

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: 2009-25917

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 26, 2009

Midland County DHS

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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 August 26, 2009. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly cancel claimant's State Disability Assistance (SDA) benefits based upon its determination that claimant is no longer disabled?

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 a State Disability Assistance benefit recipient.
- (2) Claimant's State Disability Assistance was subject to medical review in March 2009.
- (3) On March 13, 2009, the Medical Review Team denied claimant's continued State Disability Assistance benefits and suggested a referral to Michigan Rehabilitation Services.
- (4) On April 23, 2009, the department caseworker sent claimant notice that her State Disability Assistance benefits would be cancelled.
- (5) On May 5, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (6) On June 22, 2009, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of light work per 20 CFR 416.967(b) and unskilled work per 20 CFR 416.968(a) pursuant to Medical-Vocational Rule 202.20 and commented that the claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of light work. Therefore, based on the claimant's vocational profile of younger individual with a high school education, MA-P is denied using Vocational Rule 202.20 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (7) The hearing was held on August 26, 2009. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(8) Additional medical information was received and sent to the State Hearing Review Team on August 26, 2009.

(9) On September 2, 2009, the State Hearing Review Team again denied claimant's application stating in its analysis and recommended decision: The newly submitted evidence does not significantly or materially alter the previous recommended decision. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence does not significantly or materially alter the previous recommended decision. The medical evidence of record indicates that the claimant retains the capacity to perform light work. In lieu of detailed work history, the claimant will be returned to other work. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(10) Claimant is a 48-year-old woman whose birth date is [REDACTED]. Claimant is 5' 5-1/2" tall and weighs 227 pounds. Claimant is a high school graduate and is able to read and write and does have basis math skills.

(11) Claimant last worked October 23, 2008 for [REDACTED] doing work schedules, payroll assessments, hiring and firing as a support specialist.

(12) Claimant alleges as disabling impairments: back pain, spinal stenosis, spasms, arthritis, diabetes mellitus, a pacemaker and heart problems.

#### 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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, disability is defined as:

...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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).

Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

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 PEM Item 261.

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 the instant case, the claimant is not working and has not worked since October 23, 2008.

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 the instant case, the objective medical evidence in the record indicates that the electromyogram done in [REDACTED] showed very mild denervation in the paraspinal muscles at L4-5 on the left. (p. 77) A myelogram was done in [REDACTED] which showed mild to moderate stenosis at L4-L5. She also had some spurring at C5-C6 with narrowing of the canal. (pp. 57-59) The neurosurgeon reported that claimant had good strength with normal gait and station. (p. 80) A medical source statement form was also provided by [REDACTED] in support of benefits. A Medical Examination Report dated [REDACTED] indicates that claimant was 5' 5-1/2" tall and weighed 251 pounds. The clinical impression was that claimant's condition was stable. (pp. 70-71) An examination dated [REDACTED] indicated that the present nerve conduction and EMG examination showed very mild denervation in the paraspinals at L4-5 on the left. No clear cut evidence of neuropathy. No features of gross radiculopathy were present. (p. 76) An [REDACTED] neurological examination indicates that claimant was bright and alert. No scleral icterus or carotid bruit. Lungs were clear. No cardiac murmur. Abdomen was benign. No clubbing, cyanosis, or edema. She was overweight. She was deconditioned. She had normal expressive and receptive language, insight and affect, equal reactive pupils, full eye movement, full facial movement, tongue was midline, symmetrical shoulder shrug, good grip strength, absent reflexes biceps, triceps, brachioradialis, knees and ankles, downgoing toes, normal tone, normal power, decreased pinprick over the vulva on the left, decreased pinprick in both feet, decreased pinprick medial calf right, lateral calf left. (p. 79) A neurosurgery examination done [REDACTED] indicated that claimant had some spurring

at C5-C6 with some narrowing of the canal but not frank cord compression and she had a small disc at T9-T10 with loss of space behind the cord. She had good strength, normal station and gait, normal expressive and receptive language, insight and affect, equal reactive pupils, full eye movements, full facial movement, and good strength in the upper and lower extremities. (p. 80)

Claimant's pain questionnaire indicates that claimant has an extreme impairment in the ability to function because she has severe pain and that she has constant pain. Surgery was not recommended at this time. The treatment plan for the claimant was conservative treatment, medications, previously involved in physical therapy, and epidural steroid injections.

The objective evidence in this record is insufficient to establish that claimant has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1.

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, this Administrative Law Judge finds that there has been a decrease in medical severity and thus 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 apply, 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), are 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 these exceptions do not apply in this case.

The second group of exceptions is medical improvement, found at 20 CFR 416.994(b)(4), are 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 these exceptions do not apply in this case.

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 objective medical evidence in this record indicates that there is insufficient objective medical evidence contained in the file upon which this Administrative Law Judge can base a finding that claimant is unable to perform work which she has engaged in, in the past. This Administrative Law Judge finds that claimant could do her prior work even with her impairments. Therefore, claimant is denied at this step.

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, this Administrative Law Judge finds claimant does retain bilateral manual hand dexterity. Claimant testified on the record that she does have a driver's license and does drive herself to appointments one to two times per week. Claimant does cook microwave meals one to two times per day and also eats cereal. Claimant does grocery shop three to four times a month and she sometimes needs help but usually will ask. Claimant testified that she is able to dust, do dishes and laundry, and that she does crafts as a hobby. Claimant testified that she can walk a quarter a mile, stand for 10-15 minutes at a time, and can sit 30-45 minutes at a time. Claimant testified that she can shower and dress herself, but not squat because she can't get back up. Claimant testified that she can bend at the waist but it hurts and that she can tie her shoes. Claimant testified that she can carry 10 pounds or a gallon of milk and she is right-handed and that she sometimes drops things. Claimant testified that her level of pain on a scale from 1 to 10 without medication is a 9/10 and with medication is a 6/7.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing

is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. 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).

The objective medical evidence in the record indicates that claimant can probably perform light or sedentary work even with her impairments. Therefore, claimant is disqualified from receiving State Disability Assistance benefits on a continuing basis because she does have medical improvement.

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, this Administrative Law Judge finds that claimant can do light or sedentary 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, this Administrative Law Judge finds that claimant can perform her prior work, and can perform light or sedentary work even with her impairments.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established by the necessary, competent, material, and substantial on the record that it was acting in compliance with department policy when it denied claimant's continued receipt of State Disability Assistance benefits based upon its determination that claimant has medical improvement. The claimant should be able to perform a wide range of light or sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

/s/ \_\_\_\_\_  
Landis Y. Lain  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: October 29, 2009

Date Mailed: October 29, 2009

**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.

2009-25917/LYL

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.

LYL/vmc

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