

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.: 2009-36281

Issue No.: 2009

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

November 4, 2009

Wayne County DHS (17)

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 November 4, 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

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) program?

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 was an ongoing recipient of MA-P based upon a February 22, 2007, application following a hearing by an Administrative Law Judge with the State

Office of Administrative Hearings and Rules who determined that claimant was limited to sedentary work and, thus, disabled.

- 2) On July 31, 2009, the department notified claimant that, effective August 12, 2009, her MA-P benefits would be terminated based upon the belief that claimant was no longer disabled.
- 3) On August 5, 2009, claimant filed a timely hearing request to protest the department's proposed negative action.
- 4) On August 12, 2009, the department terminated claimant's MA program benefits.
- 5) At the hearing, the department agreed to reopen MA-P benefits for claimant pending the Administrative Law Judge's determination on the matter.
- 6) Claimant, age 52, has an eighth-grade education.
- 7) Claimant last worked in 2006 as an adult home health care provider/housekeeper. Claimant has also performed relevant work as a cashier. Claimant's relevant work history consists exclusively of unskilled work activities.
- 8) Claimant was hospitalized in [REDACTED] as a result of an anterior communicating artery aneurysm. Her aneurysm was successfully coiled.
- 9) Claimant has had no further hospitalizations.
- 10) Claimant currently suffers from degenerative disc disease of the lumbar spine at L5-S1, sciatica, chronic obstructive pulmonary disease, and history of brain aneurysm post coiling.
- 11) Claimant has severe limitations upon her ability to walk or stand for prolonged periods of time and/or lift extremely heavy objects. Claimant's limitations have lasted twelve months or more.

- 12) When comparing current medical documentation with past documentation, it is found that medical improvement of claimant's condition has occurred as there has been a decrease in the severity of claimant's impairments as shown by changes in symptoms, signs, and/or medical findings.
- 13) Medical improvement of claimant's condition is related to claimant's ability to do work as there has been an increase in claimant's residual functional capacity to do basic work activities.
- 14) Claimant continues to suffer from a severe impairment which impacts upon her ability to walk or stand for long periods of time and lift heavy objects.
- 15) Claimant, at the very least, is capable of performing the physical and mental demands necessary for a wide range of light work activities on a regular and continuing basis.

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). This Administrative Law Judge finds that claimant’s impairment(s) is not a “listed impairment” nor is it equal to a listed impairment. 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, the undersigned Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds that there has been medical improvement. The Administrative Law Judge who conducted the November 15, 2007, hearing regarding claimant's February 22, 2007, application, relied in large part upon consulting exams performed on [REDACTED]. The consultant psychologist who evaluated claimant on [REDACTED], diagnosed her with cognitive disorder, probably secondary to aneurysm. The evaluator felt that claimant's prognosis was fair as she had a number of intellectual strength despite the aneurysm. The consulting internist who evaluated claimant the same day provided impressions of intermittent loss of balance; history of chronic arthritis of the neck, shoulders, hands, and knees bilaterally; asthma; and depression. A review of the more recent medical evidence supports a finding that claimant's condition has improved. On [REDACTED], claimant's treating physician indicated that claimant had a completely normal examination. Claimant was seen by a consulting internist for the [REDACTED] on [REDACTED]. [REDACTED]. The consultant provided the following assessment:

“As far as her ability to work is concerned, she has normal range of motion and no sensory or motor deficits in the upper extremities. Her lower extremities reveal aches and pains along with stiffness in her hips and knees... With her aches and pains all over her body as well as headaches she is limited in her capacity to work. She should be able to do work with her upper extremities.”

Claimant was seen by a consulting internist for the department on [REDACTED]. The consultant found that claimant’s shoulders, elbows, hips, knees, ankles, wrists, and hands were within normal limits as to range of motion. The consultant provided the following assessment:

“The patient is status post cerebral aneurysm which was closed in [REDACTED]. The only residual problem she has is occasional headaches and pain in her left face. No other neurological deficits from the aneurysm are present.

As far as her low back pain is concerned, she continues to have pain. Her back is stiff and she needs an x-ray and MRI of the lumbrosacral spine for assessment for the status of her back before any determination about her work can be made.”

Claimant had an x-ray of her lumbar spine on [REDACTED]. The x-ray revealed evidence of degenerative disc disease at L5-S1 with minimal marginal osteophytic spurring throughout the lumbar spine. The consulting internist opined that claimant had no physical or mental limitations. After considering and comparing current medical documentation with past documentation, the undersigned finds that there has been medical improvement.

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to claimant’s ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been an increase in claimant’s residual functional capacity based on the impairment that was present at the time of the most favorable medical determination. The consulting internist who evaluated claimant on [REDACTED], after examination and x-rays of the lumbar spine, concluded that claimant

had no physical or mental limitations. At the hearing, claimant testified that she performs housework but has difficulty moving heavy furniture and scrubbing the floors on her hands and knees. Claimant reported that she drives, prepares food, reads, and socializes with her family. Thus, this Administrative Law Judge finds that claimant's medical improvement is related to claimant's ability to do work. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

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 Administrative Law Judge finds that claimant's impairment(s) continue to significantly impact her ability to walk or stand for prolonged periods of time and lift heavy objects. 20 CFR 416.921.

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 past work consisted of work as an adult home health care provider/housekeeper and cashier. The current medical record does support a finding that claimant is capable of her past work as a cashier. But, even if claimant were to be found incapable of performing that work, she would still be found capable of performing other work.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, the Administrative Law Judge finds that claimant is capable of the physical and mental demands required to perform light work activities on a regular and continuing basis. Light work is defined as follows:

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

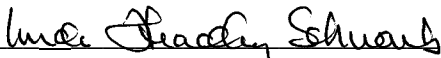
There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for a wide range of light work. On [REDACTED], claimant's treating physician reported that claimant had a completely normal examination. On [REDACTED], the consulting internist who examined claimant for the department opined, after examination and x-rays of the lumbar spine, that claimant had no physical or mental limitations. At the hearing, the undersigned Administrative Law Judge offered to order the department to set up and pay for a consulting psychological evaluation for claimant. Claimant declined the evaluation. After careful review of claimant's medical records and reports and evaluations by consulting and treating physicians, claimant has failed to establish limitations which would compromise her ability to perform a wide range of light work activities on a regular and continuing basis. The record fails to support the position that claimant is incapable of light work activities.

Considering that claimant, at age 52, is closely approaching advanced age, has an eighth-grade education, has an unskilled work history, and has a work capacity for light work, this

Administrative Law Judge finds that claimant's impairments do not prevent her from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 2, Rule 202.17. Accordingly, the undersigned finds that claimant is no longer 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 Department of Human Services properly determined that claimant is no longer "disabled" for purposes of the Medical Assistance program. Accordingly, the department's decision in this matter is hereby affirmed.


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

Date Signed: April 19, 2010

Date Mailed: April 19, 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

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