

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 200913787
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 21, 2009
Iosco County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 May 21, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services properly determine that Claimant no longer met the disability standard for Medical Assistance based on disability (MA-P) 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) On August 24, 2007, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
- (2) On November 1, 2007, the Department of Human Services Medical Review Team determined that Claimant was disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).
- (3) On December 30, 2008, the Department Medical Review Team reviewed Claimant's case and determined she was no longer disabled for purposes of Medical Assistance (MA) based on disability or State Disability Assistance (SDA).

- (4) On January 22, 2009, Claimant was sent notice of the Department's determination.
- (5) On January 27, 2009, Claimant submitted a request for hearing.
- (6) On March 4, 2009, the State Hearing Review Team determined that Claimant was no longer disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).
- (7) Claimant is a 46 year old female. Claimant is 68 inches tall and weighs approximately 215 pounds. Claimant's formal education consists of 10 years of school. Claimant was in special education classes from grade three on.
- (8) Claimant has past relevant work as a dishwasher and working at a gas station.
- (9) Claimant asserts continuing disability based on hypertension, diabetes, hip and back pain, learning deficits, and liver problems.
- (10) Claimant last worked in 1999 as a dishwasher.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (PRM).

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. The purpose of the review is to determine if your medical condition still meets the Social Security Administration disability standard. There are two main factors used in deciding whether your disability continues. One is your current medical condition. The other is whether you can engage in any substantial gainful activity. 20 CFR 416.994

In evaluating whether your disability continues any current work activities, any medical improvement in your previous impairments, and the severity of your current impairment(s) are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that you are unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The starting point of the review is to determine if you are currently engaged in substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, that fact establishes that you are capable of working and you are no longer disabled.

Based on Claimant's testimony and the evidence in this record Claimant is not engaged in substantial gainful activity.

If you are not engaged in substantial gainful activity an evaluation is done using the evidence in the record. The sequential seven step evaluation is contained in 20 CFR 416.994(b)(5).

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; *i.e.*, whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section. If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see §416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with §416.960. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work

experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

STEP 1

At this step it is determined whether you have 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. If your impairment or combination of impairments meet or equal the severity of an impairment listing, your disability will be found to continue.

In order to make this determination the evidence showing your medical condition must be evaluated. Claimant asserts continuing disability based upon hypertension, diabetes, hip and back pain, learning deficits, and liver problems. Evidence in the record of Claimant's impairments and medical condition includes:

Claimant was given a physical examination by [REDACTED] [REDACTED]. (Pages 4-7) The Doctor determined that Claimant had chronic right sacroiliitis (inflammation of the sacroiliac joint). The Doctor recorded that Claimant could: walk approximately 300 feet before her hip becomes painful; sit or stand approximately 25 minutes before experiencing pain and stiffness; and occasionally lift 30 pounds. The Doctor also recorded that from an orthopedic standpoint, Claimant's long term prognosis was good.

An Intelligence Evaluation was done by [REDACTED] (Pages 1-3) [REDACTED] recorded that Claimant was cooperative and appeared motivated to do her best throughout the testing. The Doctor recorded the test results should be considered valid. The testing determined that Claimant had a mental age of 10 years, 7 months. Claimant had a reading and spelling capacity equivalent to the second grade. Claimant's arithmetic capacity was equivalent to the third grade. Claimant's full scale IQ was measured at 64.

An MRI of Claimant's lumbar spine was done [REDACTED]. (Page 40) [REDACTED] recorded that Claimant had: mild to moderate degenerative disc changes; disc bulges at all levels; and a focal protrusion with increased T2 signal posteriorly consistent with an annular tear without gross disc herniation at L4-L5.

There are several sequential reports of Claimant's visits to the [REDACTED] between [REDACTED]. (Pages 18-29)

There is a [REDACTED] note from the office of the [REDACTED] which states Claimant has multiple medical issues including uncontrolled diabetes, dyslipidemia, anxiety-depression, GERD, and chronic back pain that requires ongoing medical/pharmaceutical care. (Page A4)

There is a [REDACTED] note from the office of the [REDACTED] which states Claimant is considered unemployable indefinitely due to a disc tear at L4-L5. (Page A1)

At this hearing Claimant testified that she still experiences a lot of pain in her hip. Claimant also testified that she can only sit or walk for a few minutes before she is in pain.

Claimant's sister-in-law was present at the hearing and testified that she has to help Claimant in and out of the bathtub and with many of Claimant's household chores.

The Department representative at the hearing testified that it took Claimant a long time to walk through the building to the hearing room. The Department representative also testified that Claimant had to reposition, stand up and move around frequently during the hearing due to pain.

Claimant's medical conditions were compared with the Social Security Administration impairment listing 12.05. That listing is:

12.05 *Mental retardation*: Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; *i.e.*, the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

In this case the evidence of record shows that Claimant's impairments meet or equal section C of this listing. Claimant has a full scale IQ of 64. Claimant still has significant work-related limitations due to her hip and back pain. Claimant's disability is found to continue. No further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly determine that Claimant no longer met the disability standard for Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA).

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: October 13, 2010

Date Mailed: October 14, 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.

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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.

GFH/vc

cc:

