

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.: 2009-21169
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 12, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on August 12, 2009. The Claimant appeared and testified, along with [REDACTED]. Robin Stanford, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of continued entitlement to Medical Assistance ("MA-P") benefits?

FINDINGS OF FACT

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

1. Claimant was determined to be disabled in February of 2006. Claimant's SDA and MA benefits were extended by review in February of 2007 and denied by review February of 2008.

2. On March 13, 2009, the Department sent the Claimant a Notice of Case Action informing the Claimant that she was found no longer disabled; therefore, her MA-P and SDA benefits would cancel effective March 25, 2009. (Exhibit 2).
3. On March 19, 2009, the Department received the Claimant's written request for a hearing protesting the determination that she was determined no longer disabled.
4. On May 20, 2009, the State Hearing Review Team ("SHRT") determined that there was insufficient medical evidence (no medicals were provided to SHRT) to determine whether the Claimant was still disabled. (Exhibit 3).
5. Claimant's impairments have been medically diagnosed as high blood pressure, chronic obstructive pulmonary disease, cataracts, high cholesterol, emphysema, bronchitis, asthma and arthritis.
6. Claimant's physical symptoms are shortness of breath, dizzy spells (2-3x/week), and pain in the hips, legs and shoulders. Claimant sees dots every now and then (2-3x/week) and also wakes up during the night 2-3 times.
7. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.
8. At the time of hearing, the Claimant was 62 years old; right handed; 5'4" tall and weighed 179 pounds.
9. The Claimant completed school through the 12th grade and has previous work experience as a housekeeper which involved bending, stooping, standing/walking and lifting.
10. Claimant takes the following prescriptions:
 - Ranitidine 150 mg - cholesterol
 - Sinvastatin 40 mg – blood pressure
 - Lisnoprolo 40 mg – blood pressure

- Amitriptylyne – anti-swelling
- Ibuprofen 800 mg 3x/day
- Ovar inhaler – 2x/day
- Proair 4x/day
- Nebulizer machine – 3-4x/day

11. New Medical Records were reviewed as follows, in part:

██████████ Medical Exam Report (Exhibit 1, pp. 9 – 10)

IMPAIRMENTS: Chronic obstructive lung disease, osteoarthritis knee, hypertension.

MUSCULOSKELETAL EXAM: Decreased range of motion.

CLINICAL IMPRESSIONS: Stable

PHYSICAL LIMITATIONS: Lifting 10 lbs frequently, Stand/walk 2 hours in 8 hours day, sit less than 2 hours in 8 hour day due to recurring bilateral knee pain.

██████████ General Eye Exam (Exhibit 1, p. 12)

ASSESSMENT: Cataracts – pt not bothered, Unlikely Glaucoma

██████████ X-Ray Chest (Exhibit 1, p. 25)

IMPRESSSION: Slightly hyper-inflated lungs

██████████ Exercise Stress Echocardiogram (Exhibit 1, p. 26-27)

INTERPRETATION: Abnormal heart rate recovery

██████████ Medical Exam Report (Exhibit 1, pp. 37-38)

DIAGNOSES: COPD exacerbated, obesity

PHYSICAL LIMITATIONS: Lifting less than 10 lbs occasionally, stand/walk less than 2 hours in 8 hour period.

██████████ ER Admission (Exhibit 1, pp. 45-61)

Patient admitted for unexplained shortness of breath and we did a workup for her including dobutamine echo test on which she failed to reach the target heart rate, the dobutamine echo revealed normal ejection fraction. We put the patient on IV steroids and breathing treatment with Advaid inhaler, after which her shortness of breath relieved significantly.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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”).

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual’s disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual’s ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

A. Substantial Gainful Activity.

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. In this case, Claimant has not worked since 2004, so the analysis will proceed at the second step.

