

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. 200924806
Issue No. 2009; 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: July 29, 2009
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on Wednesday, July 29, 2009. The claimant personally appeared and testified with her daughter [REDACTED] as a witness.

ISSUE

Did the department properly determine that the claimant has not established continued eligibility for disability under 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 a material fact:

1. On October 29, 2007, the claimant was approved by the Medical Review Team (MRT) for MA-P and retroactive MA-P to June 2008 stating that the claimant was not capable of performing other work with a medical review required December 2008.
2. On March 16, 2009, the MRT denied the claimant's medical review of MA-P and SDA stating she was capable of past relevant work per 20 CFR 416.920(E),

3. On April 6, 2009, the department caseworker sent the claimant a notice that her application was denied.
4. On April 17, 2009, the department received a hearing request from the claimant, contesting the department's negative action.
5. On June 23, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to chronic obstructive pulmonary disease, numbness in the back and thighs, and emotional problems. She is 60 years old and has a 12th grade education with a history of semi-skilled work. The evidence in file is inadequate to assess all of the claimant's alleged impairments. A complete psychiatric examination, treating sources, and current activities of daily living are requested. MA-P is denied per 20 CFR 416.913(d), insufficient evidence. SDA is denied per PEM 261. The impairments should not prevent all work for 90 days or more.

6. During the hearing on July 29, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on August 19, 2009 and forwarded to SHRT for review on September 3, 2009.
7. On September 15, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and SDA. The SHRT report reads in part:

This claim is a December 2008 medical review of benefits previously granted due to meeting or equaling a listing or vocational rule. The claimant is 61 years old with 12 years of education and a history of unskilled sedentary work as an aide from 1981 to 2002. Disability is alleged due to joint pain, high blood pressure, and depression. The claimant did not meet applicable Social Security Listings 1.01, 4.01, and 12.01. The claimant has had medical improvement where she is capable of performing past unskilled, sedentary work per 20 CFR 416.994.

8. The claimant is a 62 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 1" tall and weighs 253 pounds. The claimant completed the 9th grade of high school and has a GED. The claimant can read and write and do basic math. The claimant was last employed in 2002 as a home healthcare worker. The claimant has also been employed as a sales clerk and co-manager.
9. The claimant's alleged impairments are COPD, obesity, depression, anxiety, and fatty tumors in arm.

CONCLUSIONS OF LAW

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).

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) 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).

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

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, the claimant is not substantially gainfully employed and has not worked since 2002. Therefore, the claimant is not disqualified from receiving disability at Step 1.

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 claimant's impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the claimant is disqualified from receiving disability at Step 2.

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 claimant has had medical improvement resulting in a decrease in medical severity.

On [REDACTED], the claimant had an independent consultative psychological exam by [REDACTED]. The independent medical consultant licensed psychologist's impression was major depressive disorder, recurrent, moderate secondary to physical complaints with a Tier II diagnosis of anxiety disorder. The claimant's Global Assessment of Functioning Scale was 55-60 that shows moderate symptoms or difficulty in social, occupational, or school functioning. The claimant's prognosis was guarded pending medical resolution as far as performing simple, unskilled work situation on a sustained and competitive basis. The claimant may benefit from vocational rehabilitation program to help her explore work activities that do not involve extensive physical exertion, but may allow her the opportunity to change positions at times. The claimant appeared to have no difficulty understanding, remembering, or following through with simple instructions, and there appears to be no restrictions to her ability to perform simple, repetitive, concrete tasks except for the limited mobility. The claimant is able to manage her benefit funds. Department Exhibit 212-216.

On [REDACTED], the independent medical consultant licensed psychologist completed a Mental Residual Functional Capacity Assessment. The claimant was not markedly limited in any area except for sustained concentration and persistence in her ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Department Exhibit 210-211.

