

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2010-33912

Issue No: 2009; 4031

[REDACTED]

Wayne 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 Sept 28, 2010. Claimant and her son personally appeared and testified.

This hearing was originally held by Administrative Law Judge [REDACTED]. [REDACTED] 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 [REDACTED] 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 receiving Medical Assistance and State Disability Assistance benefits.
- (2) In February 2010, claimant's case was due for a Medical review.

- (3) On March 16, 2010, the Medical Review Team denied claimant's continued receipt of Medical Assistance and State Disability Assistance benefits stating that claimant had medical improvement.
- (4) On April 15, 2010, the department caseworker sent claimant notice that her MA-P and SDA benefits would be cancelled effective April 30, 2010, based upon medical improvement.
- (5) On April 28, 2010, claimant filed a request for a hearing to contest the department's negative action.
- (6) On May 20, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the claimant was diagnosed with squamous cell carcinoma in January 2009, and has undergone the treatment. In December 2009, her skin showed no evidence of mass or metastatic disease. In January 2010, the claimant's doctor indicated that her cancer was in remission. The claimant has had medical improvement. 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 a wide range of light 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 a history of unskilled work, MA-P is denied due to medical improvement and using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments no longer precludes work activity at the above stated level for 90 days.
- (7) On September 28, 2010, the hearing was held. At the hearing, claimant waived the time periods and requested to submit additional medical information.
- (8) On March 28, 2011, additional medical information was submitted and sent to the State Hearing Review Team.
- (9) On April 7, 2011, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation the objective medical evidence that supports the findings of the MRT and the SHRT. The medical evidence supports the significant medical proven as taking place since the December 17, 2009 determination. The claimant's impairments do not meet/equal the intent of severity of a Social Security Listing. The medical evidence of record indicates that the claimant claims the capacity to perform a wide range of light exertional work. Therefore, based on the claimant's vocational profile of 48-years old, a high school equivalent education and a history of light unskilled employment MA-P is

denied using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would preclude work activity at the above stated level for 90 days. Retro MA-P was not considered in this case as only continue MA-P and SDA are being reviewed. Listing 13.18 was considered in this determination.

- (10) On December 21, 2010, the Social Security Administration (SSA) issued an unfavorable decision for as SSI & RSDI. This Administrative Law Judge is bound by the SSA determination.
- (11) On the date of hearing, claimant was a 48-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 120 pounds. Claimant is right handed and has a high school diploma and 1 ½ years of schooling for nursing.
- (12) Claimant last worked in 2009 at a group home for the mentally challenged.
- (13) Claimant alleges as disabling impairments: balance problems, blood in her stool, osteoporosis, hemorrhoids, Vitamin D deficiency, ulcerations of her colon, swollen vagina.

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 impairments 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 the instant case, claimant is not working and is not engaged in substantial gainful activity.

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 does not have an impairment or combination of impairments which meet or equal the severity of an impairment listed in appendix 1.

The subjective and objective medical evidence in the record indicates that on September 15, 2010, discharge instruction indicates that claimant had a colonoscopy and her discharge diagnosis was ulceration of the intestine (Page A3). Her vital signs were blood pressure 136/96, pulse was 57 beats per minute, respiration 19 beats per minute, temperature was 97.5 F, weight 119.71 pounds, height 5' 4" tall and her BMI was 21.2. Claimant had no dietary restrictions she could resume her usual activities, there were multiple ulcers in the colon (Page A4). A CT of the abdomen and pelvis were performed January 11, 2010. An evaluation of the lower thorax demonstrates a 3mm nodular opacity in the left lower lobe (6 & 9). Continues with a pulmonary artery and is stable compared to the prior exam, likely representing a small pulmonary arteriovenous malformation. There is no pleural effusion. The liver, spleen, pancreas, adrenal glands and kidneys appear unremarkable. There is no retroperitoneal lymphadenopathy or ascites. The aorta and inferior vena cava are normal in diameter. The large and small

intestine appears unremarkable. No abdominal wall masses are evident. Evaluation of the pelvis demonstrates the uterus to be normal in size. There is no pelvic mass, lymphadenopathy or fluid collection. The previously demonstrated 5.1cm heterogeneous mass at the right aspect of the anal rectal region is no longer present. There is no evidence of renal mass. Mild symmetric soft tissue thickening is present of the wall, the rectum and anus without evidence of discrete mass. The osseous structures appear unremarkable. The impression is no evidence of mass, metastatic disease or lymphadenopathy. Its mild thickening of the wall of the anorectum, likely representing post inflammatory changes (Page B3).

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 examining the record, this Administrative Law Judge finds that in the instant case, none of the exceptions to medical improvement apply in this case.

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 medical exceptions is found to apply in this case.

In the fourth step 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. In the instant case, this Administrative Law Judge finds that the Social Security Administration has determined that claimant is not disabled effective March 23, 2010, appeals decision when an unfavorable decision. This Administrative Law Judge is bound by the SSA determination.

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).

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.

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 even with her impairments.

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 the claimant's residual functional capacity indicates that she can probably perform light work pursuant to Medical Vocational Rule 202.20 in light of her vocational profile of 48-years old, high school equivalent education and history of light unskilled work.

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.

In this case, this Administrative Law Judge finds that claimant should be able to perform light work even with her impairment based on the SSA assessment and the assessment of the objective medical evidence contained in the file.

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. 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 determined that claimant was no longer eligible to receive medical assistance and/or State Disability Assistance benefits based upon disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and in compliance with the Social Security Administration determination, 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 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: 6/27/11

Date Mailed: 6/27/11

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/ds

■ [REDACTED]