

**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.: 2010-39693  
2010-38702  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: October 18, 2010  
Wayne County DHS (18)

**ADMINISTRATIVE LAW JUDGE:** Colleen M. Mamelka

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on Monday, October 18, 2010. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department.

**ISSUE**

Whether the Department properly determined that the Claimant was not disabled for purposes of the MA-P and SDA benefit 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. On March 12, 2010, the Department received the Claimant's request for hearing protesting the termination of SDA benefits. (Exhibit 3)
2. On April 13, 2009, the Medical Review Team ("MRT") found the Claimant disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 2, pp. 1, 2)
3. In April 2010, the Department reviewed the Claimant's eligibility. (Exhibit 2, p. 1)
4. On May 13, 2010, the MRT deferred the disability determination requesting additional medical evidence.

5. On May 25, 2010, the MRT found the Claimant no longer disabled based upon medical improvement. (Exhibit 1, pp. 2, 3)
6. The Department notified the Claimant of the MRT determination.
7. On June 18, 2010, the Department received the Claimant's timely written request for hearing.
8. The Claimant has not alleged any physical disabling impairments.
9. The Claimant's alleged mental disabling impairments are due to a learning disorder and schizophrenia.
10. At the time of hearing, the Claimant was 44 years old with an [REDACTED] birth date; was 5'7" in height; and weighed 172 pounds.
11. The Claimant has a limited education and a work history as cashier and general laborer.
12. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

### **CONCLUSIONS OF LAW**

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formerly known as the Family Independence Agency, 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 Bridges Reference Manual ("BRM").

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory

statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the

impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperated;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

At the time of the Claimant's initial approval, the Claimant had attempted suicide in [REDACTED]. The diagnosis was schizophrenia and the Global Assessment Functioning ("GAF") was 25 (admitting) and 50 at discharge in [REDACTED]. The Claimant was markedly limited in 8 of the 20 factors on the Mental Residual Functional Capacity Assessment. The Claimant was previously approved pursuant to Listing 12.03.

On [REDACTED], the Claimant attended a psychiatric evaluation. The Claimant was diagnosed with schizophrenia, paranoid type. The GAF was 35 and the prognosis was guarded. The Psychiatrist found the Claimant able to understand, retain, and follow simple instructions and generally restricted to performing simple routine repetitive tasks. Due to her psychosis with symptoms of depression periodically, the Claimant was restricted to work that involves brief and superficial interactions with coworkers, supervisors, and the public.

On [REDACTED], the Claimant attended a psychiatric evaluation. The Claimant was diagnosed with schizophrenia, paranoid type with a GAF of 51. The Claimant was prescribed Abilify and Seroquel.

Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings. 12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and

whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A

Schizophrenic, paranoid, and other psychotic disorders are characterized by the onset of psychotic features with deterioration from a previous level of functioning and are defined in Listing 12.03. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements of C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or;
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
  - a. Blunt Affect; or
  - b. Flat Affect; or
  - c. Inappropriate affect;

or

4. Emotional withdrawal and/or isolation;

AND

B. Resulting in a least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended durations

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or changed in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

In this case, the Claimant's diagnosis of schizophrenia has not changed however there were limited current records to establish that the Claimant continues to meet the intent and severity requirement of Listing 12.03. In light of the foregoing, a determination of whether the Claimant's condition has medically improved is necessary.

As noted above, the Claimant was previously found disabled based on Listing 12.03. In comparing those medical records to the recent evidence (as detailed above), it is found that the Claimant's condition has medically improved therefore the Claimant's Residual Functional Capacity is considered pursuant to Step 3.

RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations. To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect an individual's ability to meet the demands of a job, other than the strength (physical) demands, are considered nonexertional. 20 CFR 416.969a(a) Examples of nonexertional limitations or restrictions include difficulty functioning because of nervousness, anxiety, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings; or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(i)-(vi)

The Claimant's prior RFC is not known therefore federal regulations require a determination of whether an individual can engage in substantial gainful activity. 20 CFR 416.994(b)(2)(iv)(E) In this case, the Claimant previously worked as a cashier and general laborer. In light of the foregoing, and in consideration of the Occupational Code, the Claimant's past relevant work is classified as unskilled, light work.

At the time of the hearing, the Claimant was 44 years old thus considered to be a younger individual for MA-P purposes. The Claimant has a limited education and was unable to pass the General Educational Development ("GED") examination. The Claimant's reading and language was at the fourth grade level with her math at the third grade level. The consultative evaluation placed the Claimant's GAF at 35 which equates to some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood. At the time of the Claimant's prior approval, the GAF was 50. During the hearing, the Claimant had difficulty answering simple direct questions. After review of the entire record, it is found that, at this time, the Claimant's medical improvement is not related to her ability to work and that her functional limitations remain despite prescribed treatment. Accordingly, the Claimant's disability is found to have continued at Step 3.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of continued Medical Assistance ("MA-P") entitlement, therefore the Claimant's is found disabled for purposes of continued SDA benefits.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of continued MA-P and SDA benefits.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the April 2010 redetermination application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in November 2011 in accordance with department policy.

*Colleen M. Mamelka*

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Colleen M. Mamelka  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: 10/19/2010

Date Mailed: 10/19/2010

**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.

2010-39693 & 2010-38702/CMM

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cc:

