

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-47244
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: June 27, 2012
County: St. Clair

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon the Claimant's request for a hearing made pursuant to Michigan Compiled Laws 400.9 and 400.37, which govern the administrative hearing and appeal process. After due notice, a telephone hearing was commenced on June 27, 2012, from Lansing, Michigan. Claimant, represented by Attorney [REDACTED] [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Family Independence Manager [REDACTED] [REDACTED]

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team (SHRT) for consideration. On September 11, 2012, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly determined that Claimant was no longer disabled and denied her review application for Medical Assistance (MA-P) and 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) Claimant was a Medical Assistance benefit recipient and her Medical Assistance case was scheduled for review in January, 2012.

- (2) On January 25, 2012, Claimant filed a Redetermination for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On March 30, 2012, the Medical Review Team denied Claimant's application indicating that Claimant was capable of performing other work, pursuant to 20 CFR 416-920(f). (Department Exhibit A, pages 116-117).
- (4) On April 4, 2012, the department caseworker sent Claimant notice that her MA and SDA benefits would be closed.
- (5) On April 13, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (6) On May 30, 2012, the State Hearing Review Team again denied Claimant's Redetermination indicating that Claimant was capable of performing a wide range of light work. SDA was denied per BEM 261 because the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days. (Department Exhibit B, pp 1-2).
- (7) On February 1, 2012, Claimant underwent a medical examination by her treating physician at the request of the department. Claimant was diagnosed with an upper respiratory infection, urinary urgency, hematuria, Crohn's disease, dyspnea, herpes keratitis, fatigue, vitamin-D deficiency, iron deficiency, abnormal uterine bleeding, restless leg syndrome, anxiety, right sciatica, right ankle pain and low blood pressure. An abdominal ultrasound was completed on 1/27/12 and was in within normal limits. The pelvic ultrasound on 1/27/12 indicated cysts within each ovary and a progressive ultrasound was scheduled in 6 weeks. (Department Exhibit A, pp 106-110).
- (8) On February 1, 2012, Claimant met with her primary care physician to follow-up on her recent ultrasound and lab values. The ultrasound confirmed the presence of bilateral 5 cm ovarian cysts. The left side was possibly hemorrhagic. The upper abdomen mass was possibly a dilated loop of small bowel from previous small bowel resection. Claimant was informed that the only way to rule out cancer was with a surgical diagnosis. The other option was to follow her closely with imaging. Claimant elected to follow up with imaging. (Department Exhibit A, p 93).
- (9) On April 10, 2012, an MRI of Claimant's lumbar spine without contrast revealed a left paracentral disc herniation at the L5-S1 level effacing the anterolateral thecal sac to left of midline and likely effacing central SI nerve. (Department Exhibit A, p 154).

- (10) On July 10, 2012, Claimant underwent an eye examination on behalf of the department. Claimant had a herpes infection in her left eye 15 years ago which has led to scarring of her left cornea. Without corrective lenses, Claimant's vision is 20/400 in her left eye with the best correction at 20/100. Her left eye was unaffected. (Department Exhibit A, pp 156-157).
- (11) Claimant was receiving Medicaid and State Disability Assistance at the time of this review.
- (12) Claimant alleges as disabling impairments Crohn's disease, anxiety, depression, anemia, fistulas, herpes keratitis and two herniated discs.
- (13) Claimant is a 44-year-old woman whose birth date is [REDACTED]. Claimant is 5'1" tall and weighs 182 pounds. Claimant is a high school graduate and is able to read and write and does have basic math skills.
- (14) Claimant last worked in March, 2008 as a dietary supervisor for 7 years, and as a restaurant manager for 10 years before that. She has a valid driver's license and is able to drive.

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 Reference Tables Manual (RFT).

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

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. 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 first question asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because she has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CFR 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement.

Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

The State Hearing Review Team upheld the denial of SDA and MA benefits on the basis that Claimant's severe impairments did not meet or equal any listing and despite her severe impairments, she retained the capacity to perform light work.

Pursuant to the federal regulations, at medical review, the agency has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The agency has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

In this case, the agency has not met its burden of proof. The agency has provided no evidence that indicates Claimant had improvement or that that improvement relates to her ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the agency's SDA and MA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department erred in proposing to close Claimant's MA and SDA benefits based upon a finding that was capable of light work.

Accordingly, the department's action is **REVERSED**, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with Claimant's next mandatory medical review scheduled in September, 2014 (unless she is approved eligible for Social Security disability benefits by that time).

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: September 26, 2012

Date Mailed: September 27, 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.

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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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