

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: 2010-32592
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 26, 2010
Iosco 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 May 26, 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 on April 8, 2010, based upon a State Hearing Review Team approval of April 6, 2009.

(2) On April 6, 2010, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

(3) On April 15, 2010, the department caseworker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.

(4) On April 23, 2010, claimant filed a request for a hearing to contest the department's negative action.

(5) On May 5, 2010, the State Hearing Review Team again denied claimant's review application stating that claimant is capable of performing other work and could perform light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.14.

(6) Claimant is a 50-year-old woman whose birth date is [REDACTED] Claimant is 5'8" tall and weighs 198 pounds. Claimant has a GED. Claimant is able to read and write and does have basic math skills.

(7) Claimant last worked in 2008 as a packer at [REDACTED] Claimant has also worked as a Certified Nursing Assistant and as a cashier.

(9) Claimant alleges as disabling impairments: degenerative disc disease, osteoarthritis in the knee, muscle deterioration, restless leg syndrome, fibromyalgia, torn rotator cup, cervical spondylosis, and depression as well as chronic obstructive pulmonary disease, and carpal tunnel syndrome.

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 2008.

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 March 17, 2010, Michigan Medical Consultants physical examination indicates that the claimant is wearing a right sided knee brace. She was cooperative in answering questions and following commands. The claimant immediate, recent and remote memory is intact with normal concentration. The claimant insight and judgment are both appropriate. The claimant provides good effort during the examination. The blood pressure on the left arm was 160/80. Pulse was 88 and regular. Respiratory rate was 16, her weight was 198 pounds, and her height was 67" without shoes. Her skin was normal. In her eyes and ears, there was a visual acuity in the right eye equal to 20/30 and the right eye equal 20/30 without corrective lenses. Pupils were equal, round and reactive to light. The claimant could hear conversation speech without limitation or aids. The neck was supple without masses. In the chest, breath sounds were clear to auscultation and symmetrical. There is no accessory muscle use. In the heart, there was regular rate and rhythm without enlargement. There was a normal S1, S2. In the abdomen, there is no organomegaly or masses.

Bowel sounds are normal. In the vascular area, there is no clubbing, cyanosis or edema detected. The peripheral pulses are intact. In the musculoskeletal area, there is no evidence of joint laxity, crepitation or effusion. Grip strength remains intact. Dexterity is unimpaired. The claimant could pick up a coin, button clothing and open a door. The claimant had no difficulty getting on and off the examination table, however mild difficulty heel and toe walking. Moderate difficulty squatting and was unable to hop. Straight leg raising is negative. There is no paravertebral muscle spasm. There is synovial thickening about the right knee. Range of Motion studies: there is normal of range of motion in the cervical spine, normal range of motion in the dorsolumbar spine, normal range of motion in the shoulder, elbows, hips, knees, ankles, wrists as well as the hands and fingers. Neurological: cranial nerves were intact. Motor strength and tone were normal. Sensory was intact to light touch and pin prick. Romberg testing is negative. The claimant walks with a small step gait without the use of an assist device. Extremity reflexes: the right knee is 0, the left is 1+, the right ankle is 1+, and the left ankle is 1+. The conclusion is arthritis. She did wear a knee brace but there is no real instability. She had some synovial thickening in the left but not as pronounced. In regards to her back, there may have been some degenerative arthropathy and kyphosis, again due to wear and tear. There was no myopathy or neuropathy noted. She should avoid repetitious twisting, pushing, bending, or lifting over 20 pounds. She would be able tolerate standing 4-6 hours out of an 8 hour day. (pp. 3-7) A February 25, 2010, medical assessment indicates that claimant had chronic obstructive pulmonary disease and was advised to quit smoking. (p. 44) A January 22, 2009, report indicates that the claimant was in the doctor's office for a refill of [REDACTED] for chronic pain good control. She was not feeling tired or poorly, no fever, no chills, no eye symptoms, no ear aches, no discharge from the ears, no chest discomfort, or pain, no palpation, no intermittent leg

claudication and no soft tissue swelling. She had no epistaxis and no sore throat. No chest pain or discomfort or palpitations. She was not sleeping upright or with extra pillows. She had no polyphagia, no abdominal pain, no diarrhea, and no constipation. No hematuria and no dysuria. No polydipsia. Arthralgias mainly in lower back, no neurological deficits. No localized joint swelling. No fainting, no convulsions, no anxiety. Her temperature was 98.5 degrees Fahrenheit, respiratory rate 20 per minute. Pulse rate 72 beats per minute, blood pressure 110/80, weight 195, her general appearance was alert and oriented x3, and well developed. Her neck showed no abnormalities, her pharynx was normal, and lymph nodes were normal. Lungs pulmonary auscultation revealed abnormalities, distant scattered wheezes. Respiration, rhythm, and depth was normal. Cardiovascular was normal, heart sounds were normal, no murmurs were heard. Abdominal palpation revealed no abnormalities. Musculoskeletal system was normal. Neurological and motor exam demonstrated no dysfunction. General appearance was normal.

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 claimant could perform at least light or sedentary tasks 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 cashier even with her impairments.

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 her 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: June 10, 2010

Date Mailed: June 10, 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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