

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20122391
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 22, 2011
Tuscola 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, a telephone hearing was held on Thursday, December 22, 2011. Claimant appeared with her authorized representative, [REDACTED].

Medical reports (Claimant Exhibit A) submitted at hearing for a second SHRT review delayed the decision and order below with the claimant's approval.

ISSUE

Was a recovered non-severe mental/physical, as defined below, 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 August 20, 2007, claimant was originally approved for MA-P based on stress, anxiety, depression, seizure disorder and epilepsy disorder (Medical Packet, Page 432).
2. On September 5, 2008, claimant had her continued eligibility approved (Medical Packet, Page 349 and 353).
3. Medical statement on March 10, 2009, states the claimant is able to work about 25 hours a week due to her psychiatric and medical condition (Claimant Exhibit A).
4. Psychiatric exam on August 18, 2010, states the claimant's GAF score of 60 (Medical Exam, Page 136).

5. Psychiatric exam on January 18, 2011, states the claimant's GAF score of 60 (Medical Exam, Page 132).
6. Medical exam on January 19, 2011, regarding claimant's seizures, states she has been doing pretty well; that she feels well overall; that she had a spell two weeks ago; that seizures occur once every two weeks; and that she states headaches are improved since she discontinued the vitamin B complex (Medical Exam, Page 104).
7. Medical exam on January 19, 2011, states the claimant's coordination is normal; that her gait is normal; that she has full range of motion of her extremities; and she has normal strength and stability in her extremities (Medical Packet, Page 106).
8. As of November 29, 2011, the claimant has been working 30 hours a week (Medical Packet, Page 527)

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 (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.

...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).

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).

At Step 1, the medical evidence of record does not establish a mental/physical impairment meeting/equaling a social security listing

At Step 2, the medical evidence of record establishes a medical improvement of claimant's mental/physical impairment.

The psychiatric evidence of record establishes the claimant's GAF score of 60 in August 2010 and January 2011. Scores of 50 and lower are considered a severe mental impairment with job-functioning. 51 and above non-severe mental impairment with job-functioning.

The medical evidence of record establishes the claimant's improvement of her seizure disorder and ability to work 30 hours a week.

The medical evidence of record establishes that in March 2009, the claimant had a capacity to work at least 25 hours a week; that in January 2011 her physical condition had substantial improvement; that her physical functional capacity became normal; and that she increased her current employment to 30 hours a week.

At Step 3, the medical improvement has been established related to claimant's ability to do work.

At Step 4, the medical evidence of record does not establish no medical improvement in the claimant's mental/physical residual functional capacity.

At Step 5, the medical evidence of record does not establish that current impairments in combination do not significantly limit claimant's mental or physical abilities to do basic work activities, resulting in a non-severe impairment, as defined below.

Severe/Non-Severe Impairment

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

Non-severe impairment(s). An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities. 20 CFR 416.921(a).

Basic work activities. When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.
20 CFR 416.921(b).

First, the fact that the claimant has been working part-time instead of full-time does not mean she is significantly limited in performing basic work activities, as defined above.

Substantial work activities is work activity that involves doing significant physical or mental activities. Your work maybe substantial even if it is done on part-time basis or if you do less, get paid less, or have less responsibility then when you worked before. ...20 CFR 416.972(a).

The question for this Administrator Law Judge is whether or not the claimant's medically diagnosed disorders are severe or non-severe, as defined above. Said in another way,

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do the claimant's medically diagnosed disorders impair her slightly, mildly, moderately (non-severe, as defined above) or severely, as defined above?

The medical evidence of record, discussed under Step 2, above, shows that the claimant is not significantly mentally/physically limited in performing basic work activities, as defined above.

This Administrative Law Judge based on the medical evidence of record finds that the claimant has a non-severe impairment, as defined above, and no longer a severe impairment, as defined above.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that a recovered non-severe mental/physical impairment has been medically established.

Accordingly, Medicaid termination is **UPHELD**.

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

Date Signed: March 23, 2012

Date Mailed: March 23, 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.

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cc:

