

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: 2009-7516
Issue No: 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 2, 2009
Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 telephone hearing was held on April 2, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services properly determine that Claimant no longer met the disability standard for State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On November 5, 2007, the Department Medical Review Team approved Claimant for State Disability Assistance (SDA) benefits.
- (2) On March 17, 2008, the Department Medical Review Team reviewed Claimant's case and re-approved her for State Disability Assistance (SDA) benefits.

- (3) On July 8, 2008, the Department Medical Review Team reviewed Claimant's case and re-approved her for State Disability Assistance (SDA) benefits.
- (4) On September 15, 2008, the Department Medical Review Team reviewed Claimant's case and denied her for State Disability Assistance (SDA) benefits.
- (5) On September 26, 2008, Claimant was sent a Notice of Case Action (DHS-1605) stating her State Disability Assistance (SDA) benefits would end on October 1, 2008.
- (6) On October 3, 2009, Claimant submitted a request for hearing.
- (7) Claimant is a 27 year-old female. Claimant is 64 inches tall and weighs approximately 165 pounds. Claimant's formal education consists of 10 years of school and independently obtaining a GED.
- (8) Claimant has past relevant work as a waitress, a bartender, and a stocking clerk.
- (9) Claimant has a history of anxiety, depression, stress, and a herniated disc in her lower back.
- (10) Claimant last worked in 2005 as a bartender and cashier. Claimant reports she left that employment because she was not getting enough hours.
- (11) On January 12, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for State Disability Assistance (SDA).
- (12) Claimant is not engaged in any substantial gainful activity.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (PRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manuals (PRM).

Once an individual has been determined to be “disabled” for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. The purpose of the review is to determine if your medical condition still meets the Social Security Administration disability standard. There are two main factors used in deciding whether your disability continues. One is your current medical condition. The other is whether you can engage in any substantial gainful activity. 20 CFR 416.994

In evaluating whether your disability continues any current work activities, any medical improvement in your previous impairments, and the severity of your current impairment(s) are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that you are unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The starting point of the review is to determine if you are currently engaged in substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial

gainful activity, that fact establishes that you are capable of working and you are no longer disabled.

Claimant testified that she is not performing any activity for pay or profit. Claimant is not engaged in substantial gainful activity.

If you are not engaged in substantial gainful activity an evaluation is done using the evidence in the record. The sequential seven step evaluation is contained in 20 CFR 416.994(b)(5).

(5) *Evaluation steps.* To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be *continued* at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. The steps are as follows. (See paragraph (b)(8) of this section if you work during your current period of eligibility based on disability or during certain other periods.)

(i) *Step 1.* Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of this chapter? If you do, your disability will be found to continue.

(ii) *Step 2.* If you do not, has there been medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (See step 4 in paragraph (b)(5)(iv) of this section.)

(iii) *Step 3.* If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(i) through (b)(1)(iv) of this section; *i.e.*, whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is *not* related to your ability to do work, see step 4 in paragraph (b)(5)(iv) of this section.

If medical improvement *is* related to your ability to do work, see step 5 in paragraph (b)(5)(v) of this section.

(iv) *Step 4.* If we found at step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If one of the first group of exceptions to medical improvement applies, see step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process.

(v) *Step 5.* If medical improvement is shown to be related to your ability to do work or if one of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see [§416.921](#)). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in step 3 in paragraph (b)(5)(iii) of this section shows significant limitation of your ability to do basic work activities, see step 6 in paragraph (b)(5)(vi) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered to be disabled.

(vi) *Step 6.* If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with [§416.960](#). That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work you have done in the past. If you can do such work, disability will be found to have ended.

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age, education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue.

STEP 1

At this step, it is determined whether you have 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. If your impairment or combination of impairments meet or equal the severity of an impairment listing, your disability will be found to continue.

In order to make this determination the evidence showing your current medical condition must be evaluated. Claimant asserts continuing disability based upon anxiety, depression, stress, and a herniated disc in her lower back. Evidence in the record of Claimant's medical condition includes:

A psychological evaluation conducted on [REDACTED] by [REDACTED] (pages 184-188) [REDACTED] diagnosed Claimant as having major depressive disorder, anxiety disorder, and nicotine dependence. Claimant reported her activities as: spending Mondays with her mother; watching her little cousin one day a week; and spending time with her friend's grandmother who has mobility problems. Claimant stated she also does community service and tries to stay busy because she believes activity helps ward off depressive symptoms. [REDACTED] noted that Claimant: had no thoughts of wanting to harm herself or others, hallucinations, or delusions; a broad and normal affect; was oriented to time, person, place and circumstances; and had good memory and judgment. Claimant's psychological testing suggested depressive and anxiety symptoms along with a preoccupation with her health. The Doctor noted that Claimant: is highly self-critical; has limited coping resources; has difficulty with relationships; and could benefit from psychotherapy and psychiatric management. The evaluation did not identify any noteworthy mental impairments to Claimant's ability to work.

A physical examination conducted on [REDACTED] by [REDACTED]. At the appointment Claimant was still complaining of back pain. The examiner found tenderness in the lumbar region and tenderness of unspecified joints. There were no other abnormalities.

An MRI report on Claimant's lower back was done [REDACTED]. [REDACTED] found a small disc protrusion at L4-5 causing slight deformity of the thecal sac. There was also a small protrusion at L5-S1 that made contact with the right S1 nerve root sleeve.

Claimant's mental impairment was compared with the Social Security Administration impairment listing 12.04 Affective Disorders. That listing is:

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:

- a. Anhedonia or pervasive loss of interest in almost all activities; or
- b. Appetite disturbance with change in weight; or
- c. Sleep disturbance; or
- d. Psychomotor agitation or retardation; or
- e. Decreased energy; or
- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

The information from Claimant's most recent psychological evaluation show Claimant does not meet or equal this listing.

Claimant's back impairment was compared to Social Security Administration impairment listing 1.04 Disorders of the spine. Those listing are:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Claimant's herniated discs do not meet or equal this listings because she does not have any symptoms beyond reported pain. The evaluation continues to Step 2.

STEP 2

In this step, we determine whether there has been medical improvement in your previous impairments. Medical improvement is defined in 20 CFR 416.994(b)(1)(i). 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 evaluation proceeds to Step 3. If there has been no decrease in

medical severity and thus no medical improvement, the evaluation skips Step 3 and proceeds to Step 4.

At the time Claimant was initial approval for State Disability Assistance (SDA) medical evidence addressed both her mental status and back pain. The Medical Review Team did not specify the reason for approving State Disability Assistance (SDA) benefits. The evidence used in the initial approval includes an opinion that Claimant was bipolar with periods of impaired judgment, impaired insight, extreme agitation, and moodiness. The evidence used in the initial approval shows considerable difficulty arriving at a tolerable medication regimen to treat both Claimant's mental status and back pain.

Evidence used in the Medical Review Team's [REDACTED], approval of State Disability Assistance (SDA) benefits included a Psychiatric/Psychological Examination Report (form DHS-49D) and Mental Residual Functional Capacity Assessment (form DHS-49E) completed by [REDACTED] on [REDACTED]. (pages 137-140) The Mental Residual Functional Capacity Assessment (form DHS-49E) showed Claimant's mental limitations consisted of moderate limitations in 6 of the 20 mental work activities. The specifically identified limitations were: ability to work in coordination or proximity to others without distraction; ability to complete a normal work day without interruption from psychological symptoms and perform without an unreasonable number and length of rest periods; ability to interact appropriately with the general public; ability to accept instructions and respond appropriately to criticism from supervisors; ability to get along with co-workers without distracting them or exhibiting behavioral extremes; and ability to respond appropriately to change in the work setting.

The evidence used in Claimant's most recent approval (July 8, 2008) did not contain a specific psychological evaluation. Consultation notes submitted did show additional positive changes in Claimant's mental status. The Medical Review Team scheduled a medical review and specifically requested a psychological evaluation for that review. Claimant's psychological evaluation of [REDACTED] was the only additional evidence submitted to the Medical Review Team prior to their denial dated September 15, 2008.

With regard to Claimant's back problems there is no medical evidence in the record more current than the most recent approval (July 8, 2008) for State Disability Assistance (SDA). It cannot be determined if there has been medical improvement to Claimant's back since the last approval (July 8, 2008).

The psychological evaluation used in the [REDACTED], denial was conducted on [REDACTED] by [REDACTED] (pages 184-188) [REDACTED] diagnosed Claimant as having major depressive disorder, anxiety disorder, and nicotine dependence. Claimant reported her activities as: spending Mondays with her mother; watching her little cousin one day a week; and spending time with her friend's grandmother who has mobility problems. Claimant stated she also does community service and tries to stay busy because she believes activity helps ward off depressive symptoms. [REDACTED] noted that Claimant: had no thoughts of wanting to harm herself or others, hallucinations, or delusions; a broad and normal affect; was oriented to time, person, place and circumstances; and had good memory and judgment. Claimant's psychological testing suggested depressive and anxiety symptoms along with a preoccupation with her health. The Doctor noted that Claimant: is highly self-critical; has limited coping resources; has difficulty with relationships; and could benefit from psychotherapy and

psychiatric management. The evaluation did not identify any noteworthy mental impairments to Claimant's ability to work.

The [REDACTED], psychological evaluation shows significant improvement over Claimant's initial impaired judgment, impaired insight, extreme agitation, and moodiness. The [REDACTED] psychological evaluation also shows improvement from Claimant's [REDACTED] evaluation. There has been medical improvement in Claimant's previous mental impairment. The evaluation proceeds to Step 3.

STEP 3

If there has been medical improvement as shown by a decrease in medical severity, this step of the evaluation is done to determine if the medical improvement is related to your ability to work. 20 CFR 416.994(b)(1) provides:

(ii) *Medical improvement not related to ability to do work.* Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but *no* increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section.

