

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: 2010-38943
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 21, 2010
Wayne County DHS (15)

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 September 21, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's continued 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 benefit recipient and her Medical Assistance case was scheduled for review in June 2008.
- (2) On October 28, 2009, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
- (3) On February 14, 2010, the department caseworker sent claimant notice that his Medical Assistance and State Disability Assistance benefits case would be cancelled based upon medical improvement.
- (4) On February 17, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (5) On June 25, 2010, the State Hearing Review Team again denied claimant's continued application stating in its analysis and recommendation: the evidence supports that there has been significant medical improvement since the claimant was allowed. There is no objective evidence to support any psychiatric limitations. The objective medical evidence does support that the claimant would be reasonably limited to performing light exertional task. The claimant's impairments show significant medical improvement versus their condition when benefits were approved on October 9, 2007. 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 exertional work; there is no evidence of psychiatric limitations. Therefore, based on the claimant's vocational profile of 48 years old, a less than high school education and a history of no gainful employment, Medicaid-P is denied using Vocational Rule 202.17 as a guide. Retroactive Medicaid-P was considered in this case and is also denied. State Disability Assistance is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Listings 1.02, 1.03, 1.04, 11.14, 12.04, and 13.10 were considered in this determination.
- (6) Claimant is a 48-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 155 pounds. Claimant attended the 8 grade and has no GED. Claimant testified that she is not able to read and write because she has dyslexia and does have some basis math skills.
- (7) Claimant last worked about 6 years before the hearing in a Nursing Home. Claimant has also worked self-employed cleaning houses and janitorial services.
- (8) Claimant alleges as disabling impairments: carpal tunnel syndrome in both wrists with surgeries, neuropathy from the chemotherapy, depression, and breast cancer in remission, as well as pain in the legs and pain in a muscle flap that was removed in her back.

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 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).

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 approximately 2004.

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 in the record indicates that the claimant was seen on September 3, 2009. She was in the doctor's appointment for a physical examination to be complete as secondary to a continued disability claim. Claimant had several reconstructions, most recently within 2009. She is status post left mastectomy on August 18, 2006. She has been on disability ever since. She had chemo therapy on January 2007. She continues to receive shots once per month per oncology. She stated that she has persistent low back pain. On physical examination her height was 64", weight 153.7, BMI was 26, blood pressure was 130/90, respirations 16, her temperature was 98.3, pulse 80. In general she was alert, oriented and in no acute distress. Her vital signs were stable. She was afebrile. The neck was supple. No lymphadenopathy. No thyromegaly. Cardiovascular had regular rate and rhythm with no murmur. PMI is non-displaced. Lungs are clear to auscultation bilaterally. No wheeze, rales, or rhonchi. Good inspiratory effort. Abdomen was soft, non-tender and non-distended. No masses. Extremities: there is no cyanosis, clubbing, or edema. There is good tendon reflexes in the upper and lower bilateral and symmetrical. Decreased strength with regard to the left arm. Grip strength noted to be within normal limits. Skin examination on patient's chest, there is a deformed left chest with muscle flaps as opposed to the right. The doctor indicated that within the next 6-12 months the claimant should be able to perform some kind of labor. The claimant does have limitations and cannot lift greater than 10 pounds, cannot stand greater than 10 minutes, and cannot go up and down stairs secondary to low back pain (p.6).

On April 20, 2009, claimant had a right mastopexy for symmetry and left carpal tunnel release, as well as excision of hypertrophic scar on the back and closure with superior and inferior tissue advancement rearrangement flaps and intermediated plastic closure (p. 9).

A June 15, 2009, medical examination report indicates that claimant was normal in all areas of examination except for breast reconstruction and median neuropathy in the bilateral which had improved. The clinical impression is that claimant was stable and that she could frequently carry 20 pounds or less, and occasionally carry 50 pounds or more. Claimant could stand or walk at least 2 hours in an 8 hour work day and did not require assistive devices for ambulation. Claimant could use both of her upper

extremities for simple grasping, reaching, pushing but only use the right for fine manipulating and she could operate leg and foot controls with both feet and legs. Claimant had no mental limitations (pp. 142-143).

It should be noted for the record that claimant had cessation of Social Security Disability benefits effective July 1, 2009.

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 his medical improvement is related to the claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that claimant does have medical improvement. 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 or light work even with her impairments. This Administrative Law Judge finds that claimant does have the residual functional capacity assessment at step seven to perform at least light or sedentary work.

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 cleaning person 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 up on 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.

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

Date Signed: November 8, 2010

Date Mailed: November 9, 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

cc:

