

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2010-16640
Issue No: 2009; 4031
Case No: [REDACTED]
Load No:
Hearing Date:
March 2, 2010
Otsego 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 2, 2010. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Jana Bachman. Judge Bachman is no longer affiliated with the Michigan Administrative Hearing System Administrative Hearings for the Department of Human Services and this hearing decision was completed by Administrative Law Judge Landis Y. Lain by considering the entire record.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's continued 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 and State Disability Assistance benefit recipient and her Medical Assistance case was scheduled for review in December 2009.

- (2) On December 14, 2009, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On December 14, 2009, the Medical Review Team denied claimant's continued Medical Assistance and State Disability Assistance benefit eligibility stating that claimant had medical improvement.
- (4) On December 28, 2009, the department caseworker sent claimant notice that her application was denied.
- (5) On January 8, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) On February 3, 2011, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: that claimant is receiving treatment from Community Mental Health. In 2008, she had disorganization of her thinking and was guarded and paranoid. The claimant was receiving ongoing treatment. In 2009, she had improved. She was less anxious and her thought processes were goal oriented, although over inclusive. She had shoulder pain but no significant abnormal findings on examination. The x-ray of the shoulder was unremarkable. She did have some degenerative changes of the MRI of the cervical spine. The claimant's mental status has improved. Claimant's impairments do not meet/equal the intent or severity of a Social Security Listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile of a younger individual, a high school education and history of unskilled work, MA-P is denied due to medical improvement and using Vocational Rule 203.28 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (7) On the date of hearing, claimant was a 44-year-old woman whose birth date was [REDACTED]. Claimant is 5'4" tall and weighed 155 pounds. Claimant completed the 12th grade and a nurse's aide program and was able to read and write and does have basic math skills.
- (8) Claimant last worked in 2009 as a home help care aide. She has also worked as a certified nurse's assistant.
- (9) Claimant alleges as disabling impairments: Emotional problems, anxiety, shoulder and arm problems.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 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 2009.

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 Medical Examination Report dated June 4, 2009 indicates that claimant's blood pressure is 120/80; a sitting pulse rate of 70; respiratory rate of 16. Temperature was 97.4 degrees Fahrenheit. Her height was 64.5 inches and her weight was 145 pounds. Her body mass index was 24.5 and her body surface was 1.72. She was well-oriented to time, place and person, well developed and well nourished. She had no signs of abnormality. In her back she had no costovertebral tenderness. Her abdomen was clear to auscultation. Her bowel sounds were normal. She had no abdominal tenderness and palpation. In the neurological area, her cognitive function was normal. Her speech was normal. The psychiatric evaluation shows she has suicidal ideation but her appearance was normal, grooming was normal, mood was euthymic. Affect was normal. Thought processes were not impaired. Thought content revealed normal impairment. No suicidal plans or suicidal intent. Her skin had general appearance. The assessment was dysfunctional uterine bleeding and depression. (Pages 15 and 16.)

A September 18, 2009 letter from a doctor indicates that claimant's recent MRI of the neck came back abnormal. She had a shoulder view dated June 26, 2009 which indicates that on the right shoulder there were three projections at the right shoulder demonstrating no evidence of fracture or dislocation. No unusual periarticular classifications to identify. The medical report was taken on August 28, 2009 (page 6). A pelvic examination dated June 22, 2009 indicates a fibroid uterus and small amount of free fluid which could be due to a recently ruptured follicle (page 27)

A September 16, 2009 CT of the cervical indicates that there was right upper extremity radiculopathy and the impression was degenerative disc space narrowing with right posterior disc protrusion at C6-C7 produces severe right neuroforaminal stenosis with likely impingement involving the right C7 nerve root and moderate central pain on stenosis to the right of midline and small disc bulges at C3/C4 and C4/C5 with patent central neuroforaminal. No cord signal abnormality (pages 28 and 29).

In September 2008, the client was very unfocused. She had some rambling and disorganization in her thinking. She had occasional problems in sorting out her thoughts. She denied hallucinations, delusions and paranoia. However, she became very guarded, anxious, and possibly paranoid with some questions were repeated for clarification. Diagnosis included mood disorder NOS, likely with psychotic features and rule out psychotic disorder NOS (page 76). With treatment, the claimant's condition was improving (page 75).

In September 2009, the claimant was not anxious or depressed. Thought processes were goal-oriented (page 32). In October 2009, she seemed slightly anxious, her demeanor was calm and euthymic. Her affect was broad and she was able to smile. Thought process found her over-inclusive and tangential. However, she could stop speaking and she did not have pressure (page 31). A physical examination dated August 2009 showed the claimant's overall findings of the right shoulder were normal. The shoulder was nontender to palpation. There was no joint effusion and she had full range of motion with minimal pain. She did report some tingling to the fingers when extending the arm. Assessment was compression arthralgia of the shoulder region (page 20). X-ray of the right shoulder in August 2009 was unremarkable (page 26). An MRI of the cervical spine dated September 2009 showed degenerative changes of the area of C6/C7 and small disc bulges at C3/C4 and C4/C5 (page 28).

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

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).

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 nurse's aide even with her impairments.

Claimant testified on the record that she does live alone and that her family and her Medical Assistance and State Disability Assistance and Food Assistance Program benefits for her. Claimant does have a driver's license but does not have a car. Claimant does cooking, grocery shopping, does housekeeping duties. On a typical day, she describes it as she gets up at 10 a.m., making breakfast, she works on the computer and writes stories, she helps out cleaning the nursery at church. She tries to keep busy by reading and educating herself and celebrating her recovery, going for walks, and meeting with friends. Claimant testified she has no physical impairments that she does have some poor memory, racing thoughts and is hard to connect with tasks, and medications make her hypoglycemic and has blackouts. Claimant testified that she has no problems with walking and no issues with standing. She can sit without problems and carry weight without problems.

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 Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 7, 2011

Date Mailed: June 8, 2011

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.

2010-16640/LYL

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.

LYL/tg

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