

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: 2010-19827
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 24, 2010
Kalamazoo 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 24, 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 and State Disability Assistance benefit recipient and her Medical Assistance and State Disability Assistance case was scheduled for review in November 2008.

(2) On November 1, 2008 claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.

(3) On January 29, 2010, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

(4) On February 3, 2010, the department caseworker sent claimant notice that her application was cancelled based upon medical improvement.

(5) On February 8, 2010, claimant filed a request for a hearing to contest the department's negative action.

(6) On February 5, 2010, the State Hearing Review Team again denied claimant's application stating: the claimant has a history of substance abuse but denied current use, she has hallucinations when she smokes crack cocaine. In May of 2008, her mental status was basically unremarkable. In August 2008, her medications were continued, because she was fearful that without them she would have a serious relapse. The MRT approval indicated the claimant met listing 12.04. The claimant was denied by the Social Security Administration ALJ in April 2009, but it appears she may still have an appeal pending. In August 2009, her thought process was organized, logical and linear. Her thought content was reality based but she did report vague auditory hallucinations on occasion. In December 2009, she was not sleeping well because she threw away one of her medications. The medical information in the file does not support the previous listing of 12.04, it appears that the decision was made in error. The claimant had a history of substance abuse. When not abusing drugs and following prescribed treatment the claimant would have been able to at least do simple unskilled work. The claimant's impairments to 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 unskilled 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, high school education and history of unskilled, MA-P is denied using Vocational Rule 204.00(H) as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments will not preclude work activity at the above stated level for 90 days.

(7) Claimant is a 41-year-old woman whose birth date is [REDACTED]. Claimant is 4'11" tall and weighs 115 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills, but said that she has problems counting.

(8) Claimant last worked in 2006 for [REDACTED] as a stock person. She has also worked as a waitress, as a prep cook and in factories. Claimant was receiving Medical Assistance, State Disability Assistance, and Food Assistance Program benefits.

(9) Claimant alleges as disabling impairments: bi-polar disorder, depression, panic attacks, post-traumatic stress disorder, agoraphobia, and prior cocaine addiction.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2006.

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 on the record indicates that claimant testified that she is living with a friend in a house and that she is divorced with no children under 18. She does have a driver's license but because of tickets she either gets the bus or her friends take her where she needs to go. Claimant testified that she does cook things like potatoes and vegetables and that she does grocery shop one time per month but needs help picking things out. Claimant testified that she cleans her home by doing the kitchen and bathroom and listens to the radio for a hobby. Claimant testified that she can stand for a half an hour, sit for a half an hour to 45 minutes, walk one block, squat but not bend at the waist. Claimant testified that she can shower and dress herself but cannot tie her shoes or touch her toes. Her level of pain on a scale from 1-10 is a 10 without medication and a 4 with medication. Claimant testified that she is right handed and her hands and arms are fine and her legs and feet are fine. The heaviest weight that she can carry is 10-15 pounds. Claimant does smoke a half a pack of cigarettes per day and claims that her doctor did not tell her to stop. Claimant testified that she drinks alcohol occasionally and she has been 2 years clean for crack cocaine. Claimant testifies that she usually lies in the bed and listens to the radio and walks out to get the mail and does the dishes for her day. Claimant testified that she had a suicide attempt approximately 7 years before the hearing.

A psychiatric evaluation in May 2008, showed the claimant's speech was clear, coherent and goal directed. Her mood was down, her affect was brighter than reported her mood and she smiled appropriately. She denied hallucinations. Diagnosis included post traumatic stress disorder, major depressive disorder with psychotic features in full remission, rule out cocaine induced psychotic disorder, cocaine dependence in full remission, panic disorder with agoraphobia. (p. 193) In August 2008, the claimant stated that she fearful that she would quickly go into a serious relapse without medication, so her medications were continued (p. 182). A psychiatric evaluation dated August 2009, showed the claimant had hallucinations when she smoked crack cocaine. She denied current substance abuse (p. 46). Her mood was anxious, her affect was euthymic. Speech was normal. Her thought process was organized, logical and linear. Her thought content was reality based but she expressed some auditory hallucinations which were vague and occurred occasionally (p. 48). In December 2009, the claimant had been doing well with her medication but threw away one over her medications after she read that hair loss is a side effect (p. 25). She was alert, calm, and her mood was euthymic. Speech was pressured which is typical. There was no evidence of psychosis (p. 26).

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 condition has improved. 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 that claimant can perform at least light or sedentary work 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 work as a stock person or as a prep cook.

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, based upon the claimant's vocational profile of , MA-P is denied using Vocational Rule as a guide. 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. BEM, Item 261, p. 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 application for continued 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.

Accordingly, the department's decision is AFFIRMED.

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 23, 2010

Date Mailed: May 25, 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.

LYL/alc

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