

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

IN THE MATTER OF:



Reg. No.: 201273903
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: December 13, 2012
County: Monroe

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

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 December 13, 2012.

ISSUE

Did the Department of Human Services (DHS) properly propose to close Claimant's Medical Assistant (MA-P) and State Disability Assistance (SDA) cases at review?

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 previously approved by MRT and benefits began in May, 2010. At review by MRT, Claimant's benefits were denied in August, 2012.
2. There is no retro MA-P issue herein.
3. On 8/16/12 Claimant was denied continued eligibility by MRT.
4. On 8/21/12, the DHS issued notice.
5. On 8/31/12, Claimant filed a hearing request. The DHS reinstated the cases pending the outcome of the review.
6. On 10/18/12 the State Hearing Review Team (SHRT) denied Claimant. Pursuant to Claimant's request to hold the record open for the submission of new and additional medical documentation, on 2/19/13 SHRT once again denied Claimant.

7. Claimant has been denied twice by the Social Security Administration (SSA) for SSI applications. On 12/1/11 Claimant was denied an appeal by the [REDACTED] [REDACTED] of a [REDACTED] [REDACTED] denial of her SSI application. Claimant subsequently re-applied on 9/5/12 and was denied. Claimant filed an appeal on 11/28/12. Claimant has been denied SSI by the Social Security Administration (SSA). Claimant has had a final determination by SSA. None of the exceptions apply.
8. As of the date of review, Claimant was a [REDACTED]-year-old stand 5'8 and weighing 365 pounds. Claimant's BMI is 55.5. (BMI Index/Education).
9. Claimant does not smoke, does not use alcohol, and does use drugs.
10. Claimant has a [REDACTED] [REDACTED]
11. Claimant is not currently working. Claimant's work history is semi-skilled/skilled employment.
12. Claimant alleges continuing disability on the basis of diabetes, neurocardiogenic syncope, problems with her left foot, ankle and leg.
13. The 10/18/12 SHRT decision is adopted and incorporated by reference to the following extent:

Medical Summary:

The Claimant was denied disability benefits by the Social Security Administrative Law Judge (ALJ) 2/4/11 (Exhibit 120) and the Appeals Council denied her request for review 12/1/11 (Exhibit 47).

On 4/19/12, the Claimant underwent left tarsal tunnel release (Exhibit 15). On 7/7/12, the Claimant's incision was well healed. There was very minimal tenderness to palpation. Her sensation was improved. She was to start physical therapy (Exhibit 7).

A cardiology examination dated 6/20/12 showed the Claimant has a history of vasodepressor syndrome with a history of positive tilt table testing in 10/08. She had a recent diagnosis of diabetes. She had a normal cardiac catheterization in 12/08. Lower extremity venous and arterial Doppler's were within normal limits. Repeat cardiac catheterization in 9/11 showed all coronaries were normal with normal left ventricular ejection fraction. Pulmonary evaluations showed an unremarkable pulmonary function testing with unremarkable sleep study. She has suspected gastroesophageal reflux disease and gastroparesis. On

examination, the Claimant was 331 pounds and her blood pressure was 124/68. Motor and sensory examinations were grossly normal. Reflexes were 2+. Gait was normal. Her musculoskeletal examination showed no joint deformity, inflammation or synovitis. She has vasodepressor syndrome and was to continue her medications (records from DDS).

An office visit date 9/14/02 showed the Claimant was 335.6 pounds with a BMI of 51.03 (records from DDS).

Analysis:

The Claimant was denied disability benefits by the Social Security ALJ 2/4/11 and the Appeals Council denied her request for review 12/1/11. The ALJs decision is a final and binding decision. Therefore, the Claimant's MA-P and SDA should be ceased based on that final and binding Social Security decision. This case should be evaluated as a new application.

Recommendation:

Denied per medical vocational grid rule 201.21 as guide.

14. The 2/19/13 subsequent SHRT decision is adopted and incorporated to the following extent:

New Information:

A letter dated 9/12/12 from the Claimant's treating physician/nurse indicated the Claimant was not able to work due to chronic fatigue and shortness of breath. She constantly has symptoms of chest tightness and shortness of breath. The Claimant completed multiple tests and it was found that she had chronic obstructive pulmonary disease and it was recommended that she use oxygen. Her symptoms will not improve. She also has uncontrolled hypertension and diabetes (Exhibit 1A).

There are no new objective findings submitted. New information does not significantly change or alter the previous decision. Denied per medical vocational grid rule 201.20 as a guide.

15. Medical evidence shows improvement.
16. Claimant testified that she does her activities of daily living "as tolerated."

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 (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

Statutory authority for the SDA program states in part:

- (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.

Federal regulations and State law require specific considerations at review. These Federal regulations state in part:

...the medical evidence we will need for a continuing disability review will be that required to make a current determination or decision as to whether you are still disabled, as defined under the medical improvement review standard.... 20 CFR 416.993.

...In some instances, such as when a source is known to be unable to provide certain tests or procedures or is known to be nonproductive or uncooperative, we may order a consultative examination while awaiting receipt of medical source evidence. Before deciding that your disability has ended, we will develop a complete medical history covering at least the 12 months preceding the date you sign a report about your continuing disability status.... 20 CFR 416.993(b).

...If you are entitled to disability benefits as a disabled person age 18 or over (adult) there are a number of factors we consider in deciding whether your disability continues. We must determine if there has been any medical improvement in your impairment(s) and, if so, whether this

medical improvement is related to your ability to work. If your impairment(s) has not so medically improved, we must consider whether one or more of the exceptions to medical improvement applies. If medical improvement related to your ability to work has not occurred and no exception applies, your benefits will continue. Even where medical improvement related to your ability to work has occurred or an exception applies, in most cases, we must also show that you are currently able to engage in substantial gainful activity before we can find that you are no longer disabled. 20 CFR 416.994(b).

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).

Medical improvement not related to ability to do work. Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

Medical improvement that is related to ability to do work. Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

As noted above, the first two steps of the sequential analysis require an assessment as to whether there has been an improvement. The second step requires a showing as to whether that improvement is related to an individual's ability to engage in work or work like settings. The final five steps of the seven steps at review are basically the sequential analysis and is assessed as a new application as noted by SHRT.

This ALJ has reviewed the great bulk of medical evidence herein and finds that Claimant's conditions have improved from the time she was initially granted benefits by MRT. Specifically, as noted by SHRT, Claimant has normal cardiac catheterization in 2011. Doppler studies were unremarkable. Pulmonary function studies and sleep studies are unremarkable. Claimant does have a BMI over 50. Claimant's vasodepressor syndrome is treated with medication.

Claimant also went under a tarsal tunnel release in 4/12. Reflexes were grossly normal as to her motor sensory and reflexes measurements in 6/12. Claimant's musculoskeletal exam did show any joint deformity, inflammation, or synovitis. This medical evidence shows improvement.

The remaining five steps applies the five steps of the sequential analysis as a new application as noted by SHRT under Federal law and State policy, there is no jurisdiction to proceed with substantive review of an application where an individual has received a final determination within the consideration and parameters outlined in 42 CFR 435.541. That law is reflected in the DHS policies:

Final SSI Disability Determination

SSA's determination that disability or blindness does **not** exist for SSI purposes is **final** for MA if:

- . The determination was made after 1/1/90, **and**
- . No further appeals may be made at SSA, **or**
- . The client failed to file an appeal at any step within SSA's 60-day limit, **and**
- . The client is **not** claiming:
 - .. A totally different disabling condition than the condition SSA based its determination on, **or**
 - .. An additional impairment(s) or change or deterioration in his condition that SSA has **not** made a determination on.

Eligibility for MA based on disability or blindness does **not** exist once SSA's determination is **final**. PEM, Item 260, pp 2-3.

Relevant federal regulations are found at 42 CFR Part 435. These regulations provide: "An SSA disability determination is binding on an agency until the determination is changed by the SSA." 42 CFR 435.541(a)(b)(i). These regulations further provide: "If the SSA determination is changed, the new determination is also binding on the agency." 42 CFR 435.541(a)(b)(ii).

In this case, evidence on the record indicates that Claimant received a denial by the Appeals Council regarding her appeal which denied her by a Federal ALJ. That denial by the Appeals Council was issued on 12/1/11. Moreover, Claimant received a subsequent denial on a re-application. While Claimant has an appeal pending on that re-application, the denial at the Federal level by the Appeals Council is controlling. Claimant alleged that her condition is worsening; there is no medical evidence to support Claimant's claim. In fact, Claimant's condition(s) have improved. Claimant's claim was considered by SSA and benefits denied. The determination was final. Claimant is alleging the same impairments. None of the exceptions apply

For these reasons, under the above-cited policy and federal law, this Administrative Law Judge has no jurisdiction to proceed with a substantive review. The department's denial must be upheld.

As noted above, should the SSA change its determination, then the new determination would also be binding on the DHS.

Claimant may reapply.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department's actions were correct.

Accordingly, the department's determination in this matter is UPHELD.

/s/ _____
Janice G. Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 4/15/13

Date Mailed: 4/16/13

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 mailing date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error , or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
 - the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

JGS/tb

cc:

