

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

IN THE MATTER OF:



Reg. No: 2010-54440
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 28, 2010
Cass 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 October 28, 2010. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly deny claimant's 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 and State Disability Assistance benefit recipient.
- (2) On May 2010, claimant's case was scheduled for a case review.
- (3) On August 10, 2010, the Medical Review Team denied claimant's review application stating that claimant had medical improvement.
- (4) On August 12, 2010, the department case worker sent claimant notice that her review application was denied.
- (5) On August 19, 2010, claimant filed a request for a hearing to contest the department's negative action.

- (6) On September 25, 2010, the State Hearing Review Team again denied claimant's application stating in its' analysis and recommendation: the objective medical evidence present does not establish a disability at the listing or equivalence level. The collective medical evidence shows that claimant is capable of performing a wide range of light unskilled work. The claimant's impairment's 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 unskilled work. Therefore, based on the claimant's vocational profile of a younger individual, high school education and a semi-skilled work history MA-P is denied using Vocational Rule 202.22 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairment's would not preclude work activity at the above stated level for 90 days.
- (7) Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant is 5'1" tall and weighs 145 pounds. Claimant is a high school graduate and has one year of college. Claimant is able to read and write, add, subtract, and count money.
- (8) Claimant last worked September 2008 as a waitress. Claimant worked as a waitress for 20 years.
- (9) Claimant alleges as disabling impairments: depression, ovarian cancer, attention deficit disorder, and asthma, screws in the right foot, sciatica, foot surgery and obsessive compulsive disorder.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 2008.

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 claimant is single and lives with her boyfriend and her mother supports her. Claimant has no children under 18 and she does receive State Disability Assistance and Medical Assistance benefits. Claimant does have a driver's license but usually gets rides from friends and family. Claimant cooks one time per day and cooks things like grilled cheese sandwiches. Claimant grocery shops 1-2 times per month with help and she does dusting, vacuuming, and laundry. Claimant knits and cross-stitches as a hobby and watches TV 4-5 hours per day. Claimant testified that she can stand about 10 minutes and sit about one hour at a time. Claimant stated that she could walk 100 feet and she falls down a lot. Claimant testified that she cannot squat but she can bend at the waist. Claimant can shower and dress herself if she is sitting and she can tie her shoes if she is sitting and she can touch her toes if she is sitting. Claimant testified that her level of pain on a scale from 1-10 without medication is a 10+ and with medication is a 4-5. Claimant testified that she is right handed and she has arthritis in her hands and arms and she has screws in her legs and feet and her left leg hurts because of the sciatica. Claimant testified that the heaviest weight that she can carry is 5 pounds and she smokes less than a pack of cigarettes per day and her doctor has told her to quit but she is not in a smoking cessation program. Claimant testified that in a typical day, she gets up, sits, drinks coffee, watches the news, dusts, reads a little and looks at the TV and then lies back down.

The objective medical evidence on the record indicates that a dated examination on September 29, 2009, states that on a physical examination her vital signs were stable. She was afebrile. Her lungs were clear, her heart had regular rate and rhythm. Her abdomen was benign. Her extremities: the examination of the right foot revealed swelling. She was tender in the foot area and there was some crepitance there as well. Neurovascular testing was normal. Her ankle and subtalar motion were normal. Her Achilles were intact. She had no tenderness in the lateral aspect of the mid foot. X-rays revealed mid-foot degenerative changes and her CT scans confirmed this. Right mid-foot arthritis was the impression (pp. 15-16).

An October 5, 2009, report indicates that claimant was given a right mid-foot arthrodesis (p. 17). A January 8, 2010, left shoulder radiology report indicates that glenohumeral and acromioclavicular joints are within normal limits. Bones, joints and soft tissues are radiographically unremarkable for age (p. 26). A CT of the abdomen/pelvis for a follow-up from ovarian cancer and complete hysterectomy indicates no interval change was seen and a comparison was made with the study of 29 December 29, 2009. Axial CT scans of the abdomen and pelvis were obtained. Reformatted images were obtained in their coronal and sagittal projections. A small hypodense area was again seen inferiorly in the left nodes of the liver. It measured approximately 5 centimeters in size. Its appearance is unchanged, study of 29 December 2009. The liver otherwise appeared within normal limits. The spleen, adrenal glands, kidneys and the pancreas appeared within normal limits. There was no evidence of retroperitoneal adenopathy. The bowel patterns were unremarkable. The appendix appeared within normal limits. The claimant has had a hysterectomy. There was no evidence of ascites (p.25). Claimant has a chest CT scan done because of an abnormal chest x-ray. There was one 4 millimeter nodule on the right lung apex. It was determined that etiology and recommendation was for a repeat CT scan in 3 months. The report was taken September 22, 2009 (p. 144).

In February 2, 2009, claimant was diagnosed with Stage I Grade II adenocarcinoma of the ovary. She received chemotherapy and was finished 6 cycles. She had an IV infusaport in place for her treatments. She denied any nausea, vomiting and increased abdominal pain or vaginal bleeding. She denied any changes in her bowel or bladder habits. She is feeling fine and anxious to complete her 6 cycles of chemotherapy (pp. 57-58). Claimant had an abdominal hysterectomy on October 28, 2008, and a bilaterally salpingo oophorectomy for her Stage I ovarian cancer (p. 125).

In the instant case, claimant's impairment or combination of impairments no longer meet/equal the severity of an impairment listing in appendix 1.

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, there has been a decrease in medical severity and medical improvement.

In Step 4 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. There has been an increase in claimant's residual functional capacity based upon evidence that was present at the time of the most favorable medical determination.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

In the instant case, this Administrative Law Judge finds that claimant has the residual functional capacity to perform at least sedentary work even with her impairments.

Thus, this Administrative Law Judge finds that claimant's. 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 work even with his impairments. This Administrative Law Judge finds that claimant's condition does not reveal significant limitations upon claimant's ability to engage in basic work activities.

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 waitress. Claimant was a waitress for 30 years. Because of her foot problems, claimant could probably not continue to work as a waitress, so this Administrative Law Judge will not disqualify claimant at the seventh step of this sequential evaluation.

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 functional 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 younger individual (age 47) with a high school diploma and one year of college and her past work experience as a waitress, claimant should be able to perform basic work activities and she should be able to perform a full range of sedentary work as defined in 20 CFR 416.967(a) because the nature of her limitations.

This Administrative Law Judge does take into account claimant's complaints of pain in that the diagnoses do support the claims. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a claimant's limitations. *Duncan v Secretary of HHS*, 801 F.2d 847, 853 (CA6, 1986); 20 CFR 404.1529, 416.929.

In the present case, the claimant has not presented the required competent, material, and substantial evidence which would support a finding that the claimant has an impairment or combination of impairments which would significantly limit the physical or

mental ability to do basic work activities. 20 CFR 416.920(c). Although the claimant has complained of medical problems, the clinical documentation submitted by the claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate the claimant's claim that the impairment(s) are severe enough to reach the criteria and definition of disabled. The claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time person and place during the hearing. Claimant's complaints of pain while profound and credible are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform some work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish a claimant has no residual functional capacity. Claimant is disqualified from receiving disability because she has not established by objective medical evidence that she continues to have a severe impairment which has kept her from working for a durational period of 12 months or more and she has not established by objective medical evidence that she cannot perform sedentary work even with her impairments.

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 based upon medical improvements.

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 review application for Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of sedentary work even with her impairments. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is AFFIRMED.

Landis

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

Date Signed: December 7, 2010

Date Mailed: December 10, 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.

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