

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: 2009-9618

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 2009

Macomb 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 16, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services properly determine that Claimant no longer met the disability standard for Medical Assistance based on disability (MA-P)?

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 8, 2007, Claimant applied for Medical Assistance (MA) based on disability.

(2) On December 12, 2007, the Department of Human Services Medical Review

Team determined that Claimant is disabled in accordance with the standards for Medical Assistance (MA).

(3) On September 10, 2008, the Department Medical Review Team reviewed Claimant's case and determined she was no longer disabled for purposes of Medical Assistance (MA) based on disability.

(4) On October 21, 2008, Claimant was sent notice of the Department's determination.

(5) On October 24, 2008, Claimant submitted a request for hearing.

(6) On January 29, 2009, the State Hearing Review Team determined that Claimant was no longer disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(7) Claimant is a 60 year old female. Claimant is 66 inches tall and weighs approximately 125 pounds. Claimant's formal education consists of 9 years of school.

(8) Claimant has past relevant work as a waitress, chauffer, and barmaid.

(9) Claimant asserts continuing disability based on head tremors, depression, seizure disorder, osteoporosis, and complications from a broken hip and femur.

(10) Claimant last worked in 2002.

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 stays around home all day, does what little she can to help out with household chores, and watched television. 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.

At step 1, 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 on head tremors, depression, seizure disorder, osteoporosis, and complications from a broken hip and femur.

Evidence in the record of Claimant's current medical condition includes:

A Medical Examination Report (form DHS-49) filled out on August 12, 2008 by [REDACTED] [REDACTED] is Claimant's treating physician. The report states that Claimant is stable and gives some physical limitations based on back pain and range of motion. The Doctor prescribed lifting limitations of 10 pounds and less occasionally and never more than 20 pounds. The Doctor also prescribed to stand or walk less than 2 hours in an 8 hour day. There were no limitations placed on repetitive motions of the arms or legs. The Doctor did note that a head tremor work up was in progress but did not provide any diagnosis or related restrictions.

There is also a medical examination dated May 22, 2008, done by [REDACTED] of [REDACTED] [REDACTED]. The Doctor found no complications from Claimant's prior hip and femur fractures. Claimant reported to the Doctor that she takes her seizure medication regularly and has had no seizures for the prior 18 months. The Doctor found that Claimant had no restricted

range of motion in any joint. In short the Doctor found that Claimant had no physical limitations.

There is also a psychiatric evaluation done on May 22, 2008, by [REDACTED]

[REDACTED] The Doctor diagnosed Claimant with major depressive disorder and alcoholism. The Doctor also noted tremors of the head but deduced no specific cause. The Doctor found no notable deficiencies in Claimant's mental status.

Claimant's major depression disorder was compared with the Social Security Administration impairment listing 12.04. 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; or

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.

Claimant's major depressive disorder does not meet or equal these listings because she has none of the symptoms and conditions of the listing.

The current objective medical evidence regarding Claimant's back pain and range of motion is insufficient for comparison to any Social Security Administration impairment listing.

In step 2, 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.

Claimant was determined to be disabled based on a Medical Examination Report (form DHS-49) by [REDACTED] dated November 27, 2007. That report states that Claimant was deteriorating and gave some physical limitations based on left knee FXR on walker. The Doctor prescribed absolutely no lifting and to stand or walk less than 2 hours in an 8 hour day. There were no limitations placed on repetitive motions of the arms but the Doctor did restrict repetitive motions of Claimant's right leg.

To determine if there has been medical improvement the November 27, 2007 report is compared to the more recent objective medical evidence. In this case there are two recent physical examinations which are conflicting. The May 22, 2008 examination by [REDACTED] found no physical limitations. The August 12, 2008 examination by Claimant's treating physician, Dr [REDACTED] did contain some physical limitations. In accordance with 416.927(d) the treating physician's opinion is given controlling weight.

The more recent examination by Claimant treating physician has changed to allow lifting of 10 pounds and less occasionally and no longer restricts repetitive movements of Claimant's leg. The Doctor's prescription to stand or walk less than 2 hours in an 8 hour day remained the same.

These changes constitute medical improvement in Claimant's previous impairments. The evaluation proceeds to Step 3.

At 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.

Based on the impairment(s) that was present at the time of the most recent favorable medical determination Claimant had no residual functional capacity because of the complete lifting restriction. The most recent medical evaluation shows that Claimant has the residual functional capacity to do sedentary work. This increase in claimant's residual functional capacity is based on Claimant's increased ability to perform the work activities of lifting and use of her leg. Thus, claimant's medical improvement is related to her ability to do work.

At 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. In this case Step 3 determined that Claimant's medical improvement WAS related to her ability to work so Step 4 is not necessary to the evaluation.

At step 5, since Step 2 and Step 3 showed medical improvement related to your ability to do work, 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).

In this case Claimant's lifting restriction and the restriction on standing and walking do significantly limit her physical ability to do basic work activities.

At 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.

The most recent medical evaluation done by Claimant's treating physician shows that Claimant has the residual functional capacity to do sedentary work. Claimant's past work as a barmaid and waitress exceed sedentary work due to the amount of standing and walking required. However, Claimant's past work as a chauffer falls within the sedentary work category. In this case Claimant is able to perform past relevant work. Since Claimant can perform past relevant work she is no longer disabled.

At 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 would determine whether you can do any other work. At Step 6 it was determined that Claimant could do past relevant work so Step 7 is not necessary to the evaluation.

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 met the disability standard for Medical Assistance based on disability (MA-P).

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: April 13, 2010

Date Mailed: April 13, 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/alc

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