

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: 2010-30640

Issue No: 2009; 4031

Case No: [REDACTED]

Hearing Date:

May 13, 2010

Ingham 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 13, 2010. Claimant was represented at the hearing by [REDACTED].

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. 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 determine that claimant was no longer disabled and deny her review application for Medical Assistance (MA-P) and State Disability Assistance (SDA) based upon medical improvement?

**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 in July 2009.

- (2) On January 22, 2009, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On April 2, 2010, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
- (4) On April 7, 2010, the department caseworker sent claimant notice that her Medical Assistance case would be cancelled based upon medical improvement.
- (5) On April 13, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) On April 21, 2010, the State Hearing Review Team again denied claimant's review application stating that it had insufficient evidence and requested a complete physical examination. .
- (7) The hearing was held on May 13, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (8) Additional medical information submitted and sent to the State Hearing Review Team on August 18, 2011 and on September 1, 2011.
- (9) On September 26, 2011, the State Hearing Review Team denied claimant's application stating in its analysis and recommendation: the objective medical evidence supports the MRT determination. She had normal range of motion of all joints with no sensation lost. There is no evidence of a severe mental or physical condition. The 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 unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, 12<sup>th</sup> grade education, an unskilled work history, MA-P is denied using Vocational Rule 203.28 as a guide. Retroactive MA-P was considered in this case and is also denied.
- (10) On the date of hearing, claimant was a 40-year-old woman whose date of birth is [REDACTED]. Claimant is 5'9" tall and weighs 220 pounds. Claimant completed the 10<sup>th</sup> grade and does have a GED. Claimant is able to read and write and does have basis math skills.
- (11) Claimant last worked in November 2008. Claimant has also worked as a waitress, and a cleaning store and doing factory work.
- (12) Claimant alleges as disabling impairments: a bad back, bad knee (right knee), posttraumatic stress disorder.

## **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 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 subjective and objective medical evidence in the record indicates that based on the physical examination of February 2010 reported normal tone and strength. She had intact sensation and normal gait. A February 11, 2010 mental status examination indicates that claimant had Axis V GAF score of 45 and she was diagnosed with pain disorder associated with both psychiatric and medical conditions and rule out posttraumatic stress disorder. Her appearance was disheveled. Her affect was labile and depressed. Her mood was anxious and easily distracted and hyper vigilant. Her attitude was guarded. Her speech was pressured. Her judgment was indecisive. Poor problem solving and she does not reason things out. Her intellectual functional is below average. Her cognition was attention impaired. Her thought process was tangential, loose associations were circumstantial. Her thought content was normal. Insight was poor (Client Exhibit A, page 1). Her February 11, 2010 objective medical evidence indicates that claimant was 69 inches tall and weighed 217 pounds. Her BMI was 35.05. Her blood pressure was 134/95. Claimant's left arm stated her pulse was 100 beats per minute and her respiratory rate was 18 beats per minute. Her pain index was 9 (Page 85). In general, she was well-developed, well nourished, overweight, well groomed with no apparent distress. The neck was supple and the fibroid is normal to palpation. Normal breath sounds with no rales and wheezes. In the cardiovascular area, she had normal rate and rhythm without murmurs; normal S1 and S2 heart sounds with no S3/S4 rubs, clicks and no edema. In the lymphatic system there was no enlargement of cervical nodes; no inguinal adenopathy. In the musculoskeletal system, there was normal gait, tone and strength. 5/5 strength in the bilateral C5-T1 and L2-S1 myotomes; range of motion. There was pain in the back, flexion and extension. Crepitance, tenderness and effusion. There was tenderness noted in the lumbosacral region. The skin had no ulcerations, lesions or rashes. No skin thickening, in duration or subcutaneous nodules. The neurological area had normal DTRs elicited in biceps, triceps, supinator, knee and ankle jerk; sensation: grossly intact and light touch. Her mental status was alert and oriented x3, mood and affect, mild and affect psychomotor agitation but appropriate behavior and pleasant. The assessment pathologic vertebral compression fracture resolving, degeneration of lumbar disc by L5-S1 most significantly lumbosacral radiculitis and chronic pain syndrome (Page A5 and A6).

A Medical Examination Report dated January 14, 2010 indicates that claimant was 5'8-1/2" tall and weighed 217 pounds. Her blood pressure was 142/80 and she was right hand dominant. She was normal in all areas of examination except in her musculoskeletal she was unsteady and slow and her mental status was anxious. The clinical impression was that she was deteriorating and could not lift any weight but could stand or walk less than two hours in an eight-hour day and could sit about six hours in

an eight-hour day. She could use both of her upper extremities for simple grasping and fine manipulating but not reaching and pushing and pulling. She could operate foot and leg controls with her left foot (Pages 56 and 57). Claimant had no mental limitations (Page 58).

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 her 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 her impairments. This Administrative Law Judge finds that claimant fits the profile of a younger individual, 12<sup>th</sup> grade education and unskilled work history. MA-P would be denied using Vocational Rule 203.28.

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 perform her prior work as a waitress.

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. 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.



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Landis Y. Lain  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: September 28, 2011

Date Mailed: September 29, 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.

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

cc:

