

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-57984
Issue No: 2009; 4031
Case No: [REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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. After due notice, a telephone hearing was held on [REDACTED]. Claimant personally appeared and testified by a 3-way teleconference call.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer disabled and deny 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 on [REDACTED]. She had been approved by the MRT on [REDACTED] for MA-P, SDA and retroactive Medical Assistance benefits.
2. On [REDACTED] claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On [REDACTED] the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On [REDACTED] the department caseworker sent claimant notice that her Medical Assistance and State Disability case would be cancelled based upon medical improvement.

5. On [REDACTED] claimant filed a request for a hearing to contest the department's negative action.
6. On [REDACTED], the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: The claimant was approved by the MRT in [REDACTED] on her mental limitations. Her thoughts were racing and she was obsessing. She was depressed and anxious. However, the claimant has not followed through with her mental health treatment. Her condition is expected to improve with continued prescribed treatment. In [REDACTED] she was noted to have missed a lot of appointments and her probation officer told her she needed to keep mental health appointments or she would go to jail for violation. The claimant had generalized weakness and generalized tenderness. However, her strength at the neurology evaluation was 5/5 throughout. Her gait was within normal limits. She has asthma and had expiratory wheeze. However, she had not required frequent emergency treatment for her asthma. The claimant's condition is expected to be better controlled with prescribed treatment. The claimant is not currently engaging in substantial gainful activity based on the information that is available in the file. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of simple, unskilled, light work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical-vocational guidelines would direct a finding of not disabled given the claimant's age, education and residual functional capacity.

Therefore, based on the claimant's vocational profile (younger individual, 12th grade education and history of unskilled/semi-skilled work); MA-P is denied using Vocational Rule 202.20 as a guide. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments no longer preclude work activity at the above stated level for 90 days.

7. Claimant is a [REDACTED] whose birth date is [REDACTED]. Claimant is 5'11" tall and weighs 304 pounds. Claimant is a high school graduate and has a mental health tech certificate. Claimant is able to read and write and does have basis math skills.
8. Claimant last worked in [REDACTED] as a cashier [REDACTED]. Claimant has also worked as a mental health technician feeding and bathing mentally disabled individuals
9. Claimant alleges as disabling impairments: borderline personality disorder, fibromyalgia, rheumatoid arthritis, bipolar disorder, anxiety, depression, post traumatic stress disorder (PTSD), degenerative disk disease (DDD),

bulging disks, herniated disk, agoraphobia, panic attacks, paranoia as well as constant vomiting and diarrhea.

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 his or her claim for assistance has been denied. MAC R 400.903(1). 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 (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 (PAM), the Program Eligibility Manual (PEM) 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 (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be

continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the claimant is not engaged in substantial gainful activity and has not worked since 2010.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

The objective medical evidence in the record indicates that a psychological evaluation dated March 10, 2011 showed the claimant was initially shy. Her speech was low volume, understandable, clear and fluent. She made sporadic eye contact. She did not maintain a conversation and merely answered questions asked of her (A168). She was a fair historian. Her memory for recent events was poor. Her mood was really anxious and wanting to go home. She had been depressed and blue. She reported her anxiousness turns to anger. Her affect was restricted, blunted and flat. She seemed to be sad and very anxious. Thought process was relevant to questioning. Her thoughts had been racing and she obsesses about things (A169). Diagnosis was bipolar disorder, most recent episode severe depression, PTSD, history of cannabis use and anti-social personality (A170).

A mental status dated [REDACTED] showed the claimant was paranoid, irritable and easily agitated. She reported racing thoughts (A47). Diagnoses included bipolar disorder, PTSD, cannabis dependence and borderline personality disorder (A40).

Mental health progress notes dated [REDACTED], indicated the claimant's probation officer told her she needed to keep her mental health appointments or she would go to jail for violation. Her worker looked up her records on the computer and she had missed many appointments, never met with her therapist, but did come in [REDACTED]. She had not turned in her paperwork and Medicaid was closed (A53).

A neurology consultation dated [REDACTED] showed the claimant was 304.2 pounds (A161). She had severe tenderness to palpation over the bilateral greater occipital nerve region. She had tenderness to palpation over the cervical and lumbar spine with decreased range of motion. Strength was 5/5 in all four extremities. Sensations were intact. Deep tendon reflexes were 2+. Gait was within normal limits (A162).

In [REDACTED], the claimant was 71" and 292 pounds. Her diagnoses included asthma, bipolar, depression, fibromyalgia, seasonal allergies, PTSD and borderline personality disorder (A80). She was obese with a slow steady gait. She reported fatigue. She had expiratory wheeze. She had generalized tenderness and generalized weakness. She is able to button and manipulate fingers. She had decreased deep tendon reflexes on the right side. Her affect was flat, but she was able to comprehend appropriately (A81).

A neurology report dated [REDACTED] indicated that claimant's weight was 304.2 pounds, blood pressure was 130/92, heart rate was 90, respiratory rate was 16 and her temperature was 97.4 degrees. The patient was well-developed, well-nourished female and appeared in no acute distress. Cranial nerves II through XII were intact. Strength was 5/5 in all four extremities. The heart had regular rate and rhythm S1 and S2 without murmurs. The impression was lumbago/lumbar radicular pain, depression, tobacco dependence and she was counseled to tobacco cessation (Pgs. A161-A162).

A lower extremity nerve conduction study indicates that the study demonstrates normal nerve conduction study and needle EMG examination of the bilateral lower extremities. There was no electrophysiological evidence of peripheral polyneuropathy, isolated abnormality of the examined nerves or lumbosacral radiculopathy; although a negative needle EMG examination may not preclude lumbosacral radiculopathy (A156).

A diagnostic radiology CT of the brain, cervical spine, chest, abdomen and pelvis dated [REDACTED] indicated that no significant spinal stenosis, foraminal encroachment or disk herniation. Cervical vertebral bodies are intact in the cervical spine. The chest had no pneumothorax or pleural effusion. No fracture was evidence and no lung mass or airspace disease (Pg. A97). The abdomen had no solid abnormality. There was a gallstone noted incidentally within the gallbladder. The pelvis had no fracture. The impression was no traumatic abnormality evident (Pg. A98).

A medical examination reported dated [REDACTED] indicates the claimant was 71" tall and weighed 292 pounds. Her blood pressure was 118/84. She was right hand dominant. Her visual acuity was 20/25 in both eyes (Pg. A80). The clinical impression was that claimant was stable (Pg. A81).

At Step 2, claimant's impairments do not equal or meet the severity of an impairment listed in Appendix 1.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). 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). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In the instant case, this Administrative Law Judge finds that claimant does have medical improvement and his medical improvement is related to the claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that claimant's. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds claimant can perform at least sedentary work even with her impairments. This Administrative Law Judge finds that claimant can perform at least light or sedentary work even with her impairments and does have medical improvement.

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residual functional capacity based on all current impairments and consider whether the claimant can still do work he/she has done in the past. In this case, this Administrative Law Judge finds that claimant could probably perform her past work as a mental health technician or a cashier.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the claimant's vocational profile of a younger individual age 25, MA-P is denied using Vocational Rule 202.20 as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and 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 proposed to cancel claimant's Medical Assistance and State Disability Assistance benefits based upon medical improvement.

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. PEM, Item 261, page 1. 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 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.

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 Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

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

/s/ _____
Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.

LYL/jk

cc:

[REDACTED]

MAHS