

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-17137
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: April 16, 2013
Wayne-18 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 April 16, 2013. Claimant personally appeared and testified. The department was represented at the hearing by Medical Contact Worker, Ma [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 July, 2012.
2. On July 19, 2012, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On November 26, 2012, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On November 30, 2012, the department caseworker sent claimant notice that her Medical Assistance case would be cancelled based upon medical improvement.

5. On December 10, 2012, claimant filed a request for a hearing to contest the department's negative action.
6. On January 30, 2013, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: the ALJ reported in his August, 2011 decision that the claimant had an ankle fracture which caused foot and ankle pain with extreme pain on ambulation. She had edema of the right wrist and hand caused by carpal tunnel syndrome, and for the last four months, her hand had been paralyzed and she had no use of it whatsoever. She had difficulty standing, walking, bending and carrying. In June, 2012, the podiatrist indicates she had lymphedema of the left foot/ankle and support hose and an Unna boot was recommended. In July, 2012, the treating physician indicated the claimant's motor examination was normal with normal bulk and tone in all four extremities. Sensory findings were normal. Reflexes were symmetric and her gait was normal. There was no evidence of a paralyzed arm or difficulty in standing, walking, bending or carrying. Therefore, the claimant has had medical improvement. She has possible adenoma in the pituitary gland without mass effect and a meningioma in the left anterior cranial fossa without mass effect. Her reported seizures were diagnosed as psychogenic non-epileptic seizures. Her mental status showed she was never been psychiatrically hospitalized. She was able to take care of daily chores with frequent rest. She was depressed but there was no evidence of a formal thought disorder. The claimant has had medical improvement. The claimant is not currently engaging in substantial gainful activity based on the information that is available in 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 (closely approaching advanced age at 50, high school education and history of semi-skilled work), MA-P is denied due to medical improvement and using Vocational Rule 202.14 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.
6. The hearing was held on April 16, 2013. At the hearing, claimant waived the time periods and requested to submit additional medical information.
7. Additional medical information was submitted and sent to the State Hearing Review Team on April 17, 2013.

8. On July 2, 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 significant medical improvement has been evidenced. It is, however, reasonable that the claimant would be limited to the performance of light exertional, simple and repetitive tasks. BEM 260. The medical evidence of record indicates that significant medical improvement has been evidenced (20 CFR416.994) 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. The claimant's past work was: direct care worker, 355.674-014, 4M; driver/referral specialist, 205.367-062, 3S; and, security monitor, 372.667-034, 3L. 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 (51 years old, at least a high school education and a history of sedentary, light and medium exertional, semi-skilled employment), continuing MA-P is denied, 20CFR416.920(e&g), using Vocational Rule 202.13 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 1.02/06, 3.03/10, 5.06, 9.00B5, 11.02/03/05/14, 12.03/04/06/08/09 and 14.02 were considered in this determination.
9. Claimant is a 51-year-old whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 185 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills.
10. Claimant last worked in January, 2010 as a private duty, in home care person. Claimant has also worked driving a truck, and as a nail technician.
11. Claimant alleges as disabling impairments: arthritis, bursitis, asthma, sleep apnea, restless leg syndrome, carpal tunnel syndrome, fibromyalgia, brain tumors, degenerative disc disease, meningioma, broken ankle in 2010, osteoporosis, nerve damage on the left side, depression and attention deficit hyperactive disorder as well as lupus.

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 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 April 11, 2012, the Social Security Administration issued an unfavorable decision on claimant's behalf stating that claimant has residual functional capacity and is not disabled based on application filed on October 20, 2010 with the Social Security Administration. The claimant was admitted May 18, 2012 to May 24, 2012 with intractable spells. She has a history of a possible small pituitary adenoma, 8mm meningioma in the left anterior cranial fossa without mass effect. She had a long history of seizure like spells. She had been on Dilantin but the spells had stopped so the Dilantin was tapered off over 7-8 years. In 2011, she began to experience new spells. She was not on any anticonvulsant medications at the time of the admission. She underwent continuous video-EEG. She had six non-epileptic spells recorded. There were no electrographic epileptiform correlates during the spells. Discharge diagnoses included non-epileptic spells, major depressive disorder and acute on chronic abdominal pain (p 59). A podiatry examination dated June 5, 2012 showed the claimant had secondary lymphedema in the area of the left foot/ankle lower leg left side. There was distention of superficial varicose veins due to incompetent communicating veins. She had some instability and pain in the area of the anterior talo fibular ligament of the left foot and ankle. She was informed about benefits of wearing/not wearing support hose. They applied an Unna boot for secondary lymphedema of the foot/ankle lower leg left side. Prognosis was good (p 40). On July 17, 2012, the claimant stated she was having a little difficulty accepting the diagnosis of psychogenic non-epileptic seizures. MR imaging of the brain in November 13, 2011 demonstrated a possible adenoma in the pituitary gland without mass effect. She also had a meningioma in the left anterior cranial fossa without mass effect (p 55). On examination, she was tearful at times. Her speech was fluent with no dysarthria or no aphasia. Memory was intact. Motor examination revealed normal bulk and tone in all four extremities. Sensory examination was intact to light touch. Reflexes were 2/4 and symmetric in all four extremities. Fine coordinated movements were performed well bilaterally. Gait was normal (p 56). A mental status dated October 11, 2012 showed the claimant had no history of psychiatric hospitalization (p 24). She was adequately groomed. She had decreased eye contact. She was spontaneous, slow and circumstantial with whispering speech. She was organized. She reported seeing shadows off and on. She was depressed, anxious and friendly. Her affect was blunted (p 25). Diagnoses included major depressive disorder, recurrent with psychotic features, partially treated. Her GAF was 60 (p 26). An August 8, 2012, Guidance Center notation indicates that the claimant had moderate limitations. She was diagnosed with major depression and cocaine abuse in remission. The Social Security Administration indicated that claimant has fibromyalgia residual pain from a left ankle sprain with possible small avulsion fracture.

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 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 or light 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 can probably perform her past work and would not disqualify her at this step.

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 51 years-old, high school education, and a history of semi-skilled work, MA-P is denied using Vocational Rule 202.14 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.

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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:

