

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: 2010-41945

Issue No: 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

August 3, 2010

Calhoun County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

**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 August 3, 2010. Claimant personally appeared and testified.

**ISSUE**

Did the claimant continue to be disabled and eligible for continuing 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 initially approved for SDA by department's Medical Review Team (MRT) on May 11, 2010 due to her physical or mental impairment preventing employment of 90 days or more. Claimant was denied for Medicaid (MA) as her condition lacked duration of 12 months.
2. Claimant's SDA eligibility was reviewed by MRT on June 25, 2010 and ongoing benefits denied stating that the claimant was able to do sedentary work now.
3. Department sent the claimant notice that her SDA benefits will stop on August 1, 2010.

4. Claimant requested a hearing on July 6, 2010 and her SDA benefits continue pending the outcome of this hearing.
5. On July 13, 2010 State Hearing Review Team also determined that the claimant is no longer disabled, as her previous condition, a fractured ankle, is showing evidence of significant medical improvement. Claimant therefore retains the capacity to perform a wide range of sedentary exertional work.
6. Claimant testified at the hearing that she is trying to get an appointment with a bone specialist and requested the hearing record be held open for 90 days. This extension was granted but as of December 14, 2010 no additional information has been received by the Administrative Law Judge and the record was closed.
7. On August 4, 2010 department did advise that the claimant did list having her children living in her home on February, 2010 application, and that this fact previously overlooked by the department qualified her for Caretaker MA program. Claimant therefore has MA coverage beginning with April, 2010 to current, and MA coverage for February and March, 2010 has also been requested through department's Central Office staff.

#### **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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (RFT).

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). Claimant is not working.

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). Claimant does not have such an impairment.

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.

Claimant is a 39-year-old woman whose birthday is September 20, 1971. Claimant is 5'10" tall and weighs 350 lbs. Claimant has a high school diploma, but virtually no work history. Claimant lives with her children and grandfather in his house, and her source of support is her children's RSDI and food stamps. Claimant slipped on ice and broke her ankle in February, 2010. Claimant was approved for SDA based on this injury. [REDACTED]

[REDACTED] exam report of June 2, 2010 indicates that the claimant is now 3 ½ months postop of an open left ankle fracture. Claimant stated she is still very painful and is requesting a refill of her medications. Claimant was to start physical therapy after last visit a month ago, however she did not do it yet. Claimant stated she was ill and was going to schedule it today, and that she had to start using her walker again. Exam revealed that the incision site is well healed, there is no sign of infection, all the wound are completely healed, and the claimant continues to have good range of motion of her ankle in all planes. Claimant complains of pain with extreme of plantar and dorsiflexion. The hardware is not palpable. Claimant was to start outpatient physical therapy for an ankle rehab program and was advised that her swelling in the ankle will take a long time to resolve. She was given a prescription for Vicodin with no refills and advised to use sparingly.

It is the finding of this Administrative Law Judge 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. Thus, this Administrative Law Judge finds that claimant's medical improvement is related to claimant's ability to do work. 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. Claimant still has significant limitations upon her ability to engage in basic work activities, due to residuals from her ankle surgery (swelling) and non-compliance with physical therapy.

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, claimant was in need of physical therapy in June, 2010, the date last medical information was provided for. Claimant had swelling in her ankle, which appears to be something expected following the ankle surgery. Claimant was non-compliant with physical therapy, activity which would assist in her recovery. Claimant also weighs 350 lbs., a contributing factor to her issues with climbing stairs or walking a distance, especially with a post-operative ankle. Claimant has no work history to speak of, therefore no evaluation of her ability to perform past work can be done.

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, it is the finding of this Administrative Law Judge that the claimant is capable of sedentary work. Claimant is a younger individual age 18-44 (she is 39), has a high school diploma, and no work history. Vocational Rule 201.27 directs that such an individual is not disabled if they can perform sedentary work, which the claimant is capable of doing. Department therefore correctly determined that the claimant's condition has improved and that she no longer qualifies for SDA. BEM 261.

As previously stated, claimant is receiving MA based on Caretaker MA category.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly determined that the claimant was no longer disabled for SDA eligibility purposes.

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/\_\_\_\_\_

Ivona Rairigh  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: December 15, 2010

Date Mailed: December 15, 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.

IR/tg

cc:

A large black rectangular redaction box covering several lines of text in the cc field.