

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-20522

Issue No: 4031

[REDACTED]

February 28, 2012

St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received on December 15, 2011. After due notice, a telephone hearing was held on February 28, 2012. Claimant personally appeared and testified.

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 April 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 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 MA and SDA recipient and her MA/SDA case was scheduled for review in June 2011.
- (2) On June 23, 2011, Claimant filed a Redetermination for MA and SDA benefits alleging continued disability.

- (3) On November 22, 2011, the Medical Review Team denied Claimant's application stating that Claimant had medical improvement. (Department Exhibit A, p 302).
- (4) On December 12, 2011, the department caseworker sent Claimant notice that her MA and SDA cases would be closed based upon medical improvement.
- (5) On December 15, 2011, Claimant filed a request for a hearing to contest the department's negative SDA action. Claimant testified that she is receiving the Adult Medical Program and was only contesting the denial of SDA.
- (6) On February 1, 2011, the State Hearing Review Team again denied Claimant's Redetermination indicating that 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.
- (7) Claimant has a history of chronic obstructive pulmonary disease (COPD), hypertension, hyperlipidemia, anxiety, agoraphobia, social phobia, and depression.
- (8) On June 20, 2011, Claimant underwent a medical examination on behalf of the department. Claimant was currently diagnosed with COPD, hypertension, depression, anxiety, insomnia, dyslipidemia, and left thigh pain. The examining physician found Claimant's condition was deteriorating and that she was limited to lifting/carrying less than 10 pounds and could not use her feet or legs to operate foot and leg controls. The physician also found Claimant would be able to stand or walk or sit for less than 2 hours in an 8-hour workday. The physician opined that Claimant's depression and anxiety would increase in a stressful work environment and that repetitive motion would increase her chronic leg and thigh pain levels. (Department Exhibit A, pp 280-281).
- (9) On July 27, 2011, Claimant underwent a medical examination at the request of the department. Her chief complaints were shortness of breath, high blood pressure, and anxiety. The examining physician found that Claimant did appear to have mild to moderate obstructive pulmonary disease clinically and pulmonary function studies would be of benefit. She was on inhaler therapy. Much of this appears to be related to chronic tobacco use as well as due to her body habitus. Her blood pressure was normal. She was on anti-hypertensive agents. There was no evidence of heart failure on exam. At this point, tobacco cessation and continued inhaler therapy would be of benefit. Her degree of impairment appears mild but not actively declining. Her prognosis appears fair. (Department Exhibit A, pp 289-291).

- (10) On July 28, 2011, Claimant underwent a psychological evaluation. Claimant stated she has social phobias where she cannot be around a bunch of people and she has anxiety. She also suffers from severe depression. Claimant had a distant psychiatric hospitalization years ago, and is currently in outpatient treatment. Her current medications include Paxil, Ativan, Seroquel, Tofranil, BuSpar, Metoprolol, and Crestor. Claimant described a constricted range of activities, interests, and social contacts. She alleges that she has panic attacks when exposed to groups of people or crowds. Claimant was able to perform simple arithmetic, but seemed to lose her concentration on sequential calculations. Claimant's formal judgment was impaired. Diagnoses: Axis I: Social Phobia, Depressive Disorder; Axis V: GAF=55. Prognosis is guarded. (Department Exhibit A, pp 286-288).
- (11) On September 28, 2011, Claimant underwent a medical examination on behalf of the department. Claimant had right knee pain. She did have significant diminished range of motion and much of this did appear to be postsurgical. She did have mild effusion of the right knee with associated mild lower extremity edema. Orthopedic maneuvers were not obtained due to her recent surgery. She will need physical therapy. In the short term, she would benefit from the use of an assistive device, but potentially, this could be weaned off. The pulmonary function report showed her FEV1 after the bronchodilator was 1.46, 1.43 and 2.02. Her FVC after the bronchodilator was 2.19, 2.16, and 2.03. The reduced FVC indicated that Claimant has a moderately severe restriction. The examining physician opined that Claimant does appear to have a moderate restrictive disease due to chronic bronchitis. She does have a history of tobacco use and she did appear mildly dyspneic, but was not hypoxic today. Her blood pressure was stable and there were no findings of heart failure. Her overall physical degree of impairment appeared moderate, but the physician opined that he suspected it would improve after therapy. Her prognosis was fair. (Department Exhibit A, pp 292-297).
- (12) On December 27, 2011, Claimant was admitted to the hospital with severe COPD exacerbation and tracheobronchitis and underwent a bronchoscopy. She was doing much better by the time of discharge. She grew some candida, but responded well to Diflucan. She also had some proximal myopathy from steroids and they were discontinued, and she was doing better by discharge. Final diagnoses: (1) Acute severe COPD exacerbation; (2) Purulent tracheobronchitis; (3) Candida obtained following bronchoscopy; (4) Acute mild pancreatitis; (5) Gastric polyp that was removed; (6) Gastritis; (7) Esophagitis; (8) Essential hypertension; (9) Depression and anxiety; (10) Proximal myopathy from steroids; (11) Hyperglycemia from steroids; (12) Bipolar disorder and depression. Claimant was discharged on January 11, 2012, with Seroquel, Trazodone,

Diflucan, Levaquin, Protonix, Paxil, and an Atrovent nebulizer to use three times a day plus Albuterol as needed.

- (13) Claimant is a 52 year old woman whose birthday is [REDACTED]. Claimant is 5'3" tall and weighs 205 lbs. Claimant graduated from high school. Claimant last worked in 2006.
- (14) Claimant was appealing the denial of Social Security disability at the time of the hearing.

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).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 CF 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 benefits on the basis that Claimant's medical condition has improved. Claimant was approved for SDA benefits in 2008. 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's condition has improved or that it relates to her ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that showed Claimant is currently capable of doing basic work activities. Accordingly, the agency's SDA 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 SDA case based upon a finding of improvement at review.

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 April, 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: 5/1/12_____

Date Mailed: 5/1/12_____

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.

VLA/ds

■ [REDACTED]