant asserts disability based on impairments caused by a bad back and nerve damage.

(8) Claimant testified at hearing. Claimant is 56 years old, 5'5" tall, and weighs 185 pounds. Claimant completed high school and 63 college credits in communications. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as a secretary.

(10) At last positive decision, which appears to have been in August 2006, claimant had undergone back surgery in February 2005 to correct disc herniations at L4-5 and L5-1. Claimant underwent back surgery again on June 9, 2006 to correct a recurrent L4-5 disc herniation. Department Exhibit A, pgs 9-63.

(11) At medical review, claimant presented to hospital on or about November 2006 complaining of chest pain. Claimant underwent extensive cardiac testing and no heart disease was found. Department Exhibit A, pgs 77-99. At medical review, claimant underwent an independent physical examination on March 7, 2008. A narrative report was prepared that indicates the following, in pertinent part: neck is supple without masses. Breath sounds are clear to auscultation and symmetrical. There is no accessory muscle use. Heart has regular rate without enlargement. There is normal S1 and S2. Abdomen has no organomegaly or masses. Bowel sounds are normal. Claimant has no clubbing, cyanosis, or edema detected. Peripheral pulses are intact. There is no evidence of joint laxity, crepitation, or effusion. Grip strength remains intact. Dexterity is unimpaired. Patient could pick up a coin, button clothing, and open a door. Patient had no difficulty getting on and off the exam table, no difficulty heel and toe walking, moderate difficulty squatting and mild difficulty hopping on the right and moderate difficulty hopping on the left. Range of motion of all joints is full. Reflexes are 2+ and symmetrical. The report notes that patient complains of pain radiating into her left leg but doctor does not find any evidence of myopathy or neuropathy. Department Exhibit A, Report, 3-7-08.

(12) When comparing the objective medical evidence at medical 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 was recently post status post two back surgeries to correct herniated discs in her lumbar spine. At review, claimant has completely recovered with no neurologic or motor impairments. Claimant continues to complain of pain in her leg.

(13) Claimant's medical improvement is related to the ability to work. Claimant has recovered from her back surgeries. She has some pain, but no neurologic or motor impairments.

(14) Claimant is capable of performing 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).

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).

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).

The federal regulations at 20 CFR 416.994 require the department to show, by objective, documentary medical and/or psychological evidence that a previously diagnosed physical and/or mental condition has improved before MA can be terminated at review. The governing regulations state:

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 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 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).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

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

Finding of Fact 10-14.

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 was recently status post two back surgeries to correct herniated discs in her lumbar spine. At medical review, claimant has fully recovered from her surgeries. She has pain, but no neurologic or motor impairments. Finding of Fact 10-14.

At Step 3, claimant's medical improvement is related to her ability to perform work. Claimant's back is now healed, range of motion in all joints is full, as is strength. Finding of Fact 10-14.

At Step 4, claimant's medical improvement is related to the ability to perform work. See Steps 2 and 3 above. Finding of Fact 10-14.

At Step 5, claimant does not have current severe impairments. See discussion at Steps 2 and 3 above. Finding of Fact 10-14.

At Step 6, claimant's past relevant employment has been performing secretarial work. Finding of Fact 9. The record does not appear to establish that claimant is incapable of performing the tasks required by this type of work. See discussion at Steps 2-3 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, see discussion at Steps 2-3 above. The record would appear to establish that claimant may have difficulty with heavy lifting and repetitive bending and twisting. Finding of Fact 10-14. See discussion at Steps 2-3 above. Accordingly, the record is sufficient to establish that claimant is capable of performing light work activities. Considering claimant's vocational profile (advanced age, high school graduate, semi-skilled work—skills transferable) and relying on Vocational Rule 202.07, claimant is not disabled.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant is not disabled for purpuss of 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 17, 2009

Date Mailed: November 18, 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.

JAB/db

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