(iii) *Medical improvement that is related to ability to do work.* Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision *and* an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section.

(iv) *Functional capacity to do basic work activities.* Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s). In determining whether you are disabled under the law, we must measure, therefore, how and to what extent your impairment(s) has affected your ability to do work. We do

this by looking at how your functional capacity for doing basic work activities has been affected. Basic work activities means the abilities and aptitudes necessary to do most jobs. Included are exertional abilities such as walking, standing, pushing, pulling, reaching and carrying, and nonexertional abilities and aptitudes such as seeing, hearing, speaking, remembering, using judgment, dealing with changes and dealing with both supervisors and fellow workers.

In this case, the Medical Review Team did not assess Claimant's residual functional capacity at any time when approving her for State Disability Assistance (SDA) benefits.

At the time of Claimant's most recent approval (July 8, 2008) for State Disability Assistance (SDA) she had moderate limitations in her mental ability to work. (pages 137 & 138) The psychological evaluation of [REDACTED] by [REDACTED] (pages 184-188) shows that Claimant currently has no reduction in her mental abilities to work.

There was medical evidence (MRI of [REDACTED]) that supported Claimant's assertions of pain. However, there were no physical limitations determined by medical sources.

There has been an increase in claimant's residual functional capacity based on the improvement of her mental status. Thus, claimant's medical improvement is related to claimant's ability to do work. The evaluation proceeds to Step 5.

STEP 4

If Step 2, determined that there was no medical improvement, or Step 3 determined your medical improvement was not related to your ability to work, this step of the sequential evaluation is done to determine whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply to you. It is not necessary to perform this step of the analysis for this Claimant's evaluation.

STEP 5

If Step 2 and Step 3 showed medical improvement related to your ability to do work or if Step 4 determined that one of the first group of exceptions applies, this Step will determine whether your current impairment or combination of impairment(s) are severe or not. An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (20 CFR 416.921).

The psychological evaluation of [REDACTED] by [REDACTED] (pages 184-188) shows that Claimant currently has no reduction in her mental abilities to work.

Recent medical evidence regarding Claimant's herniated disc is the MRI of [REDACTED] [REDACTED] which showed a small disc protrusion at L4-5 causing slight deformity of the thecal sac and a small protrusion at L5-S1 that made contact with the right S1 nerve root sleeve.

There is also the physical examination conducted on [REDACTED] by [REDACTED]. At the appointment Claimant was still complaining of back pain and reported her back was killing her and she had used up her supply of pain medicines. The examiner found tenderness in the lumbar region and tenderness of unspecified joints. The examiner also recorded that Claimant's general appearance was "healthy appearing individual in no distress" and had a normal gait. Claimant had no other abnormalities.

Claimant's MRI of [REDACTED], does state that there is contact between a disc protrusion and the nerve root sleeve. It does not state the protrusion impinges the nerve root. A medical condition of this nature would be expected to cause some pain and/or discomfort from certain movement. It would not normally cause constant pain and discomfort requiring constant pain medication. Claimant does have a medical condition that affects her ability to perform all of the movements that might be necessary in a work environment. Depending on the type of work, Claimant's medical condition could significantly limit her physical ability to do the work. However, the evidence does not support Claimant's assertions of constant pain and a complete inability to work. The evaluation goes on to Step 6.

STEP 6

If Step 5, determined that you have a severe physical or mental impairment or combination of impairment (s), this step will assess your current residual functional capacity to determine if you are still able to perform work you have done in the past.

In this case, Claimant has no mental limitations that prevent her from working. The record contains physical limitations determined by medical sources. Claimant does have a small disc protrusion at L4-5 causing slight deformity of the thecal sac and a small protrusion at L5-S1

that made contact with the right S1 nerve root sleeve. A medical condition of this nature would be expected to cause some pain and/or discomfort from certain movement, most likely stooping, crouching, and/or twisting. It would also limit Claimant's ability to perform heavy lifting. A medical condition of this nature would leave Claimant able to perform a wide range of light work and a full range of sedentary work.

Claimant has a past work history as a waitress, a bartender, and a stocking clerk. These jobs would all entail standing, bending, and twisting. Claimant does not have the residual functional capacity to perform her past relevant work.

STEP 7

If Step 5, determined that you have a severe physical or mental impairment or combination of impairment (s) and Step 6 determined you are unable to perform work you have done in the past, this step is done to determine whether you can do any other work. Your current residual function capacity, age, education, and transferable work skills are evaluated to determine if you can transition to any type of work.

Claimant is a younger individual, with a high school level education, an unskilled work history, and the residual functional capacity to do a wide range of light work and the full range of sedentary work. In accordance with the Social Security Administration Medical-Vocational Guidelines Rule 201.27 Claimant is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that Claimant no longer meets the disability standard for State Disability Assistance (SDA)?

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/

Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 25, 2010

Date Mailed: January 27, 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.

GFH 

cc:

