

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

IN THE MATTER OF:



Reg. No: 2009-32689
Issue No: 2009-4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 15, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 hearing was held on October 15, 2009. The Claimant appeared and testified.

ISSUE

Whether the Department properly determined at review that the claimant was no longer "disabled" for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) program?

FINDINGS OF FACT

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

1. On June 16, 2009, MRT found the Claimant no longer met the qualifications for disability and found her capable of past work.
2. On July 9, 2009, the Claimant submitted to the Department a request for hearing.
3. The Claimant is 44 years old.
4. The Claimant completed schooling up through high school.
5. The Claimant has employment experience as a cashier and assistant manager at a coffee club. (Based upon the records completed by the Claimant for the Department and submitted as part of the previous medical packets.)

6. The Claimant's limitations have lasted for 12 months or more.
7. The Claimant suffers from tourette's syndrome, bipolar, liver tumor, anxiety, carpal tunnel, arthritis, obsessive compulsive disorder.
8. On [REDACTED], Claimant's treating physician indicates condition deteriorating and limited the Claimant in the following areas: limited to lifting up to 10lbs frequently and up to 25 lbs occasionally, stand or walk less than 2 hours in an 8 hour day, no limitations noted or repetitive movements. This physician indicates Claimant is limited mental in all areas.
9. On [REDACTED], physician indicates a GAF of 41.
10. On [REDACTED], physician indicates a GAF of 55.
11. On [REDACTED], Claimant's treating physician indicates condition stable and limited the Claimant in the following areas: limited to lifting up to 50lbs or more occasionally, stand or walk 6 hours in an 8 hour day, able to sit about 6 hours in a day, limited use of hands and arms to reaching and pushing/pulling only, and no limitations on feet/legs. This physician indicates Claimant is limited mental in all areas.
12. On [REDACTED], a consultative exam indicates Claimant's current GAF to be 60. This physician indicated the following: "The patient does not have a mental disorder which keeps her from working".
13. On [REDACTED], a consultative exam indicates the Claimant's GAF to be 62.

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 (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 order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20 R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

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 a substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The **first step** to be considered is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified at this step in the evaluation.

The **second step** the trier of fact must determine if the Claimant’s impairment (or combination of impairments) which meet or equal the severity of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant’s medical record does not support a finding that the Claimant’s impairment(s) is a “listed impairment” or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR Part 404, Part A. Accordingly, the sequential evaluation process must continue.

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 any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s) (see §416.928).

In this case, the Claimant has had ongoing approval for disability for the last several years. The Claimant’s case was due for a review in April 2009. On June 2009, the MRT found the Claimant was no longer disabled and capable of performing past work. In this case, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds there is medical improvement. Specifically the Claimant’s mental condition has improved according to records considered. The Claimant has a long standing GAF score in the 40 range. The Claimant had achieved a GAF of 55 at the time of the previous review. The Claimant upon a consultative exam no longer demonstrates a GAF of 60. Indicating the Claimant’s mental condition has continued an upward improvement. In addition, this same examiner indicates the Claimant’s mental condition would not prevent employment. Prior records indicate the Claimant suffered debilitating psychological problems that would impact greatly her ability to obtain and retain any employment.

The Claimant's treating physician indicated on the previous review that the Claimant would be limited to standing/walking less than two hours in an 8 hour day. The latest medical from this same physician indicates the Claimant capable of standing or walking 6 hours in an 8 hour day, able to sit about 6 hours in a day. The Claimant's treating physician no longer indicates the ability to lift 50lbs or more occasionally.

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 medical improvement is not related to the ability to work, **Step 4** evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

The medical records presented establish that the mental and physical conditions have had improvement. Thus an increase in the residual functional capacity exists which may relate to the Claimant's ability to do work. Using the most restrictive as a guide, the Claimant would be limited, by the following, to sedentary work. Given the Claimant's limited employment experience, this Administrative Law Judge will proceed.

Accordingly, vocational factors such as age and education are evaluated to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v)

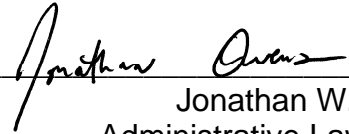
At the time of hearing, the Claimant was 44 years old thus considered to be younger age individual for MA-P and SDA purposes. The Claimant has a high school education with prior work experience. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform **sedentary work**. After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.27, it is found that the Claimant is not disabled for purposes of MA-P and SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is no longer considered to be medically disabled.

Accordingly, the Department's decision is hereby UPHELD.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/28/10

Date Mailed: 07/28/10

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 receipt 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.

JWO/dj

cc:

