

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-2435
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 23, 2013
Iosco County DHS

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 January 23, 2013. Claimant personally appeared and testified. Claimant was represented at the hearing by [REDACTED] of [REDACTED]. The Department was represented by Assistant Attorney General, [REDACTED].

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 in August, 2012.
2. On August 31, 2012, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On September 5, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On September 20, 2012, the department caseworker sent claimant notice that her Medical Assistance case would be cancelled based upon medical improvement.

5. On September 27, 2012, claimant filed a request for a hearing to contest the department's negative action.
6. On October 18, 2012, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: the medical evidence of record indicates that a significant medical improvement in the claimant's condition has been evidenced. While medical improvement has been evidenced, it is reasonable that the claimant would reasonably be limited to the performance of light exertional tasks that avoid exposure to pulmonary irritants and avoids the use of ropes, ladders and scaffolding and more than occasional crouching, crawling and squatting. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration listing. The medical evidence of record indicates that the claimant retains the capacity to perform light exertional tasks that avoid exposure to pulmonary irritants and avoids the use of ropes, ladders and scaffolding and more than occasional crouching, crawling and squatting. The claimant's past work was as a waitress, 310.137-010, 6L; bartender, 312.474-010, 3L; and assembly, 706.684-022, 2L. As such, the claimant would be unable to perform the duties associated with their past work. Likewise, the claimant's past work skills will not transfer to other occupations. Therefore, based on the claimant's vocational profile (41 years old, at least a high school education and a history of light exertional, unskilled, semiskilled and skilled employment), continuing MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 202.21 as a guide. Continuing SDA is denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Retroactive MA-P was not considered as part of this continuing MA-P and SDA only review. Listings 1.02/04, 3.02, 4.11/12, 5.05/06 and 11.14 were considered in this determination.
7. The hearing was held on January 23, 2013. At the hearing, claimant waived the time periods and requested to submit additional medical information.
8. Additional medical information was received and sent to the State Hearing Review Team on January 23, 2013.
9. On March 21, 2013, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence of record continues to support that a significant medical improvement in the claimant's condition has been evidenced. While medical improvement has been evidenced, it is reasonable that the claimant would reasonably be limited to the performance of light exertional tasks that avoid exposure to pulmonary irritants and avoids the use of ropes, ladders and scaffolding and more than occasional crouching,

crawling and squatting. The newly provided consultation has been considered but the extreme findings are not supported by totality of the evidence in file. The claimant is not currently engaging in substantial gainful activity based on the information that is available in file. The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration listing. The medical evidence of record indicates that the claimant retains the capacity to perform light exertional tasks that avoid exposure to pulmonary irritants and avoids the use of ropes, ladders and scaffolding and more than occasional crouching, crawling and squatting. The claimant's past work was as a waitress, 310.137-010, 6L; bartender, 312.474-010, 3L; and assembly, 706.684-022, 2L. As such, the claimant would be unable to perform the duties associated with their past work. Likewise, the claimant's past work skills will not transfer to other occupations. Therefore, based on the claimant's vocational profile (41 years old, at least a high school education and a history of light exertional, unskilled, semiskilled and skilled employment), continuing MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 202.21 as a guide. Continuing SDA is denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Retroactive MA-P was not considered as part of this continuing MA-P and SDA only review. Listings 1.02/04, 3.02, 4.11/12, 5.05/06 and 11.14 were considered in this determination.

10. Claimant is a 41-year-old whose birth date is [REDACTED]. Claimant is 5'9" tall and weighs 330 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
11. Claimant last worked March, 2010 as a waitress. Claimant has also worked as a bartender, waitress and in a factory making plastic parts.
12. Claimant alleges as disabling impairments: chronic obstructive pulmonary disease, edema in the lower extremities, degenerative joint disease, degenerative disc disease, venous insufficiency, hypertension, bronchitis, bulging disc, sciatica, depression and anxiety.
13. Claimant was receiving Medicaid Assistance and State Disability Assistance benefits.

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 an 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 March, 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 on October 5, 2012, [REDACTED] report indicates that claimant is 330 lbs and is a chronic smoker of 2-3 packs per day for 25 years. She is 5'9" tall. Her physical examination shows she is grossly overweight and has peripheral neuropathy. She has no other focal deficits aside from possible right lower extremity weakness. Her pupils are equal, round, reactive to light and accommodating. Her blood pressure is 162/90 with a pulse rate of 80 beats per minute. Her respiratory rate is 22 per minute at rest with a 96% at rest oxygen saturation rate. Her neck is supple though protuberant. There is no gross jugular venous distention with minimally inducible hepatjugular reflux. Her carotid upstroke is brisk. Her chest reveals limited excursion and a few rhonchi, but at present there is no wheezing nor are there any rales (client ex 2). Her cardiovascular exam reveals very distant heart sounds with a soft S4. PMI is difficult to palpate. The doctor did not appreciate any murmur nor S3 gallop. Her abdomen is markedly protuberant. There is no gross organomegaly. There is mild hepatic capsular distention. Her extremities are edematous and lipedematous. There is edema of the dorsum of the foot. She was counseled to stop smoking (client ex 3). This Administrative Law Judge did consider approximately 700 pages of medical reports, contained in the file, when making this decision. In November 4, 2011, the Social Security Administration issued an unfavorable decision indicating that claimant is not disabled under section 216(i) and 223 (d) of the Social Security Act and she is not disabled for supplemental security income under 1614 (a)(3)(A) of the Social Security Act (p 707).

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.

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 waitress or bartender even with her impairments.

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 functional 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 at age 41, with a high school education and a light work history, MA-P is denied using Vocational Rule 20.2.21 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.

It should be noted that claimant continues to smoke despite the fact that her doctor has told her to quit. Claimant is not in compliance with her treatment program. Claimant did testify on the record that she does smoke a ½ pack of cigarettes per day and her doctors have told her to quit.

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).

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

Landis

Date Signed: April 9, 2013

Date Mailed: April 9, 2013

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.

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.

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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

LYL/las

cc:

