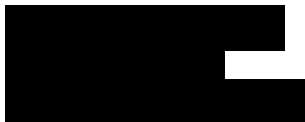


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201037884
Issue No: 2009
Case No: [REDACTED]
Hearing Date: July 14, 2010
Kent 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 July 9, 2009. Claimant personally appeared and testified.

This hearing was originally held by Administrative Law Judge Ivona Rairigh. Judge Rairigh 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 determine that claimant was no longer disabled and deny her review application for Medical Assistance (MA-P) 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 March 2010.
2. On May 21, 2010, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

3. On May 26, 2010, the department caseworker sent claimant notice that her Medical Assistance case would be closed effective May 26, 2010 based on medical improvement.
4. On June 3, 2010, claimant filed a request for a hearing to contest the department's negative action.
5. On June 16, 2010, the State Hearing Review Team again denied claimant's application stating that it had insufficient evidence and requested updated medical information and the prior medical packet as well as an independent internist examination.
6. The hearing was held on July 14, 2010. At the hearing, claimant waived the time periods and requested to submit additional medical information.
7. Additional medical information was received and sent to the State Hearing Review Team on September 20, 2010.
8. On October 4, 2010, the State Hearing Review Team again denied claimant's application stating in its analysis and decision: The medical evidence submitted for review indicates that the claimant's conditions have improved with treatment and do not preclude all work. In following the sequential evaluation process the claimant is not engaged in substantial gainful activity. The claimant's impairments do not meet or equal the intent of a Social Security Listing. The medical information submitted for review indicates that the claimant retains the capacity to perform a wide range of unskilled light work. Therefore, based on the claimant's vocational profile of a closely approaching advanced age, with 12 years of education and an unskilled work history, MA-P and SDA are denied using Vocational Rule 203.13 as a guide and per the provisions of 20 CFR 416.994.
9. On the date of hearing, claimant is a 54-year-old woman whose birth date is [REDACTED]. Claimant was 5'11" tall and weighed 180 pounds. Claimant completed the 12th grade. Claimant is able to read and write and does have basis math skills.
10. Claimant last worked in 2005 doing retail assistant managing. Claimant has also worked unloading trucks, putting up shelves, at [REDACTED] and as a department manager at [REDACTED].
11. Claimant alleges as disabling impairments: osteoarthritis, chronic pain, fibromyalgia, ileostomy, kidney stones, asthma, endometriosis, hyperlipidemia, colitis, low Vitamin D, GERD.

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 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 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 2005.

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 claimant's impairment or combination of impairments do not meet or equal the severity of a impairment listing in Appendix 1.

Objective medical evidence on the record indicates that the previous decision of March 2009 reported the claimant unable to perform work of any kind, not able to use her feet or legs and not able to meet her needs in the home (pg 248). Medical records from March 2010 reported treatment for urinary discomfort. Labs were negative for infection or blood (pg 21). Testing revealed a normal chest x-ray and a normal head CT scan (pg 12-13). Claimant was treated in April 2010 for bronchitis. On examination the heart was functioning with regular rate and rhythm. The lungs were clear to auscultation. The ileostomy was intact. There were no signs of cellulites or tenderness with palpation. There was no swelling in the extremities (pgs 16 and 26). On examination on July 2010 the claimant was 68 inches tall and weighed 199 pounds. The heart was functioning with regular rate and rhythm. Blood pressure was 120/80. The lungs were clear to auscultation. Peripheral pulses were present and equal bilaterally. The abdomen showed no organomegaly or masses. Bowel sounds were normal. The ostomy was clean, dry and intact. There was tenderness around the ostomy. There was no edema. Range of motion of all the major joints were within normal limits. Straight leg raise was negative. There were no muscle spasms. Grip strength was intact with good fine and gross dexterity. Motor strength and tone are normal. Deep tendon reflexes were present and equal bilaterally. Gait was with a mild right sided limp without the use of an assistive device (pgs 273-274). At the July 2010 medical review the claimant was alert and oriented to person, time and situation. She had appropriate mood and affect. Remote and recent memories were intact. Judgment and insight were intact (pg 273). The claimant reported that she is independent in activities of daily living and that she cares for her personal needs, can cook and do housework (pg 272).

A February 27, 2009 medical examination report indicates that the clinical impression is that claimant is stable and that she could occasionally carry ten pounds or less and never carry 20 pounds or more. She could sit about six hours in an eight-hour day and stand less than two hours in an eight-hour day. She could use both upper extremities for simple grasping, reaching, pushing and pulling, and fine manipulating and she could operate foot and leg controls with both feet and legs. She had problems with sustained concentration (pgs 129 and 129A). Claimant was 5'11" tall and weighed 185 pounds, her blood pressure was 116/76 and she was right hand dominant (pg 129).

An August 11, 2010 internist evaluation indicated the patient was cooperative in answering questions and following commands. The patient's immediate, recent and remote memory was intact with normal concentration. The patient's insight and judgment were both appropriate. The patient provided a good effort during the examination. She was present for the exam with her husband. She appeared in mild discomfort. She was wearing button down shirt, slacks and sandals. She appeared mildly depressed. Blood pressure in left arm was 120/80. Pulse=86 and regular. Respiratory rate=14. Weight=199 pounds. Height=68 inches without shoes. The skin

was normal. In the eyes and ears the visual acuity in the right eye=20/50 and left eye=20/70 with corrective lenses. Pupils are equal, round and reactive to light. The patient can hear conversational speech without limitation or aids. The neck was supple without masses. In the chest breath sounds are clear to auscultation and symmetrical. There was no accessory muscle use. In the heart there was regular rate and rhythm without enlargement. There was a normal S1 and S2. In the abdomen there was no organomegaly or masses. The bowel sounds were normal. The ostomy was located in the right lower quadrant and was clean, dry and intact. There was tenderness around the ostomy. In the vascular area there was no clubbing or cyanosis detected. There was no edema appreciated. The peripheral pulses were intact (pg 273). In the musculoskeletal area there was no evidence of joint laxity, crepitance or effusion. Grip strength remained intact. Dexterity was unimpaired. The patient could pick up a coin, button clothing and open a door. The patient had mild difficulty getting on and off the examination table, mild difficulty heel and toe walking, moderate difficulty squatting and mild difficulty hopping on the left and moderate on the right. There was diminished space height at L4-S1. Straight leg raising was negative. There was no paravertebral muscle spasm. Range of motion studies indicated that claimant's range of motion was within normal limits (pg 274). In the neurological area cranial nerves are intact. Motor strength and tone were normal. Sensory was intact to light touch and pinprick. Reflexes in the lower extremities were 2+ and symmetrical. Romberg testing was negative. The patient walks with a mild right sided limp without the use of an assistive device. The conclusion was lower back pain and fibromyalgia and ileostomy. Claimant's overall prognosis is guarded. She would not be able to tolerate any heavy lifting or squatting with a weight limit of about ten pounds. Prolonged sitting and standing of over 20 minutes should also be avoided (pg 276).

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 does have the residual functional capacity to perform sedentary work and therefore is disqualified from continuing to receive Medical Assistance benefits. 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 that claimant could probably perform her past work as a retail clerk.

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 retail clerk.

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 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 24, 2011

Date Mailed: June 24, 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/db

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