

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. 20111051
Issue No. 2009/4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: December 2, 2010
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 held on December 2, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly determine claimant was not entitled to continuing Medicaid (MA) and State Disability Assistance (SDA) eligibility at review?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

1. Claimant is a single, 44-year-old nonsmoker with a high school education who completed Medical Assistance vocational training (Department Exhibit #1, pgs 106 and 127).
2. Claimant stands approximately 5'3" tall and is medically obese at approximately 230 pounds (BMI=40.7); she is right hand dominant, per self report (Department Exhibit #1, pg 31).
3. Claimant has been diagnosed with high blood pressure not uncommon in obesity patients; however, her medical records consistently evidence good control using only hydrochlorothiazide (a water pill/diuretic).

4. Claimant has an unskilled work history in home health care, restaurants and temporary telemarketing, which she quit in November 2010; she reports she has remained unemployed since then (Department Exhibit #1, pg 106).
5. In March 2009, claimant initially applied for disability-based MA/SDA because she had right rotator cuff problems which required surgery twice.
6. On June 30, 2009, the doctors on the department's Medical Review Team (MRT) approved these benefits with a mandatory review of claimant's condition initiated in July 2010 (Department Exhibit #1, pgs 121 and 122).
7. At review, the department's doctors MRT determined claimant's condition had improved enough for her to be physically capable of returning to the competitive workforce (Department Exhibit #1, pgs 21 and 22).
8. Claimant filed a timely hearing request to dispute her MA/SDA case closure; this hearing was held by conference telephone on December 2, 2010.
9. Claimant alleges she remains disabled for MA/SDA eligibility purposes based on high blood pressure, lumbar scoliosis, asthma and gallbladder problems.
10. Effective December 1, 2010, the department approved claimant eligible for limited Adult Medical Program (AMP) benefits because she now needs gallbladder removal, which was in the process of being scheduled as of her December 2, 2010 hearing date.
11. Likewise, although claimant alleges ongoing excruciating, debilitating and disabling pain in her lower back, neck, legs, ankles, feet, stomach, etc., the objective test results contained within her medical records do not substantiate the level chronicity being reported.
12. Specifically, claimant's August 24, 2009 lumbar spine MRI scan reveals only mild degenerative changes at multiple levels (arthritis) without evidence of disc herniation, central spinal stenosis or neural foraminal stenosis (Department Exhibit #1, pgs 58,59 and 69).
13. Additionally, right foot and ankle x-rays taken in August 2009 reveal only a mild bunion (hallux varus deformity) on claimant's right foot

without evidence of fracture or any other bone/joint abnormalities (Department Exhibit #1, pgs 60-64).

14. A medical progress report dated January 7, 2010, reveals claimant violated a pain contract, and therefore, she should not receive narcotic analgesics (Department Exhibit #1, pg 70).
15. However, claimant did exhibit some tenderness in her mid/lower back during this examination; consequently, she was referred to the Pain Clinic for reevaluation (Department Exhibit #1, pg 70).
16. An updated progress report (2/23/09) states claimant had visible left leg varicosities with some swelling; consequently, the treating doctor issued her a prescription for compression stockings (Department Exhibit #1, pg 34).
17. At that time, claimant was still recuperating from one of the rotator cuff surgeries referenced in Finding of Fact #5 above; however, the doctor expressed concern over the fact claimant had been seeking multiple prescriptions from several different doctors for narcotic pain medications in violation of her pain contract (Department Exhibit #1, pgs 34 and 70).
18. As of the hearing date, claimant was taking [REDACTED] for pain management and using an inhaler as needed for self-reported shortness-of-breath symptoms.
19. No evidence of any severe, diagnosed mental impairments exists in the medical records submitted to date; however, claimant said her treating doctor has prescribed [REDACTED] (an anti-depressant) to assist in pain and depression management (Department Exhibit #1, pgs 32 and 39).

CONCLUSIONS OF LAW

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).

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).

"Disability" is:

...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.

The SDA program differs from the federal MA regulations in that the durational requirement is 90 days. This means that the person's impairments must meet the SSI disability standards for 90 days in order for that person to be eligible for SDA benefits.

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 to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

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. First, the trier of fact must determine if the individual is working and if that work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). Claimant is not disqualified from receiving continued disability benefits at this step because she has not been gainfully employed since she quit her most recent, full-time job in February 2008, although it must be noted claimant was attending vocational school (Everest) in 2009, and also, she was temporarily working as a telemarketer in 2010 (See Department Exhibit #1, pg 127 and Finding of Fact #4 above).

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). These listed impairments contain over 100 medical conditions which are automatically deemed to qualify an individual for a disability due to their severity. However, claimant's impairments, standing alone or combined, fail to rise to listing status; consequently, this analysis must continue.

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).

In this case, this Administrative Law Judge finds improvement definitely has been shown. Claimant's high blood pressure currently is under good control. Additionally, she lives independently and is self-reliant in all basic living activities. Furthermore, it must be noted the law does not require an individual to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an individual's symptoms can be managed to the point where substantial gainful employment can be achieved. A finding of not disabled must be rendered.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly determined claimant was not entitled to continuing MA/SDA eligibility at review.

Accordingly, the department's action is AFFIRMED.

/s/
Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 8, 2010

Date Mailed: December 8, 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.

MBM/db

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