

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.: 2010-2827
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 9, 2009
Wayne County DHS (19)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 December 9, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the State Disability Assistance (SDA) program and not "disabled" for purposes of the Medical Assistance (MA-P) program?

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 has been an ongoing recipient of SDA benefits based upon disability based upon an application of October 17, 2008.

- 2) In May of 2009, the department reconsidered claimant's ongoing eligibility for SDA benefits.
- 3) On May 26, 2009, claimant applied for MA-P.
- 4) On August 19, 2009, the department notified claimant that it intended to terminate her ongoing SDA benefits effective September 1, 2009, based upon the belief that claimant no longer met the disability criteria and that her May 26, 2009, application for MA-P had been denied based upon claimant's failure to meet the disability criteria.
- 5) On August 25, 2009, claimant filed a timely hearing request to protest the department's proposed closure of her ongoing SDA benefits and denial of her May 26, 2009, application for MA-P.
- 6) Thereafter, the department deleted its proposed negative action regarding claimant's SDA benefits pending the outcome of the instant hearing.
- 7) Claimant, age 50, has a tenth-grade education.
- 8) Claimant last worked in September of 2005 as an emergency medical technician and non-emergency van driver. Claimant has also performed relevant work as a medical assistant in a doctor's office. Claimant's past relevant work required the ability to engage in medium work activities.
- 9) Claimant has a history of degenerative joint disease of the bilateral knees. She has undergone left ACL reconstructive surgery.
- 10) Claimant continues to suffer with degenerative joint disease of the bilateral knees. Claimant experiences chronic pain which is aggravated by standing and walking and balance problems. Claimant is required to use a cane for all ambulation.

- 11) When comparing current medical documentation with documentation from the most recent Medical Review Team approval on January 23, 2009, it is found that medical improvement of claimant's condition has not occurred as there has been no decrease in the severity of claimant's impairments as shown by changes in symptoms, signs, and/or laboratory findings.

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).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets Federal Supplemental Security Income (SSI) standards for at least 90 days. Other than the more limited 90-day duration, the department must use the same operative definition for "disabled" when considering eligibility for SDA as is used for SSI under Title XVI of the Social Security Act. 42 CFR 435.540(a). Disability is defined as follows:

"Disability" is:

...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

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, claimant is not currently working. Accordingly, claimant may not be disqualified for SDA benefits at this step in the sequential evaluation process.

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). This Administrative Law Judge finds that claimant's impairments are not "listed impairments" nor equal to listed impairments. 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 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, claimant was most recently approved for SDA benefits by the MRT on January 23, 2009. Claimant's finding of disability was based upon the condition of her bilateral knees. On [REDACTED], claimant's treating orthopedic specialist reported that claimant experienced persistent pain in her bilateral knees with severe patella ligament rupture of the right knee. A functional capacity assessment performed [REDACTED], reported that lifting, carrying, pushing, and pulling were unsafe for claimant secondary to her unsteady balance and difficulty bending down. The evaluator reported that she was unable to ambulate safely without the use of a straight cane. More recently, claimant was evaluated by a physiatrist (specialist in physical medicine and rehabilitation) for the [REDACTED] on [REDACTED]. The physiatrist diagnosed claimant with hypertension, left ACL repair, and right quadriceps tendon repair. The consultant opined that, based upon his objective examination, claimant was unable to stand, bend, or stoop as well as unable to squat and arise from squatting. The consultant opined that claimant did require the use of a walking aid in order to reduce pain and reduce the possibility of a fall. This Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds that there has been no 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 there is nothing to suggest that any of the exceptions listed above apply to claimant's 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 none of the above-mentioned exceptions applies to claimant's case. Accordingly, per 20 CFR 416.994, the undersigned concludes that claimant continues to be disabled for purposes of the SDA program.

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).

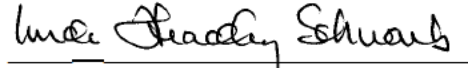
Inasmuch as claimant has been found to be disabled under SSI disability standards from October of 2008 through the present time, claimant clearly meets the “disability standard” for purposes of MA-P benefits. Accordingly, the department’s determination that claimant is not “disabled” for purposes of her May 26, 2009, application, is hereby reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to meet the definition of medically disabled under the State Disability Assistance program and is medically disabled for purposes of the Medical Assistance program as of May of 2009.

Accordingly, the department is ordered to initiate a review of the May 26, 2009, application for Medical Assistance, if it has not already done so, to determine if all other non medical eligibility criteria are met. The department shall inform claimant of its determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall

review claimant's continued eligibility for Medical Assistance and State Disability Assistance program benefits in July of 2010.


Linda Steadley Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 16, 2010

Date Mailed: February 18, 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.

LSS/pf

cc:

