

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

IN THE MATTER OF:



Reg. No: 201230523
Issue No: 4031
Case No: [REDACTED]
Hearing Date: May 8, 2012
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on January 20, 2012. After due notice, a telephone hearing was held on Tuesday, May 8, 2012. The Claimant personally appeared and provided testimony.

ISSUE

Did the Department of Human Services (Department) properly determine that the Claimant was no longer disabled and deny her review application for State Disability Assistance (SDA) based upon medical improvement?

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 September 16, 2010, the Medical Review Team (MRT) determined that the Claimant's impairments prevent her employment for 90 days or more.
2. On July 26, 2011, the Department initiated a review of the Claimant's continued eligibility to receive benefits and determine if there has been medical improvement.
3. On January 11, 2012, the Medical Review Team (MRT) determined that the Claimant no longer met the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA) because it determined that she is capable of performing other work despite her non-exertional impairment.

4. On January 12, 2012, the Department sent the Claimant notice that it would close her State Disability Assistance (SDA) benefits due to the determination of the Medical Review Team (MRT).
5. On January 20, 2012, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
6. On March 21, 2012, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of SDA benefits.
7. The Claimant is a 47-year-old woman whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 135 pounds. The Claimant attended college where she was awarded a [REDACTED]. The Claimant is able to read and write and does have basic math skills.
8. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
9. The Claimant has past relevant work experience as a waitress and a caterer where she was required to set tables, serve dinners, and lift as much as 30 pounds.
10. The Claimant alleges disability due to bipolar disorder, depression, attention deficit hyperactivity disorder (ADHD), and a tibial plateau fracture.
11. The objective medical evidence indicates that on May 17, 2011, the Claimant had markedly limited attention and concentration, ability to complete a normal workday, ability to work in coordination with others, and ability to set realistic goals.
12. The objective medical evidence indicates that the Claimant was found to be oriented to time, person, and place.
13. The objective medical evidence indicates that the Claimant was found to have a mildly impaired ability to understand, attend to, remember, and carry out instructions.
14. The objective medical evidence indicates that the Claimant was found to have a moderately impaired ability to respond appropriately to co-workers and supervisors, and a moderately impaired ability to adapt to change.
15. The objective medical evidence indicates that the Claimant has a 6° – 10° restriction of the range of motion of her knee.
16. On June 18, 2010, the Claimant was found to have an acute complex split depressed fracture of the tibial plateau with an associated small tear of the anterior horn of the lateral meniscus.

17. The Claimant has been diagnosed with bipolar disorder.
18. The Claimant is capable of shopping for groceries, washing laundry, washing dishes, vacuuming floors, and dusting.
19. The Claimant is capable of walking for 30 minutes and standing for an hour.
20. The Claimant sings with a choir on a weekly basis.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because her claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (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 (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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 decisions 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. 20 CRR 416.994.

First, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

The Claimant's impairment failed to meet the listing for bipolar disorder, depression, or attention deficit hyperactivity disorder (ADHD) under section 12.04 Affective Disorders because the objective medical evidence does not demonstrate that the Claimant currently has marked restrictions of her activities of daily living and social functioning. The objective medical evidence does not demonstrate repeated episodes of decompensation of an extended duration, or that she is not capable of functioning outside a highly supportive living arrangement.

The objective medical evidence indicates that the Claimant is oriented to time, person, and place. The Claimant has a history of marked impairments of her attention, concentration, ability to work with others, and set realistic goals. Other medical evidence indicates that the Claimant has a mildly impaired ability to understand, attend to, remember, and carry out instructions. The objective medical evidence indicates that the Claimant has a moderately impaired ability to respond to co-workers, supervisors, and to adapt to change. The Claimant is capable of attending to her personal needs, and is capable of singing with a choir on a weekly basis.

The Claimant's impairment failed to meet the listing for a fractured tibial plateau under section 1.02 Major dysfunction of a joint because the objective medical evidence does not demonstrate that the Claimant is not capable of effective and unassisted ambulation. The Claimant testified that she is capable of walking for 30 minutes and standing for 60 minutes.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

Second, the Claimant's impairments are evaluated to determine whether there has been medical improvement as shown by a decrease in medical severity. 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).

The objective medical evidence indicates that on June 18, 2010, the Claimant was found to have an acute complex split depressed fracture of the tibial plateau with an associated small tear of the anterior horn of the lateral meniscus. The Claimant is currently able to walk for 30 minutes and stand for an hour.

The Claimant was found to have markedly limited attention and concentration, ability to complete a normal workday, ability to work in coordination with others, and ability to set

realistic goals. The objective medical evidence indicates that the Claimant is being treated for bipolar disorder and is in compliance with her treatment. The objective medical evidence indicates that the Claimant has a mildly impaired ability to understand, attend to, remember, and carry out instructions. The objective medical evidence indicates that the Claimant has a moderately impaired ability to respond appropriately to co-workers and supervisors, and a moderately impaired ability to adapt to change.

This Administrative Law Judge finds that there has been medical improvement as shown by a decrease in medical severity.

Third, the Claimant's medical improvement is evaluated to determine whether it is related to your ability to do work.

The objective medical evidence indicates that the Claimant has been diagnosed with bipolar disorder. The Claimant's impairments affect her ability to understand, attend to, remember, and carry out instructions. The Claimant's impairments affect her ability to respond appropriately to co-workers, supervisors, and adapt to change.

This Administrative Law Judge finds that the Claimant's improvement is related to her ability to perform work.

Fourth, the Claimant's impairments are evaluated to determine whether current impairments result in a severely restrictive physical or mental impairment.

The Claimant is a 47-year-old woman that is 5' 6" tall and weighs 135 pounds.

The objective medical evidence indicates the following:

The Claimant has 6° to 10° restriction of the range of motion of her knee. On June 18, 2010, the Claimant was found to have an acute complex split depressed fracture of the tibial plateau with an associated small tear of the anterior horn of the lateral meniscus. The Claimant is capable of shopping for groceries, vacuuming floors, and dusting. The Claimant is capable of walking for 30 minutes and standing for an hour.

On May 17, 2011, the Claimant was found to have marked limited attention and concentration, ability to complete a normal workday, ability to work in coordination with others, and ability to set realistic goals. The Claimant is oriented to person, place, and time. The Claimant has a mildly impaired ability to understand, attend to, remember, and carry out instructions. The Claimant has a moderately impaired ability to respond appropriately to co-workers, supervisors, and adapt to change. The Claimant is capable of shopping for groceries and she sings with a choir on a weekly basis.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that meets the severity and duration standard for SDA purposes.

Fifth, the Claimant's impairments are evaluated to determine whether you can still do work you have done in the past.

The Claimant has past relevant work experience as a waitress and a caterer where she was required to set tables, serve dinners, and lift as much as 30 pounds. The Claimant's prior work history fits the description of medium work, but her prior work experience could be applied towards similar work that fits the description of light work.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is unable to perform work in which she has engaged in, in the past.

Sixth, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

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).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do light or sedentary tasks if demanded of her. The Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments for a period of 12 months. The Claimant's testimony as to her limitations indicates that she should be able to perform light or sedentary work.

Claimant is 47-years-old, a younger person, under age 50, with a high school education and above, and a history of unskilled work. Based on the objective medical evidence of

record Claimant has the residual functional capacity to perform sedentary work or light work, and State Disability Assistance (SDA) is denied using Vocational Rule 20 CFR 202.20 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 261. Because the Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either.

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 the Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

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 continued disability and application for State Disability Assistance benefits. The Claimant should be able to perform sedentary or light work. The Department has established its case by a preponderance of the evidence. The Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the Department's decision is **AFFIRMED**.

/s/
Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 20, 2012

Date Mailed: June 20, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

KS/tb

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