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had a history of impairment and chief complaint of depression, emphysema, hypertension, hypoglycemia, factor V deficiency, and incontinence, which was also her current diagnosis. The claimant was morbidly obese. She had a normal physical examination except that the treating physician noted that her mood was depressed. The claimant's treating physician's clinical impression was that the claimant was stable and not expected to improve. The claimant had physical limitations that were expected to last more than 90 days. The claimant could occasionally lift 10 pounds, but never 20 pounds. The claimant could stand and/or less than 2 hours of an 8-hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use both hands/arms for simple grasping, reaching, and fine manipulation, but neither for pushing/pulling. The claimant could use neither foot/leg for operating foot/leg controls. The medical findings that support the above physical limitations were that the claimant has COPD that limits her activity, her depression is severe and the claimant has difficulty with concentrating and it is difficult for her to leave the house. The claimant mentally limited in sustained concentration and social interaction. The claimant barely leaves her home and she has incontinence. Finally, the claimant could meet her needs in the home. Department Exhibit 221-223.

On [REDACTED], the claimant saw her treating physician for disability paperwork, cough, incontinence, hypertension, depression, and blood work. The claimant had a normal physical examination. Department Exhibit 172-175.

At Step 3, the objective medical evidence on the record indicates that the claimant has had medical improvement. The claimant had an essentially normal physical examination except that she was obese and had incontinence. She had COPD and high blood pressure. The claimant had a GAF of 55-60 that is at the moderate rate. Therefore, the claimant is disqualified from receiving disability at Step 3.

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 medical improvement.

The claimant has a driver's license and does drive with no problem, but doesn't drive far. The claimant cooks once to twice a week with no problem. The claimant does not grocery shop because it takes too long and she has a problem walking. The claimant does clean her own room by making the bed. The claimant doesn't do any outside work. Her hobby is crocheting. The claimant felt her condition has worsened in the past year because she's not able to concentrate and she has an increase in coughing. The claimant is taking medication for her mental impairment, but not in therapy.

The claimant wakes up between 4:00 to 5:00 a.m. She makes coffee. She feeds the dog. She takes care of her personal needs. The claimant smokes and uses the computer to check e-mail. She exercises. She watches TV and reads the newspaper. She goes to bed between 10:00 to 11:00 p.m.

The claimant didn't know how far she could walk, but the claimant's daughter estimated she could walk about 50 feet. The claimant stated she could stand for 10-15 minutes. She could sit for 30 minutes. The heaviest weight she felt she could carry and walk was 5-10 pounds. The claimant stated she is right-handed. Her level of pain on a scale from 1 to 10 without medication is a 4/5-10, and she is currently not taking any pain medication.

The claimant smokes 17 cigarettes a day. She used to drive very occasionally where she stopped 8-10 years ago. The claimant does not or has ever taken illegal or illicit drugs. The claimant stated that there was no job that she thought she could do.

At Step 4, this Administrative Law Judge finds that the claimant's medical improvement is related to her ability to do work. The claimant should be able to perform simple, unskilled, light work. Therefore, the claimant is disqualified from receiving disability at Step 4. 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 the claimant does have a severe impairment. In this case, the Administrative Law Judge finds the claimant has the residual functional capacity to perform light work. Therefore, the claimant is not disqualified from receiving disability at Step 6.

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. The Administrative Law Judge finds that the claimant is capable of performing her past work

that was simple, unskilled, sedentary work as a manager or sales clerk. Therefore, the claimant does retain the capacity to perform her past relevant work and is denied at Step 7.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work)... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the claimant stated that she has depression and anxiety where she is currently taking medication, but not in therapy. As a result, there is insufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from working at any job.

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 claimant does retain the residual functional capacity to perform simple, unskilled, light work under Medical-Vocational Rule 202.07. Therefore, the claimant is disqualified from receiving continued Medical Assistance benefits because she does have medical improvement. The record does not establish that the claimant is unable to work for a period exceeding one year and the claimant does not meet the disability criteria for continued MA-P.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or

- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- .
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/him disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
 - .. Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

. Because the claimant does not meet the definition of disabled under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for continued SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for continued disability for MA-P and SDA. The claimant should be able to perform any level of light work. The department has established its case by a preponderance of the evidence. In addition, the claimant can perform her past relevant work.

Accordingly, the department's decision is **AFFIRMED**.

/s/
Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: October 19, 2010

Date Mailed: October 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.

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.

CGF / vc

cc:

