

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.: 2010-10712
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 22, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 conducted from Detroit, Michigan on February 22, 2010. The Claimant appeared and testified. [REDACTED], MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of continued entitlement to Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefits?

FINDINGS OF FACT

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

1. Claimant was determined to be disabled in 2003 by meeting a listing with a medical review scheduled for November 10, 2008. (Exhibit B, pp. 1, 2).

2. On October 22, 2009, the Medical Review Team issued a denial of continued medical benefits.
3. On October 26, 2009 the Department sent the Claimant a Notice of Case Action informing the Claimant that she was found no longer disabled.
4. On October 30, 2009, the Department received the Claimant's written request for a hearing protesting the determination that she was no longer disabled. (Exhibit 1, p. 2).
5. On December 23, 2009, the State Hearing Review Team ("SHRT") determined that Claimant was capable of performing medium work and exhibited medical improvement per the provisions of 20 CFR 416.994. (Exhibit 2).
6. Claimant's impairments have been medically diagnosed as uncontrolled grand mal seizures, severe headaches and schizophrenia.
7. Claimant's physical symptoms are seizures (Two seizures occurred last week. Generally, they happen 2-3x/month and Claimant has been to the hospital over ten times in the past two years) and migraine headaches.
8. Claimant's mental symptoms are memory problems, difficulty concentrating, confusion, nervousness, weight loss 10 lbs. in a month, sleep disturbances, and fatigue.
9. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.
10. At the time of hearing, the Claimant was 47 years old; right handed; 5'4" tall and weighed 120 pounds.
11. The Claimant completed school through the 10th grade. She has difficulty reading, writing and performing basic math. Her work history is unskilled.
12. Claimant takes the following prescriptions:
 - Folic Acid
 - Ibuprofen

- Hydroclodone
- Methocarbamol
- Keppa
- Phenythion
- Quepac
- Samotidine

13. Claimant testified that she has been hospitalized more than 10 times in the past two years due to break through seizures. Claimant testified that most recently she was hospitalized after two seizures last week.
14. Claimant testified that she does nothing alone. She is always in the presence of another in case she has a seizure.
15. New Medical Records were reviewed as follows, in part:

9/23/09 patient progress notes (Exhibit 1, p. 7)

Diagnosis of schizophrenia. Seizures happen about 2x/month.

9/10/08 Hospital Admission (Exhibit 2A)

Pt presents with chief complaint of having a tonic-clonic seizure this morning after forgetting to take night dose of Dilantin. Lost control of bladder and tongue bite.

ASSESSMENT/PLAN: Breakthrough seizure likely related to alcohol excess;
Gastrointestinal/deep venous thrombosis prophylaxis.

8/27/09 Internal Medicine Medical Examination Report (Exhibit 1, pp. 11-12)

HX: seizure disease, migraine

PHYSICAL LIMITATIONS: lifting 10 lbs occasionally, stand/walk at least 2 hours in 8 hour day, sit less than 6 hours in 8 hour day.

9/29/03 Internal Medicine IME (Exhibit 1, p. 20-23)

HX: grand mal seizures for more than 20 yrs. 2-3 seizures/month. She has grand mal seizures. She states she does have tongue biting. She states she has been hospitalized many times in the past for seizures. She does have postictal confusion which lasts 5 to 10 minutes.

IMPRESSION: She does have frequent seizures despite being on Dilantin.

9/29/03 Neurologist IME (Exhibit 1, p. 24-27)

HX: Description of seizures – passing out, shaking spells, tongue biting and postictal confusion, she is very tired. She takes Dilantin 100 mg 3x/day.

CONCLUSION: The patient is suffering from seizure disorder which is not very well controlled. The patient has leg pain as well.

6/30/03 Medical Exam Report (Exhibit 1, pp. 33-34).

PHYSICAL LIMITATIONS: No lifting; no heavy machinery work/driving/swimming/no flying.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, 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 Reference Tables (“RFT”).

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).

A. Substantial Gainful Activity.

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). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is

realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. In this case, Claimant has not worked since prior to 2003, so the analysis will proceed at the second step.

B. Listed Impairment

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). In this case, the following impairment was reviewed: 11.03 *Epilepsy*, 20 CFR 404 § 11.03. Based on the hearing record, the undersigned finds that the Claimant's medical record may support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. However, due to the lack of recent medical records in the file to document the frequency of Claimant's seizures, the Administrative Law Judge will continue the analysis at the next step.

C. Medical Improvement

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, the undersigned finds, based on the evidence in the file, that Claimant has exhibited no medical improvement. First, Claimant was granted benefits based on meeting a listing or the substantial equivalent of a listing. Claimant testified that she continues to suffer from 3-4 seizures per month and has been seen at the hospital for seizures over ten times in the last two years. As a result, Claimant never stays home alone. Nor does she go out without someone else available to help her should she have a seizure. Claimant also testified that she continues to have her seizure medication adjusted as recently as last week, indicating that the seizures are still not under control.

Second, the medical evidence submitted by the Department does not refute that Claimant meets a listing. Recent medical evidence includes a progress note indicating that Claimant has seizures about twice a month and has been diagnosed with schizophrenia. (Exhibit 1, p. 7). There is also a hospital admission from 9/10/08 indicating that Claimant had a seizure with loss of bladder control and tongue bite. (Exhibit 2A). The Independent Medical Examination also reports that Claimant has seizures 2-3 times per month with tongue biting, loss of consciousness and postictal confusion for 5-10 minutes following. In fact, the Impression of the IME is that Claimant has "frequent seizures despite being on Dilantin" and gives no opinion about Claimant's ability to work. Finally, Claimant's own physician indicates that there is an ongoing seizure disorder and that Claimant has physical limitations of lifting less than 10 lbs

occasionally, stand/walk 2 hours in 8 hour day and sitting less than 6 hours in an 8 hour day. These limitations would restrict Claimant to a sedentary job.

D. Exceptions

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 none of the above stated exceptions apply.

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 second group of exceptions apply. Claimant was present at the hearing and testified credibly about her medical condition. There is one note from the 9/10/08 hospital admission indicating that Claimant forgot to take her medication; however, Claimant has had multiple seizures and multiple hospital visits for seizures. There simply is not sufficient evidence to find that Claimant is consistently noncompliant with her medication. Accordingly, the undersigned finds that Claimant has continued to follow prescribed treatment and has been cooperative.

F. Severe Impairment

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, the Claimant suffers from medical conditions including, uncontrolled grand mal seizures with loss of consciousness, severe headaches, and schizophrenia. Claimant is under the care of physicians and has been placed on physical limitations. The undersigned, therefore, finds that Claimant's physical and mental impairments are sufficiently severe. The analysis will continue at the next step.

G. Currently ability to engage in substantial gainful activity

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, Claimant's primary care physician has currently placed Claimant on physical limitations of lifting less than 10 lbs. occasionally, stand/walk 2 hours in an 8 hour day, and sitting less than six hours in an 8 hour day. Claimant testified that she never goes out or stays home alone. She is unable to even go to the grocery store by herself for fear of having a seizure. Based on his physical limitations alone, Claimant would be limited to sedentary work. Claimant has a 10th grade education and cannot read or write well. Claimant has not worked in over seven years and has a history of unskilled work. Given Claimant's limitations of uncontrolled seizures, the undersigned finds that Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments results in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

In this case, there is sufficient evidence to support a finding that Claimant's impairment continues to disable her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

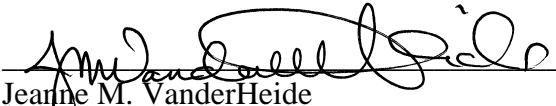
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled for purposes of continued benefits under the Medical Assistance Program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the redetermination application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in March, 2011 in accordance with Department policy.


Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: March 16, 2010

Date Mailed: March 17, 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.

JV/hw

cc:

