

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.: 2009-27523  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
August 27, 2009  
Wayne County DHS (76)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 hearing was held on August 27, 2009. Claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 has been an ongoing recipient of MA-P and SDA benefits based upon an April 6, 2007, application for benefits.
- 2) The most recent medical approval of claimant's ongoing disability occurred on April 10, 2008, by the Medical Review Team (MRT).
- 3) On April 8, 2009, the department notified claimant of its intent to terminate her ongoing MA-P and SDA benefits effective April 21, 2009, based upon the belief that claimant no longer met the requisite disability criteria.
- 4) On April 21, 2009, claimant filed a timely hearing request to protest the department's proposed negative action.
- 5) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.
- 6) Claimant, age 36, has a high-school education.
- 7) Claimant last worked in 2002 as a medical laboratory transporter. Claimant's relevant work history consists exclusively of unskilled work activities.
- 8) Claimant has a history of bilateral femoral anteversion with recurrent bilateral dislocation of the patellas.
- 9) Claimant has a history of multiple surgeries upon her legs as well as a surgery in [REDACTED] for an ulnar nerve transfer in the right elbow. Following the surgery, claimant was forced to switch from being right handed to left handed, as a result of hypersensitivity and pain.
- 10) Claimant currently suffers from hypertension, hyperlipidemia, anxiety, major depressive disorder, cognitive disorder, asthma, morbid obesity, and bilateral patella dislocation. Claimant is currently wheelchair bound.

- 11) When comparing current medical documentation with documentation from the most recent April 10, 2008, MRT approval, it is found that medical improvement of claimant's condition has not occurred as there has been no decrease in the severity of claimant's impairments as shown by changes in symptoms, signs, and/or laboratory finding.

#### 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).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...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

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).

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). In this case, claimant is not currently working. Accordingly, claimant may not be disqualified for MA at this step in the sequential evaluation process.

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 undersigned Administrative Law Judge finds that claimant's condition meets or equals an impairment. See Listing 1.02A. Claimant suffers from gross anatomical deformity with chronic pain and stiffness which limits motion. Claimant is fully wheelchair dependent. But, even if claimant cannot be found to meet a listing, the record clearly indicates that she is still disabled.

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, claimant was most recently approved for MA-P by the MRT on April 10, 2008. That MRT approval was based upon a Disability Determination Service psychiatric evaluation performed on [REDACTED], that diagnosed claimant with mood disorder due to medical condition, chronic; dysthymic disorder; and cognitive disorder, NOS. Claimant was found to have a current GAF score of 45. A [REDACTED] consulting internist examination of [REDACTED], resulted in a finding of bilateral recurrent patella dislocations with status post reconstruction of the left side of her patella, bilateral anteverted femoral neck, asthma, hypertension, crush injury to the right elbow resulting in heterotrophic bone, obesity, and mental depression. Claimant's treating family practitioner on [REDACTED] [REDACTED], opined that claimant was incapable of lifting any amount of weight and limited to standing and walking less than two hours in an eight-hour work day and sitting less than six hours in an eight-hour work day. The physician noted that claimant was unable to walk. More recently, on [REDACTED], claimant's treating physician opined that claimant was incapable of lifting any amount of weight and required the use of a cane for all ambulation. Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant noted that claimant was seen for disability due to congenital anomalies in both femurs and the inability to stand. The consultant found claimant to be morbidly obese and wheelchair bound. The consultant noted that claimant was unable to get out of her wheelchair and unable to stand. The consultant noted that claimant was in extreme pain with every movement and that her right arm was shorter than the left. The consultant provided the following impression:

“Fine and gross dexterity – the patient is now left handed, but she was born right handed. Due to the hypersensitivity and weakness in the right upper extremity, she is now left handed and does most of her eating, maneuvering, pushing and lifting with the left hand secondary to the right hand being weak. The grip in both hands is reasonable, just over sensitivity noted in the right hand.

Ambulation – the patient is wheelchair bound secondary to two surgeries

Asthma ...”

A [REDACTED] consulting psychological examination performed on [REDACTED], resulted in a diagnosis of major depressive disorder, recurrent; cognitive disorder NOS; and rule out post traumatic stress disorder. The consultant provided a current GAF score of 40.

After careful review of the entire hearing record, the undersigned Administrative Law Judge, in comparing past medical documentation with current medical documentation, finds that there has been no medical improvement.

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, the undersigned finds that there is nothing to suggest that any of the exceptions listed above apply to claimant's case.

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, the undersigned Administrative Law Judge finds that none of the above-mentioned exceptions apply to claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that claimant's disability continues for purposes of the MA program.

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).

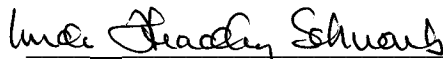
A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of

SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Inasmuch as claimant has been found to continue to be “disabled” for purposes of MA, she must also continue to be “disabled” for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to be “disabled” for purposes of the Medical Assistance and State Disability Assistance programs.

Accordingly, the department’s determination in this matter is hereby reversed. The department is ordered to maintain claimant’s eligibility for Medical Assistance and State Disability Assistance benefits if she is otherwise eligible for program benefits. The department should review claimant’s ongoing eligibility for program benefits in June of 2011.

  
Linda Steadley Schwarb  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 2, 2010

Date Mailed: March 9, 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.

LSS/pf

cc:

