

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-31332
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 29, 2009
DHS County: Monroe

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 October 29, 2009. Claimant appeared and testified. Claimant was represented by [REDACTED]. Following the hearing, the record was kept open for the receipt of additional medical evidence. No additional documents were submitted.

ISSUE

Whether the Department of Human Services (DHS or department) properly determined 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 disability as a result of a February of 2007 application.
2. The most recent favorable medical decision that claimant was disabled was issued on February 7, 2008.
3. On June 23, 2009, the department notified claimant that it intended to terminate her MA-P and SDA benefits effective July 3, 2009, based upon the belief that claimant no longer met the requisite disability criteria.

4. On June 26, 2009, claimant filed a timely hearing request to protest the department's proposed negative action
5. Claimant, age 49, has a high-school education.
6. Claimant last worked in approximately 2001 as a machine operator. Claimant's relevant work history consists exclusively of unskilled work activities.
7. Claimant currently suffers from fibromyalgia, bilateral carpal tunnel syndrome/tendonitis of the upper extremities, chronic back and neck pain, right L5 radiculopathy, poor memory, dysequilibrium, bipolar disorder, pain disorder, and borderline personality disorder.
8. When comparing current medical documentation with documentation from the most recent February 7, 2008, 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 findings.

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 (BAM), the Program Eligibility Manual (BEM) 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). This Administrative Law Judge finds that claimant's impairments are not "listed impairments" nor equal to listed impairments. Accordingly, the sequential evaluation process must continue.

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 on February 7, 2008. On [REDACTED], claimant's treating psychiatrist at [REDACTED] diagnosed claimant with bipolar disorder NOS, pain disorder, alcohol dependence, and borderline personality disorder. Claimant was given a current GAF score of 30. On [REDACTED], claimant's treating family practitioner diagnosed claimant with carpal tunnel syndrome/tendonitis of the upper extremities; fibromyalgia; back and neck pain; and poor memory. The treating physician indicated that claimant's clinical condition was deteriorating. He opined that claimant was limited to occasionally lifting less than ten pounds as well as limited to standing or 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 indicated that claimant was incapable of repetitive activities with the upper and lower extremities and noted difficulties with comprehension, memory, sustained concentration, reading and writing, and social interaction. On [REDACTED] claimant's treating neurologist diagnosed claimant with L5 radiculopathy (see EMG testing of [REDACTED]) and dysequilibrium. The specialist opined that claimant was limited to standing and walking less than two hours in an eight-hour work day and incapable of fine manipulation with the bilateral upper extremities and incapable of operating foot or leg controls with the bilateral lower extremities. The neurologist noted

difficulties with sustained concentration. On [REDACTED], claimant was seen by a consulting internist for the department. The consultant provided the following impression:

1. There is advanced degenerative fascia joint disease involving the lower lumbar spine.
2. Chronic pain in neck, shoulder blades, arms and hands and is present in most of her body with history of being diagnosed with fibromyalgia.
3. Right carpal tunnel syndrome. Status post surgery with relief of symptoms.
4. Bipolar disorder and depression. On treatment.
5. Chronic rhinitis.
6. Bronchial asthma with daily wheezing.

Claimant was also seen by a consulting psychologist for the department on [REDACTED]. The consultant diagnosed cognitive disorder, secondary to head injury per patient; major depression, recurrent, severe, without psychotic features; alcohol abuse, in reported long-term remission; and antisocial personality disorder. After careful consideration of the entire hearing record, the undersigned finds that, after comparing past medical documentation with current medical documentation, 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 applies, 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), is 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 that there is nothing to suggest that any of the exceptions applies to claimant's case.

The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), is 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 above-mentioned exceptions applies to claimant's case. Accordingly, per 20 CFR 416.994, the undersigned Administrative Law Judge concludes that claimant's disability for purposes of MA must continue.

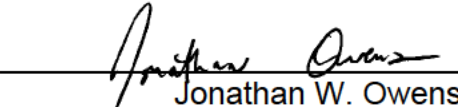
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) 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 BEM Item 261. Inasmuch as claimant has been found to continue to be "disabled" for purposes of MA, she must also be found to 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. If claimant is otherwise eligible for ongoing program benefits, the department is ordered to reinstate claimant’s Medical Assistance and State Disability Assistance with appropriate supplementation of lost benefits. The department shall review claimant’s ongoing eligibility for Medical Assistance and State Disability Assistance in December of 2011.


Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 7, 2010

Date Mailed: December 7, 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.

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.

JWO/pf

cc:

