

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2009-29402
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date
September 9, 2009
Wayne County DHS (15)

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 September 9, 2009. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's continuing application for Medical Assistance (MA-P) and 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) Claimant was a Medical Assistance benefit recipient and her Medical Assistance case was scheduled for review in May 2008.
- (2) On May 13, 2008, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On April 29, 2009, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
- (4) On May 7, 2009, the department caseworker sent claimant notice that her Medical Assistance case would be cancelled based upon medical improvement.

- (5) On May 13, 2009, claimant filed a request for a hearing to contest the department's negative action.
- (6) On July 23, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient and requested a physical consultative examination by an internist.
- (7) The hearing was held on September 9, 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 November 13, 2009.
- (9) On November 18, 2009, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and MA-P is denied at this time for insufficient evidence. The prior medical packet from the original determination of approximately May 2008, needs to be obtained. Listings 4.04, 5.05 were considered in this determination.
- (10) Claimant is a 58-year-old woman whose birth date is [REDACTED]. Claimant is 5'1" tall and weighs 105 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
- (11) Claimant last worked 10 years in [REDACTED] as a cashier and a bagger and has also worked as a typist for the [REDACTED] and a car packing company.
- (12) Claimant was receiving Medical Assistance and State Disability Assistance benefits.
- (13) Claimant alleges as disabling impairments: Hearing problems, hepatitis C, shortness of breath, pulmonary heart disease, chronic liver disease, fatigue, swelling legs, chronic bronchitis.

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 Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 engaged in substantial gainful activity and has not worked since 2000.

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).

The objective medical evidence in the record indicates that a September 16, 2009, medical examination report indicates that on examination the claimant is alert and cooperative. The claimant weighs 109 pounds. Blood pressure is 140/80. Height is 5'1" tall. Vision without glasses is 20/100 on the left and 20/200 on the right and 20/100 bilaterally. Clinically, the claimant is not jaundiced. The claimant's gait is normal. The claimant is able to get on and off the examination table. The claimant can raise both arms above head level. HEENT: normocephalic. External eye movements were intact. Pupils were equal and regular reacting to light in accommodation. Fundus was intact. ENT was benign. Neck was supple. No thyromegaly. No venous engorgement. Trachea is central. No carotid bruit. The chest moves normally on either side.

Respiratory movements are normal. The chest is clear to auscultation and percussion. No rhonchi or rales noted. In the cardiovascular area, the heart size is normal. No audible murmur. There may be a gallop heard over the heart area. JVD is not raised. Air entry is equal. No adventitious sounds. Trachea is midline. The abdomen was soft. Liver, it has one finger enlarged, non-tender. Bowel sounds are normal. No evidence of hernia. Spleen is not palpable. No ascites. In the bones and joints, straight leg raising is equal bilaterally. All peripheral pulses are equal and good bilaterally. He has not wasting of muscles. Hand grip is equal. Lower back movements are restricted to 85% of normal range. There is no kyphoscoliosis. She does not use a cane. In the nervous system, cranial nerves II-XII are grossly intact. No gouty deformities or nodules noted. Sensory, touch, pinprick and sensation are normal. Plantar is flexor bilaterally. Cerebellar function is normal. Motor strength is equal bilaterally. Plantar reflex is flexor. The deep tendon reflexes are 2+ in the upper and lower extremities. Heel to knee and finger and finger, finger to nose testing is normal. The gait is normal. No wasting of muscles. Speech and memory appear to be normal. Orientation is normal. The claimant's general health is good. No leg ulcers. The claimant stated that she is kind of unsteady at times. The conclusion is that she is a 58 year old female suffering with chronic alcoholism, who is sober now. She has a history of cocaine and heroin abuse. The claimant is off drugs. She has a refraction error and she needs glasses. She has a history of pulmonary hypertension for which she is under specific medication. Chest X-ray appears to be non-specific in nature. Resting EKG and chest X-ray are recommended. Recurrent lumbar myofascitis. History of cirrhosis of the liver and history of hepatitis C. The claimant does need new glasses, medications and follow-up. She does seem to have significant medical problems (New Information pp. 1-3).

In February 16, 2008, claimant was diagnosed with end stage renal disease secondary to alcoholic hepatitis as well as hepatitis C (p. 19).

The subjective medical evidence on the record indicates that claimant testified on the record that she can walk a half a block but she was short of breath and she could stand for 5 minutes and she could sit for a half an hour at a time. She could not squat or bend at the waist without pain and she could shower and dress herself but not tie her shoes or touch her toes. Claimant testified that she needed help getting dressed sometimes but the heaviest weight that she could carry was 1 pounds and she was right handed and she had muscle spasms. Claimant testified that her level of pain on a scale from 1-10 without medication and with medication is an 8. Claimant did testify that she smoked 3 cigarettes per day and the doctor told her to quit and she uses the patches and she used to drink a 5th of alcohol per day, but she stopped drinking 3 years before the hearing and she used to take crack cocaine but stopped taking crack 3 years before the hearing. Claimant testified that she does not do much all day and she watches TV 7 hours per day. Claimant testified that she was hospitalized for 3 days in August 2009, for irregular heart beat.

At Step 2, claimant's impairments do not equal or meet 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 the instant case, this Administrative Law Judge finds that claimant does have medical improvement and his medical improvement is related to the claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that claimant's. 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 can perform at least sedentary work even with his impairments. This Administrative Law Judge finds that the department has not established that claimant has medical improvement and that her medical improvement is related to the claimant's ability to perform substantial gainful activity.

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 could probably perform his past work as a .

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, based up on the claimant's vocational profile of , MA-P is denied using Vocational Rule as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and the department has

established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Medical Assistance and State Disability Assistance benefits based upon medical improvement.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

This Administrative Law Judge finds that the department has not established that claimant does have medical improvement in this case and has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's medical assistance and state disability assistance benefits case upon medical improvement. Claimant on the date of hearing was 58 year old woman whose birth date was May 18, 1951. The State Hearing Review Team and the Medical Review Team failed in the burden proving by preponderance of the evidence that claimant has medical improvement which is related to her ability to work.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has not appropriately established on the record that it was acting in compliance with department policy when it proposed to deny claimant's continued disability and application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary work even with her impairments. However, based upon her age and work history, and her health impairments, it has not been established by the department that she would be able to perform even the entire realm of sedentary work. The department has not established its case by a preponderance of the evidence. This Administrative Law Judge cannot find that claimant has medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's medical review application from May 13, 2008, if it has not already done so to determine if all other non-medical eligibility criteria are met. The department shall inform the claimant of a determination in writing. A medical review shall be conducted in December 2011. At that time, the department is ORDERED to assist claimant in gathering all updated medical information from May 2008 through November 2011 so that the Medical Review Team and the State Hearing Review Team will have sufficient information in which to make a proper assessment in 2011.

