

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No: 201138134
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: February 22, 2012
Berrien County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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, an in-person hearing was held on Wednesday, February 22, 2012. Claimant personally appeared and testified on her own behalf.

ISSUE

Was a recovered non-disability medically established?

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 June 3, 2010, claimant's application for MA-P/SDA was approved per BEM 264/261.
2. On June 2, 2011, the Department of Human Services proposed termination of the programs above with a hearing request on June 9, 2011.
3. Claimant's vocational factors are: age 40, second grade education, and never worked.
4. On date of the negative case action above, the claimant allege continued disability due to multiple mental/physical disorders.
5. Medical exam on June 24, 2010, states the claimant's GAF score of 30 (Medical Packet, Page 388).

6. Medical exam on July 22, 2010, states the claimant's GAF score of 30 (Medical Packet, Page 244).
7. Medical exam on January 6, 2011, states the claimant has deep profound cognitive deficits and does not respond to questions in appropriate manner; that her cognitive deficits are signs of severe depression; that claimant has significantly below average intelligence; that she has severe depressive disorder with recent suicidal ideation and not controlled well despite aggressive therapy; that she has severe post-traumatic stress disorder; and that the position of Oak Pines is that claimant is unable to engage gainful employment; and that her prognosis is not going to change due to her severe underlying cognitive and mental conditions (Medical Packet, Pages 425-430).
8. Medical exam on May 4, 2011, states the claimant GAF score of 48 (Medical Packet, Page 411).
9. SHRT report dated July 11, 2011, states claimant's impairments does not meet/equal social security listed impairment (Medical Packet, Page 432).

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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Facts above are undisputed.

"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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The Department of Human Services has the burden of proof to establish a recovered non-severe disability in accordance with the seven step procedure below PAM 600.

...To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decision to stop disability benefits are made objectively, neutrally and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The steps are:

Step 1. Do you have an impairment or combination of impairments which meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of Part 404 of this chapter? If you do, your disability will be found to continue. 20 CFR 416.994(b)(5)(i).

Step 2. If you do not, has there been a medical improvement as defined in paragraph (b)(1)(i) of this section? If there has been medical improvement as shown by a decrease in medical severity, see Step 3 in paragraph (b)(5)(iii) of this section. If there has been no decrease in medical severity, there has been no medical improvement. (see Step 4 in paragraph (b)(5)(iv) of this section.) 20 CFR 416.994(b)(5)(ii).

Step 3. If there has been medical improvement, we must determine whether it is related to your ability to do work in accordance with paragraphs (b)(1)(I) through (b)(1)(iv) of this section; i.e., whether or not there has been an increase in the residual functional capacity based on the impairment(s) that was present at the time of the most recent favorable medical determination. If medical improvement is not related

to your ability to do work, see Step 5 in paragraph (b)(5)(v) of this section. 20 CFR 416.994(b)(5)(iii).

Step 4. If we found in Step 2 in paragraph (b)(5)(ii) of this section that there has been no medical improvement or if we found at Step 3 in paragraph (b)(5)(iii) of this section that the medical improvement is not related to your ability to work, we consider whether any of the exceptions in paragraphs (b)(3) and (b)(4) of this section apply. If none of them apply, your disability will be found to continue. If any of the first group of exceptions to medical improvement applies, see Step 5 in paragraph (b)(5)(v) of this section. If an exception from the second group of exceptions to medical improvement applies, your disability will be found to have ended. The second group of exceptions to medical improvement may be considered at any point in this process. 20 CFR 416.994(b)(5)(iv).

Step 5. If medical improvement is shown to be related to your ability to do work or if any of the first group of exceptions to medical improvement applies, we will determine whether all your current impairments in combination are severe (see Sec. 416.921). This determination will consider all your current impairments and the impact of the combination of these impairments on your ability to function. If the residual functional capacity assessment in Step 3 in paragraph (b)(5)(iii) of this section shows significant limitation to your ability to do basic work activities, see Step 6 in paragraph (b)(5)(iv) of this section. When the evidence shows that all your current impairments in combination do not significantly limit your physical or mental abilities to do basic work activities, these impairments will not be considered severe in nature. If so, you will no longer be considered disabled. 20 CFR 416.994(b)(5)(v).

Step 6. If your impairment(s) is severe, we will assess your current ability to engage in substantial gainful activity in accordance with 416.961. That is, we will assess your residual functional capacity based on all your current impairments and consider whether you can still do work that you have done in the past. If you can do such work, disability will be found to have ended. 20 CFR 416.994(b)(5)(vi).

Step 7. If you are not able to do work you have done in the past, we will consider one final step. Given the residual functional capacity assessment and considering your age,

education, and past work experience, can you do other work? If you can, disability will be found to have ended. If you cannot, disability will be found to continue. 20 CFR 416.994(b)(5)(vii).

In Step 1, the medical evidence of record does not establish a severe impairment meaning/equaling a social security listing impairment.

In Step 2, the medical evidence of record does not establish the claimant's medical impairment improvement as defined in paragraph (b)(1)(i) of this section.

Medical evidences of record establish the claimant's GAF scores of 30 on June 2010, 30 in July 2010, and 48 in May 2011.

Scores of 30 describes an individual with inability to function in almost all areas. And 48 describes an individual with a serious impairment with occupational functioning and unable to keep a job. DSM IV (fourth edition-revised).

In Step 4, the medical of evidence does establish any exception in paragraph (b)(3) and (b)(4) of this section apply. Therefore, claimant's disability continues.

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. BEM, Item 261, p. 1. Because the claimant does meet the definition of disabled under the MA-P program and because the evidence of record establishes that claimant is unable to work, the claimant does meet the disability criteria for continued State Disability Assistance benefits.

Therefore, a recovered non-disability has not been established at Step 4 as defined above by the competent, material and substantial material on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that a recovered non-disability was not medically established.

Accordingly, MA-P/SDA proposed termination is **REVERSED**.

Medical review is suggested in February 2013.

/s/
William A. Sundquist
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 5, 2012

Date Mailed: March 6, 2012

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.

WAS/tb

cc:

