

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

IN THE MATTER:



Reg No. 20096949
Issue No. 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: March 18, 2009
Lake County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 March 18, 2009.

ISSUE

Whether the Department of Human Services (department) was properly established that claimant is no longer disabled for State Disability Assistance (SDA).

FINDINGS OF FACT

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

1. During September 2008, claimant was receiving SDA. Her assistance was due for medical review.
2. November 7, 2008, the Medical Review Team (MRT) denied claimant's SDA medical review. Department Exhibit A.
3. November 12, 2008, the department sent claimant written notice that her SDA would terminate.
4. November 24 2008, the department received claimant's timely request for hearing.

5. December 30, 2008, the State Hearing Review Team (SHRT) denied claimant's SDA medical review. Department Exhibit B.
6. March 18, 2009, the telephone hearing was held. Prior to the close of the record, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. April 24, 2009, after review of all medical evidence, the SHRT again denied claimant's SDA medical review. SHRT Decision, 4-24-09.
7. Claimant asserts disability based on impairments caused by breast cancer, herniated discs, and damage to nerves in right arm..
8. Claimant testified at hearing. Claimant is 48 years old, 5'6" tall, and weighs 132 pounds. Claimant completed 11th grade and is able to read, write, and perform basic math. Claimant's driver's license is revoked. Claimant cares for her needs at home. .
9. Claimant's past relevant employment is as a bartender.
10. At last positive decision in June 2008, claimant was just completing chemotherapy and had increased fatigue due to that treatment. She was about to begin radiation. Doctor treatment notes indicate claimant reported back pain but was doing well on pain meds. Department Exhibit A, pgs 41-42, 46-47.
11. At review in September 2008, claimant was examined by her oncologist and treatment notes were made. Treatment notes indicate claimant completed her radiation therapy but was having some tiredness that was associated with the radiation therapy. She appeared healthy looking. Abdomen was soft and non tender and there were no palpable masses. Liver was not clinically enlarged. Examination of the breasts revealed no abnormal masses. Assessment was carcinoma of the breasts in clinical remission. Claimant was to start on a three to five year preventative regimen. Department Exhibit A, pg 21. On October 7, 2008, claimant was again examined by her physician. Treatment notes indicate that she was doing quite well. Her incision shows no evidence of any problems. On physical examination, the right breast was examined in seated and in supine position and shows no palpable abnormality and no auxiliary adenopathy. Mammograms were reviewed of both breasts and showed no evidence of cancerous lesions. Department Exhibit A, pg 16. Independent exam conducted on November 8, 2008 revealed the following in pertinent part: There are no obvious bony deformities. Peripheral pulses are easily palpated and symmetric. There is no edema or varicose veins. Patient has no difficulty getting on and off the exam table, with heel

toe walking, or with squatting. There is mild decreased strength about the triceps muscle and volar flexors of the right wrists and the right upper extremity strength is gauged at 4/5. Grip strength is preserved. The hands have full dexterity. The remainder of the extremities demonstrate full strength. There is positive straight leg raising on the right. Reflexes are present and symmetric in all extremities. There is diminished monofilament and vibratory sensation in both medially and laterally distal to the right knee. There is also absent monofilament and vibratory sensation of the fourth and fifth digits of the right hand distal to the metacarpophalangeal joints. Romberg testing is negative. Finger evaluation is appropriate. There is no disorientation noted. Doctor's conclusion is female with history of breast cancer and auxiliary dissection with right arm weakness. She has history of low back pain. Today on physical exam, there is no lymphadenopathy appreciated. There is full lumbar spine range of motion. There is no weakness noted within the right lower extremity. Department Exhibit A, pgs 142-144. MRI conducted on 4/15/08 revealed disc bulges involving the lower three lumbar levels with a far lateral to the right asymmetric disc protrusion at the L4-5 level and no evidence of metastatic disease on this exam. Department Exhibit A, pg 33. December 1, 2008, physician examination revealed similar findings. Claimant Exhibit A, pgs 1-3. On or about October 31, 2008, claimant underwent an independent psychological exam. The prepared report indicates that claimant reported being depressed because "she is going to die" apparently due to her cancer. She reported pain in her lower back and hip. The report indicates that claimant's speech was clear and understandable. Her rate and pressure of speech seemed appropriate. She denied hallucinations or delusions. She has never threatened or attempted suicide. She has never had any type of psychiatric admissions. She was able to remain seated throughout the hour long examination. She did not appear to be physically uncomfortable. She was able to raise her arm over her head while demonstrating things that are hard for her. She was able to get in and out of her chair without difficulty. She did shift around a little bit in her chair. She was able to make and maintain eye contact. She seemed somewhat "snippy." Her attention and focus seemed appropriate. She did not seem to have difficulty interacting with the examiner or providing details. She did not appear to be overly sad, depressed, or anxious. She was oriented x 3 and cognitive functions were within normal limits. Doctor indicates AXIS I diagnoses of mood disorder due to general medical condition and alcohol abuse in full sustained remission. GAF was assessed at 56. Department Exhibit A, pgs 136-141.

12. When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical condition has occurred. At last positive decision, claimant was still undergoing treatment for her breast cancer and had resulting fatigue. She had protruding discs in her lumbar spine that caused pain. The pain was treated successfully with medication. At review, claimant's treatment for breast cancer has ended and she is in full remission. She has some right arm weakness and loss of sensation. She also has pain in her lumbar spine due to protruding discs. She has some loss of sensation below the knee but no loss of strength. She retains full dexterity in her upper extremities. At review, she was diagnosed with depression. Symptoms were considered mild to moderate.
13. Claimant's medical improvement is related to the ability to perform work.
14. Claimant is capable of performing work activities.

CONCLUSIONS OF LAW

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2001 PA 82. The Family Independence Agency (FIA or agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Medical improvement. 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).... 20 CFR 416.994(b)(1)(i).

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. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

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. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

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).... 20 CFR 416.994(b)(1)(iv).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical

severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b)(1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) Recipient of Supplemental Security Income, Social Security or Medical Assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the

- minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.
- (c) A resident of an adult foster care facility, a home for the aged, a county infirmary, or a substance abuse treatment center.
 - (d) A person receiving 30-day post-residential substance abuse treatment.
 - (e) A person diagnosed as having Acquired Immunodeficiency syndrome (AIDs).
 - (f) A person receiving special education services through the local intermediate school district.
 - (g) A caretaker of a disabled person as defined in subdivision (a), (b), (e), or (f) above.
- (2) Applicants for and recipients of the State Disability Assistance program shall be considered needy if they:
- (a) Meet the same asset test as is applied to applicants for the Family Independence Program.
 - (b) Have a monthly budgetable income that is less than the payment standard.
- (3) Except for a person described in subsection (1)(c) or (d), a person is not disabled for purposes of this section if his or her drug addiction or alcoholism is a contributing factor material to the determination of disability. 'Material to the determination of disability' means that, if the person stopped using drugs or alcohol, his or her remaining physical or mental limitations would not be disabling. If his or her remaining physical or mental limitations would be disabling, then the drug addiction or alcoholism is not material to the determination of disability and the person may receive State Disability Assistance. Such a person must

actively participate in a substance abuse treatment program, and the assistance must be paid to a third party or through vendor payments. For purposes of this section, substance abuse treatment includes receipt of inpatient or outpatient services or participation in Alcoholics Anonymous or a similar program. 1995 PA 156, Sec. 605.

- (4) A refugee or asylee who loses his or her eligibility for the federal Supplemental Security Income program by virtue of exceeding the maximum time limit for eligibility as delineated in Section 402 of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 U.S.C. 1612, and who otherwise meets the eligibility criteria under this section shall be eligible to receive benefits under the State Disability Assistance program.

At Step 1, claimant's impairments do not meet or equal any Social Security Listing. Finding of Fact 11-12.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has medically improved at medical review. At last positive decision, claimant was still undergoing treatment for breast cancer. She was being treated with medication for low back pain due to protruding disc. At medical review, claimant's breast cancer is in remission and she has ended her treatment. She still has back pain that bothers her. She has some loss of sensation below the knee. She has no loss of lumbar range of motion, strength, or dexterity in her lower limbs. She has some reduced strength and some reduced sensation in her right upper extremity. She retains full dexterity. Finding of Fact 10-12.

At Step 3, claimant's medical improvement is related to her ability to perform work. Her cancer treatment has been completed. Physical exams are within normal limits with the exception as noted at Step 2 above. Finding of Fact 10-12. Improved physical functioning enables claimant to perform work activities. The record does not establish that claimant has severe physical impairments. Department Exhibit A.

At Step 4, claimant's medical improvement is related to the ability to perform work. See Step 3 above.

At Step 5, claimant does not have current severe impairments. As discussed at Step 2 above, claimant has some weakness and loss of sensation in her right

upper extremity. She has lumbar back pain and some loss of sensation below the knee on the right but no loss of strength or dexterity. Claimant has been diagnosed with depression. Cognitive functions are generally within normal limits. Examiner assesses her GAF at 56 indicative of mild to moderate symptoms. Finding of Fact 12, DSM IV, 1994 R. See discussion at Steps 2 and 3 above.

At Step 6, claimant's past relevant employment has been as a bartender. Finding of Fact 9. The record appears to establish that with extremity weakness and loss of sensation, claimant would have difficulty performing the tasks required by this job. Finding of Fact 10-14.

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).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 7, the objective medical evidence of record is sufficient to establish that claimant is capable of performing at least light work duties. See discussion at

