

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

IN THE MATTER OF:



Reg. No: 2013-2951
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: January 22, 2013
Saginaw 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 22, 2013. Claimant personally appeared and testified.

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 and State Disability Assistance benefit recipient and her case was scheduled for review in October, 2012.
2. On September 1, 2012, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On September 20, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On September 24, 2012, the department caseworker sent claimant notice that her Medical Assistance and State Disability case would be cancelled based upon medical improvement.
5. On October 10, 2012, claimant filed a request for a hearing to contest the department's negative action.

6. On October 23, 2012, the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the medical evidence does not support that a severe condition that met or equaled SSA listing criteria has ever been present or that the claimant's condition was ever of a severe enough nature that they would have been precluded from gainful activities based upon vocational considerations. The evidence does support that the claimant would be reasonably limited to the performance of light exertional tasks of a simple and repetitive nature. While drug and alcohol abuse (DAA) is present, the evidence does not support that it is material to this determination. Continuing benefits are ceased. There is evidence provided by the claimant to medical providers that they may be currently employed which would need to be more thoroughly investigated by DHS staff prior to any future applications. The medical evidence of record indicates that significant medical improvement has been evidenced (20CFR416.994) and that the following now applies to this claim: 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 of a simple and repetitive nature. DAA is present but not material to this determination. The claimant's past work was as a janitor, 381.687-014, 2H. 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 (49 years old, a high school education and a history of heavy exertional, unskilled employment), continuing MA-P is denied, 20CFR416.920 (e&g), using Vocational Rule 202.20 as a guide. Retroactive MA-P was and SDA was not considered as part of this continuing MA-P only review. Listings 1.02/04, 4.04, 6.02, 11.14, 12.04/09, 13.23 and 14.09 were considered in this determination.
7. Claimant is a 50-year-old woman whose birth date is [REDACTED]. Claimant is 4'11" tall and weighs 160 pounds. Claimant is a high school graduate. Claimant stated she cannot read and write well and she can count money.
8. Claimant last worked approximately 4-5 years ago at a pickle factory as a seasonal employee. Claimant has also worked as a custodian and doing factory work.
9. Claimant alleges as disabling impairments: hypertension, stage IV kidney disease, polyarthritis, hemorrhoids, knee problems, ulcer, and elbow problems.

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 approximately 2008.

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 psychiatric medical examination states that her last use of alcohol was around Christmas and alcohol has never been a problem for her. The last time she used marijuana was around Christmas, and she said that has never been a daily habit. However, she finds it helps her control pain, helps her relax and sleep, and also alleviates depression (p 374). She demonstrated good contact with reality. She was asked about motivation for the future and stated she would like to live long enough to see her grandson graduate. Her speech was spontaneous and organized, but somewhat rambling. She was alone for the interview and was driven to the office by her uncle. She does drive sometimes. She is about 5' tall and stated she did not know her weight, although she appeared to be overweight. Her posture was normal and she walked with a cane. Her clothing was clean and her hygiene was good. She wore a hat, blue jeans, tennis shoes and glasses. Her mannerisms were cooperative and attentive, but she was tearful and downcast. She acknowledged physical pain in her knees, elbows and back. She was oriented in all spheres, although acknowledged the need for a digital clock to tell time. She could repeat two digits forward and two backward. The claimant seemed to need a lot of explanation about this task. She recalled zero of three objects stated to her when asked to remember these three minutes later. The claimant was asked to name the current president and said "Bush?" She identified past presidents as "Martin Luther King and Ronald Regan". She stated her birth date accurately. She named five large cities as "Saginaw, Flint and Detroit". The claimant could not identify any famous people and could not identify any current events. Her diagnosis was depression, cannabis abuse. Her current axis V was 49 and her prognosis was fair and she would not be able to handle any benefit funds (p 376-377). A May 23, 2012 record indicates that claimant was 4'11" tall, and weighed 159 lbs. Her BMI was 32.1 and her blood pressure was 134/73. The physical exam indicated anicteric sclera. No JVD. Chest had no crackles. The abdomen was soft. The extremities without pitting edema. The assessment was that the claimant was doing well and that she needed to continue to take her antihypertensive medications and lifestyle modification (p 18).

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 his impairments. This Administrative Law Judge finds that

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 custodian.

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 person closely approaching advanced age at 50, with a high school education and light/medium work history, MA-P is denied using Vocational Rule 202.21 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.

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

Date Signed: January 28, 2013

Date Mailed: January 30, 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.

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:

