

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.: 2010-17099
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 14, 2010
Wayne County DHS (18)

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 April 14, 2010. Claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

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 MA-P and SDA benefits based upon a Medical Review Team approval of claimant's September 11, 2008, application.
- 2) On November 19, 2009, the department notified claimant that her MA-P and SDA benefits would terminate based upon the belief that claimant was no longer "disabled" for purposes of program benefits.
- 3) Claimant maintained that she did not receive the notice of proposed negative action.
- 4) On December 1, 2009, claimant's MA-P and SDA program benefits were terminated.
- 5) On January 19, 2010, claimant filed a hearing request to protest the department's action.
- 6) Claimant, age 25, has an eleventh-grade education.
- 7) Claimant last worked in February of 2008 as a waitress. Claimant has also performed relevant work as a cook, bartender, and "fire watcher" at an oil refinery. Claimant's relevant work history consists exclusively of unskilled work activities.
- 8) Claimant has a history of endometriosis, depression, and alcohol abuse.
- 9) Claimant currently suffers from fibromyalgia; gastritis; hiatal hernia; major depression, recurrent; and substance dependence, alcohol.
- 10) Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who has the physical and mental

capacity to engage in simple, unskilled, sedentary work activities on a regular and continuing basis.

- 11) When comparing current medical documentation with past documentation, it is found that medical improvement of claimant's condition has occurred as there has been a decrease in the severity of claimant's impairments as shown by changes in symptoms, signs, and/or medical findings.
- 12) Medical improvement of claimant's condition is related to claimant's ability to do work as there has been an increase in claimant's residual functional capacity to do basic work activities.

CONCLUSIONS OF LAW

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).

Federal regulations require that the department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"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 MA 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 impairment(s) is not a “listed impairment” nor is it equal to a listed impairment. 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 hospitalized [REDACTED], for chronic pelvic pain. She underwent a diagnostic laparoscopy with fulguration of endometriosis. Claimant was also hospitalized [REDACTED], following complaints of abdominal pain. She underwent an esophagogastroduodenoscopy and duodenal biopsy. Claimant was diagnosed with gastritis and hiatal hernia. On [REDACTED], claimant's treating psychiatrist diagnosed claimant with major depression, recurrent, and substance dependence, alcohol. On [REDACTED], claimant's treating psychiatrist continued claimant's diagnoses. The treating psychiatrist found that claimant had no significant limitations or had no more than moderate limitations in nearly every area of understanding and memory, sustained concentration and persistence, social interaction, and adaption. On [REDACTED], claimant's treating gynecologist opined that claimant was capable of occasionally lifting up to ten pounds as well as capable of standing and walking at least two hours in an eight-hour work day and sitting about six hours in an eight-hour work day. The specialist found that claimant had no limitations with regard to repetitive activities of the upper or lower extremities and had no mental limitations. On [REDACTED], claimant's treating internist diagnosed claimant with fibromyalgia, depression, insomnia, hiatal hernia, and panic/anxiety disorder. The physician found that claimant was capable of repetitive activities with the bilateral upper and lower extremities and had no mental limitations. Claimant was seen by a consulting internist for the department on [REDACTED]. Based upon a physical

examination and claimant's report of symptoms, the internist diagnosed claimant with fibromyalgia, irritable bowel syndrome, endometriosis, and mental illness. The consulting internist found that claimant was able to ambulate without the assistance of a walking aid. Claimant was seen by a consulting psychiatrist for the department on [REDACTED]. The consultant diagnosed bipolar I disorder, most recent episode, depressed; rule out major depressive disorder, single episode; and rule out alcohol/marijuana abuse. The psychiatrist found that claimant is able to manage her funds and provided the following medical source statement:

“Based on today's exam, the claimant is able to understand, retain and follow simple instructions and generally restricted to performing simple routine repetitive tasks. Due to her mood lability with psychomotor retardation and depression, she is restricted to work that involves brief and superficial interaction with co-workers, supervisors, and the public.”

At the hearing, claimant testified that she lives with her mother. Claimant reported that she does all of the housework: cleaning, cooking, and laundry. Claimant noted that she is able to drive and grocery shops with the assistance of others in regard to lifting. In this case, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds that there has been medical improvement.

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been an increase in claimant's residual functional capacity based on the impairment that was present at the time of the most favorable medical determination. Claimant's treating physicians find claimant to be capable of lifting up to ten pounds as well as standing or walking at least two hours in an eight-hour work day and sitting about six hours in an eight-hour work day. Claimant was found to

have no difficulty with regard to repetitive activities of the upper and lower extremities.

Claimant's treating psychiatrist found that claimant had very few areas of marked limitation.

Thus, this Administrative Law Judge finds that claimant's medical improvement is related to claimant's ability to do work. 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, the Administrative Law Judge finds that claimant's impairment(s) continues to significantly impact her ability to walk or stand for prolonged periods of time and/or lift heavy objects as well as limitations with the ability to maintain attention and concentration for extended periods and interact with others. Accordingly, it must be found that claimant does have severe impairments. See 20 CFR 416.921.

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, the undersigned finds that claimant is not capable of the walking, standing, and/or heavy lifting required by her past employment. Accordingly, the sequential evaluation process must continue.

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). In this case, the Administrative Law Judge finds that claimant is capable of the physical and mental demands required to perform simple, unskilled, sedentary work activities on a regular and continuing basis. Sedentary work is defined as follows:

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).

There is insufficient objective medical evidence, signs, and symptoms to support a determination that claimant is incapable of performing the physical and mental activities necessary for simple, unskilled, sedentary work. None of claimant's treating physicians have precluded claimant from all work activities. After review of claimant's hospital records, medical records from treating sources, and opinions from claimant's treating physicians as well as consultants, claimant has failed to establish limitations which would compromise her ability to perform simple, unskilled, sedentary work activities on a regular and continuing basis. The record fails to support the position that claimant is incapable of sedentary work.

Considering that claimant, at age 25, is a younger individual, has an eleventh-grade education, has an unskilled work history, and has a sustained work capacity for sedentary work, this Administrative Law Judge finds that claimant's impairments do not prevent her from engaging in other work. See 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.24. Accordingly, the undersigned finds that claimant is no longer disabled for purposes of the MA program.

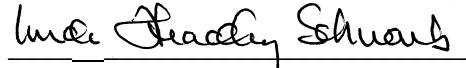
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are 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 SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. In this case, there is insufficient medical evidence to support a finding that claimant continues to be incapacitated or unable to work under SSI disability standards for at least 90 days. Therefore, the undersigned finds that claimant is no longer disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly determined that claimant is no

longer “disabled” for purposes of the Medical Assistance and State Disability Assistance programs. Accordingly, the department’s determination in this matter is hereby affirmed.


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

Date Signed: April 20, 2010

Date Mailed: April 21, 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:

