

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.: 2009-26356
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 26, 2009
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 on August 26, 2009 from Detroit, Michigan. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes continued entitlement to the State Disability Assistance ("SDA") 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. On May 12, 2008, the Claimant submitted a public assistance application seeking State Disability Assistance ("SDA") benefits.
2. On January 8, 2009, the Medical Review Team ("MRT") found the Claimant eligible for SDA benefits with a review date of February 2009.

3. On April 20, 2009, the MRT determined the Claimant was no longer met the criteria for SDA benefits. (Exhibit 1, pp. 370, 371)
4. On May 2, 2009, the Department notified the Claimant that her SDA benefits were scheduled for closure.
5. On May 8, 2009, the Department received the Claimant's written request for hearing.
6. On July 1, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
7. The Claimant's alleged disabling impairments are due to diabetes and seizure disorder.
8. The Claimant's impairment(s) will last or have lasted continuously for a period of 12 months or longer.
9. At the time of hearing, the Claimant was 20 years old with a [REDACTED] birth date; was 5' 5" and weighed 242 pounds.
10. The Claimant is a high school graduate with some college and a work history as a crew member, waitress, clerk, and administrative assistant.

CONCLUSIONS OF LAW

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

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) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20

CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in

the residual functional capacity (“RFC”) based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual’s ability to do work, then a determination of whether an individual’s impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual’s residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual’s physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual’s age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;

- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1. In this case, the Claimant suffers from a seizure disorder and diabetes.

On [REDACTED], the Claimant was treated at the emergency room after having a seizure.

On [REDACTED], the Claimant presented to the emergency room with right knee pain purportedly as a result of falling during a seizure. The Claimant was discharged with a knee brace advising her to follow-up with her primary care physician.

On [REDACTED], the Claimant was brought to the hospital via EMS due to a seizure. The Claimant was treated and discharged.

On [REDACTED], the Claimant was admitted after having a seizure. The Claimant was discharged on [REDACTED] with the diagnosis of seizures secondary to diabetes mellitus, obesity, and migrant headache.

The Claimant's treating neurologist authored a letter listing the current diagnoses as seizure disorder, migraines, and obstructive sleep apnea. On [REDACTED], the Claimant suffered a severe seizure attack requiring emergent care. The neurologist opined that the Claimant's seizures are not in control meaning the Claimant could experience a seizure at any time.

On [REDACTED], the Claimant was admitted to the hospital after a seizure. While in the hospital, the Claimant had another seizure. The Claimant was monitored and medications were adjusted. The Claimant was discharged the following day.

On [REDACTED], a treating physician authored a letter stating the Claimant is disabled due to daily seizures.

On [REDACTED], the Claimant was admitted to the hospital after having a seizure. The Claimant was treated, discharged, and instructed to follow-up with her primary care physician.

On [REDACTED], the Claimant was treated after being struck in the back of the head. The discharge diagnosis was head contusion.

On [REDACTED], the Claimant was treated for bronchitis.

On [REDACTED], the Claimant presented to the hospital due to recurrent seizures which, on this occasion, resulted in loss of bowel and a tongue bite. The Claimant was treated and her medications adjusted and discharged.

On [REDACTED], the Claimant presented to the hospital via EMS. The Claimant did not recall the seizure. Urinary incontinence was noted as well as medication compliance. The records also noted a breakthrough seizure in January which resulted in a medication adjustment.

The Claimant was found with breakthrough seizures, hyperglycemia with poorly controlled diabetes type 2, migraine headaches, asthma, and obesity.

On [REDACTED], the Claimant was treated at the emergency room after experiencing several seizures accompanied with vomiting and headache. The Claimant was treated for seizure disorder, headaches, diabetes, depression, asthma, and deep vein thrombosis. The Claimant was treated, monitored, and discharged on [REDACTED].

On [REDACTED], a Medical Examination Report was completed on [REDACTED] by the Claimant's treating physician. The current diagnoses were listed as seizure disorder, uncontrolled diabetes, bipolar disorder, hypertension, and obesity. The Claimant's condition was listed as deteriorating noting that her seizures were uncontrolled. The Claimant was found not fit to work or drive.

On [REDACTED], the Claimant was treated for hip/thigh pain after falling out of a motor vehicle. Subsequently, the Claimant experienced a grand mal seizure. A psychiatric consult found the Claimant with bipolar disorder and mood disorder secondary to seizure disorder. The Claimant's Global Assessment Functioning was 40. The Claimant was discharged the following day.

On [REDACTED], the Claimant's treating neurologist authored a letter stating that due to intractable seizure disorder the Claimant is unable to do any type of work.

On April 7, 2009, the Claimant was admitted after having another seizure. The cerebral perfusion study was abnormal demonstrating relatively increased perfusion to the left frontal cortex and decreased perfusion to the left basal ganglia when compared to the right. The study was suggestive of an epileptic focus arising from the left frontal cortex. The Claimant was again

treated, monitored, and discharged with the diagnoses of recurrent breakthrough seizure, hypertension, diabetes, bipolar disorder, and asthma.

Listing 11.00 defines adult neurological disabilities. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. 11.00C The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms. *Id.*

Listing 11.02 discusses convulsive epilepsy (grand mal or psychomotor) and requires documentation detailing the typical seizure pattern, including all associated phenomena occurring more frequently than once a month despite medication compliance for at least 3 months with:

- A. Daytime episodes (loss of consciousness and convulsive seizures)
- or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activities during the day.

Listing 11.03 defines non-convulsive epilepsy (petit mal, psychomotor, or focal) which requires documentation detailing the typical seizure pattern to include associated phenomena occurring more frequently than once weekly despite at least 3 months of prescribed treatment with alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activities during the day.

In this case, since the Claimant's approval, the record documents continual treatment for the Claimant's seizure disorder which includes medication adjustment and compliance. The

Claimant's treating physician and neurologist agree the Claimant is disabled noting her condition as deteriorating. Under the facts presented, it is found that the Claimant meets, or is the equivalent thereof, a listed impairment within 11.00 therefore the Claimant is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of continued State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the redetermination 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 October 2010 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 09/29/09

Date Mailed: 09/29/09

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 the Circuit 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.

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