B. Listed Impairment

Secondly, if the individual has 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, disability is found to continue. 20 CFR 416.994(b)(5)(ii). In this case, the following impairments were reviewed: 1.02 *Major dysfunction of a joint(s)*, 20 CFR 404 § 1.02; 4.04 *Ischemic heart disease*, 20 CFR 404 § 4.04, and 3.02 *Chronic obstructive pulmonary disease*, 20 CFR 404 § 3.02. Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. 20 CFR 416.920(a)(4)(iii). The analysis will continue to the next step.

C. Medical Improvement

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994(b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues 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 claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In this case, the undersigned finds that Claimant has exhibited no medical improvement. First, disability was granted based on the transferable work tables located at 20 CFR 404, Subpart P, Appendix 2, Rule 201.06. Claimant with advanced age, skilled or semiskilled not transferable skills and a 12th grade education, still grids out as disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 201.06. Claimant continues to have shortness of breath, and pain in her hips, legs and shoulders. The most recent Medical Exam report indicated that Claimant had physical limitations and Claimant is taking pain medication and anti swelling for bilateral knee pain that was described as chronic. Moreover, the Department provided no IME to address Claimant's improvement. The undersigned, therefore, finds that the Department has failed to meet its burden of showing that the Claimant's mental condition has medically improved. Given the medical records in the file and the limitations placed on Claimant by her doctor, Claimant would still grid out pursuant to Rule 2.06. Therefore, Claimant has not exhibited any medical improvement, the analysis will continue at Step 5.

D. Exceptions

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply. If none of them apply, claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), are as follows:

- (1) Substantial evidence shows that the claimant is the beneficiary of advances in medical or vocational therapy or technology (related to claimant's ability to work).
- (2) Substantial evidence shows that the claimant has undergone vocational therapy (related to claimant's ability to work).

- (3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques, claimant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable medical decision.
- (4) Substantial evidence demonstrates that any prior disability decision was in error.

In examining the record, this Administrative Law Judge finds that none of the above stated exceptions apply.

The second group of exceptions is medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

- (1) A prior determination was fraudulently obtained.
- (2) Claimant did not cooperate.
- (3) Claimant cannot be located.
- (4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, this Administrative Law Judge finds that none of the second group of exceptions applies. Claimant was present at the hearing and testified about her medical condition. Claimant has continued to follow prescribed treatment and has been cooperative.

F. Severe Impairment

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, the Claimant suffers from a host of medical conditions including, hypertension, chronic obstructive pulmonary disease, cataracts, high cholesterol emphysema, bronchitis, asthma and arthritis. Claimant is under the care of physicians and has

been placed on physical limitations. The undersigned, therefore, finds that Claimant's physical impairments are sufficiently severe. The analysis will continue at the next step.

G. Currently ability to engage in substantial gainful activity

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residual functional capacity based on all current impairments and consider whether the claimant can still do work he/she has done in the past.

In this case, Claimant's primary care physician has currently placed Claimant on physical limitations of lifting less than 10 lbs. frequently, stand/walk 2 hours in an 8 hour day, and sitting less than six hours in an 8 hour day. Claimant testified that she has a lot of shortness of breath due to her asthma and chronic pulmonary obstructive disease. Claimant uses a home nebulizer three to four times per day plus two other inhalers to manage her asthma. Despite these medications, however, Claimant testified that she still experiences shortness of breath. Claimant can only perform light household chores and uses paper plates so she doesn't have to do dishes. Furthermore, Claimant testified that she uses a cane to ambulate and takes pain medication to control her knee pain. Claimant also testified that she awakes several times during an average night.

Based on her physical limitations alone, Claimant would be limited to sedentary work. Claimant has prior work experience as a housekeeper and as a factory worker both of which require more than sedentary exertion. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments results in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

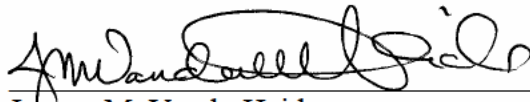
In this case, there is sufficient evidence to support a finding that Claimant's impairment continues to disable her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled for purposes of continued benefits under the Medical Assistance Program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the re-determination application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in December, 2010 in accordance with Department policy.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/07/09

Date Mailed: 12/11/09

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.

JV/dj

cc:

