

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: 2010-16647

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 11, 2010

Ingham 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 March 11, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's 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 March 2009.

(2) On March 31, 2009, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.

(2) On April 1, 2010, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

(3) On January 6, 2010, the department caseworker sent claimant notice that her Medical Assistance and State Disability Assistance case would be cancelled based upon medical improvement.

(4) On January 11, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On February 3, 2010, the State Hearing Review Team determined that it did not have sufficient information in requested an independent physical consultative examination.

(6) The hearing was held on March 11, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.

(7) Additional medical information was received and sent to the State Hearing Review Team on March 11, 2010.

(8) On March 19, 2010, the State Hearing Review Team again denied claimant's application stating that claimant is capable of performing other work in the form of medium work per 20 CFR 416.967(c), unskilled work per 20 CFR 416.968(a), pursuant to Medical-Vocational Rule 203.28.

(9) Claimant is a 52-year-old woman whose birth date is [REDACTED] Claimant is 5'7" tall and weighs 185 pounds. Claimant is a high school graduate and a licensed cosmetologist. Claimant is able to read and write and does have basis math skills.

(10) Claimant last worked in 2001 at [REDACTED] as a hairstylist. Claimant has also worked with in home nursing.

(11) Claimant alleges as disabling impairments: low back pain, hip pain, anxiety, depression, anxiety attacks, as well as lactose intolerance, and a stiff neck.

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 2006.

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 February 24, 2010, internist examination indicates that her general appearance was well developed and a well nourished lady in no acute distress. Vital signs: her height was 68”, weight was 189, pulse was 82, blood pressure was 133/72. Respiratory rate was 18 unlabored. PERRLA, EOM intact. TM were pearly gray. Nares and pharynx was unremarkable. Discs not evaluated. The neck was supple

without adenopathy, thyromegaly, bruits or jugular venous distention. The skin was unremarkable. The chest was and breath sounds were equal. The heart had regular rate and rhythm. The abdomen was protuberant. There was no overt tenderness, masses, or organomegaly. Negative CBA tenderness. Well healed surgical scars. The distal extremities had good pulses and no pedal edema. The claimant had slow but normal range of motion in the neck, back, shoulders, elbows, wrists, hands, knees, ankles and feet. The claimant has dextrokyphoscoliosis of thoracic spine. It does not appear to cause any significant pulmonary impingement. The neurologic examination was unremarkable and the assessment was chronic depression with anxiety components, chronic thoracolumbar pain with kyphoscoliosis and a strong recommendation for a mental health consultation. (New information pp. a, b, c) A mental status evaluation of December 7, 2009, indicates that throughout the evaluation claimant was extremely somatically preoccupied, dramatic in her presentation and emotionally labile. She was very vague, rambling, self-absorbed, and tangential. She was oriented x3. She could recall 6 digits forward and 5 digits backward. She could recall 3-3 objects after a 3 minute time lapse. Claimant knew her birthday and correctly name numerous recent past presidents. She exhibited average capabilities for general fund of information. She correctly name many large, many currently famous people, and 3 current events. In calculations, she repeated serial 7's with no mistakes. She exhibited the average capabilities for abstract reasoning. She stated that the proverb, the grass is greener on the other side of the fence meant, what you think is better in life isn't really. She stated that the proverb, don't cry over spilled milk meant, forget the past and don't worry. In similarities and differences, she indicated that a bush and a tree were alike and that they were plants, and indicated that they were different in size. In judgment, she exhibited average capabilities in her social judgment and comprehension. She stated that if she found a

stamped addressed envelope on the street, she would mail it. She stated that if she were the first person in a theatre to discover a fire, she would let people know. She was diagnosed with anxiety disorder, personality disorder, intermittent panic attacks, and a current GAF of 50. Her prognosis was poor and she would not be able to manage her own funds. (pp. 4-7)

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.

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 claimant can perform at least light or sedentary work even with her impairments.

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 her past work as a cosmetologist and she could perform other 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). 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.

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 on the record that it was acting in compliance with department policy when it denied 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 light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is AFFIRMED.

/s/
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director

Department of Human Services

Date Signed: May 25, 2010

Date Mailed: May 26, 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.

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