

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201319988  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Hearing Date: [REDACTED]  
County DHS: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on [REDACTED]. After due notice, a telephone hearing was held on [REDACTED]. The Claimant personally appeared and provided testimony. The Department was represented by [REDACTED].

**ISSUE**

Did the Department of Human Services (Department) properly determine that the 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. The Claimant was an ongoing Medical Assistance (MA) and State Disability Assistance (SDA) recipient based on the Department's determination that she was disabled.
2. On [REDACTED] the Department initiated a review of the Claimant's continued eligibility to receive State Disability Assistance (SDA) benefits.
3. On [REDACTED] the Department sent the Claimant's redetermination material to the Medical Review Team (MRT), which determined that the review of the Claimant's impairments was premature.

4. On [REDACTED], the Department initiated a review of the Claimant's eligibility to receive Medical Assistance (MA).
5. On [REDACTED] the Medical Review Team (MRT) determined that the Claimant no longer met the disability standard for Medical Assistance (MA-P) and State Disability Assistance (SDA) because it determined that the Claimant impairments had improved to the point that she is no longer considered to be disabled.
6. On [REDACTED] the Department sent the Claimant notice that it would close her Medical Assistance (MA) and State Disability Assistance (SDA) benefits due to the determination of the Medical Review Team (MRT).
7. On [REDACTED], the Department received the Claimant's hearing request, protesting the denial of disability benefits.
8. On [REDACTED] the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P and SDA benefits.
9. The Claimant is a 44-year-old woman whose birth date is [REDACTED]. Claimant is 5' 4" tall and weighs 220 pounds. The Claimant attended school through the 9<sup>th</sup> grade. The Claimant is able to read and write.
10. The Claimant testified that she is working 32 hours per week at a rate of \$[REDACTED] per hour.
11. The Claimant's current employment requires her to provide care for mentally impaired children. The Claimant is required to prepare meals, bathe children, dress children, change beds, lift as much as 150 to 200 pounds, and stand for up to 8 hours at a time while working in a chaotic and stressful environment.
12. The Claimant has no other past relevant work history during the previous 15 years.
13. The Claimant alleges disability due to chronic obstructive pulmonary disease, hypertension, and thyroid problems, depression, and bi-polar disorder.
14. The Claimant is capable of caring for her personal needs, preparing meals and shopping for groceries.
15. The Claimant enjoys fishing twice a year.
16. The Claimant smokes a half pack of cigarettes on a daily basis.

17. The objective medical evidence indicates that the Claimant continues to consume alcohol and has not been in compliance with her treatment plan.
18. The objective medical evidence indicates that the Claimant has been diagnosed with severe bi-polar disorder with psychotic features, and polysubstance abuse.
19. The objective medical evidence indicates that the Claimant is alert and oriented with respect to person, place, and time.
20. The objective medical evidence indicates that the Claimant's affect and mood appear normal.
21. The objective medical evidence indicates that on [REDACTED] the Claimant has serious symptoms and serious impairments in social and occupational functioning.
22. The objective medical evidence indicates that the Claimant has moderate symptoms and has moderate difficulty in social and occupational functioning.

### **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 her claim for assistance has been denied. MAC R 400.903. 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 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 (Department) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) 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 (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under

the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905.

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. 20 CRR 416.994.

First, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

The objective medical evidence and testimony taken on the record does not support a finding that the Claimant meets a listing for chronic obstructive pulmonary disease (COPD) under section 3.02 Chronic pulmonary insufficiency.

Because hypertension (high blood pressure) generally causes disability through its effects on other body systems, we will evaluate it by reference to the specific body system(s) affected (heart, brain, kidneys, or eyes) when we consider its effects under the listings. We will also consider any limitations imposed by your hypertension when we assess your residual functional capacity. In this case, the objective medical evidence and the testimony taken on the record does not support a finding of disability based on hypertension.

The objective medical evidence and testimony taken on the record does not support a finding that the Claimant meets a listing for thyroid disorders.

The Claimant's impairment failed to meet the listing for bipolar disorder or depression under section 12.04 Affective disorders because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of his activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes of decompensation or that he is unable to function outside a highly supportive living arrangement. The objective medical evidence indicates that the Claimant is alert and oriented with respect to person, place, and time. The objective medical evidence indicates that the Claimant's affect and mood appear normal. The objective medical evidence indicates that the

Claimant has moderate symptoms and has moderate difficulty in social and occupational functioning.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

Second, the Claimant's impairments are evaluated to determine whether there has been medical improvement as shown by a decrease in medical severity. 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).

The objective medical evidence indicates that on [REDACTED] the Claimant had serious symptoms and serious impairments in social and occupational functioning. The objective medical evidence indicates that the Claimant's ability to function has improved since [REDACTED]. The objective medical evidence indicates that on [REDACTED] the Claimant has moderate symptoms and has moderate difficulty in social and occupational functioning. Current medical evidence does not support a finding that the Claimant is unable to perform work duties as a result of her bi-polar disorder or depression.

The Claimant has been working 32 hours per week. The Claimant's current employment requires her to lift as much as 150 to 200 pounds and stand for up to 8 hours at a time. The Claimant has been working since [REDACTED]. The Claimant's ability to perform her current work activities supports a finding that there have been improvements in the Claimant's chronic obstructive pulmonary disease (COPD), hypertension, and thyroid impairments.

This Administrative Law Judge finds that there has been medical improvement as shown by a decrease in medical severity.

Third, the Claimant's medical improvement is evaluated to determine whether it is related to your ability to do work.

The objective medical evidence indicates that the Claimant has moderate symptoms and has moderate difficulty in social and occupational functioning. The Claimant is capable of lifting as much as 150 to 200 pounds and standing for up to 8 hours. The Claimant's current work requires her to function in a chaotic and stressful environment. The objective medical evidence indicates that the medical improvement the Claimant has experienced is related to her ability to perform work.

This Administrative Law Judge finds that the Claimant's improvement is related to her ability to perform work.

Fourth, the Claimant's impairments are evaluated to determine whether current impairments result in a severely restrictive physical or mental impairment.

The Claimant is a 44-year-old woman that is 5' 4" tall and weighs 220 pounds.

The objective medical evidence indicates the following:

The Claimant smokes a half pack of cigarettes on a daily basis. The Claimant consumes alcohol and has not been in compliance with her treatment plan.

The Claimant has been diagnosed with severe bi-polar disorder with psychotic features, and polysubstance abuse. The Claimant is alert and oriented with respect to person, place, and time. The Claimant's affect and mood appear normal. The Claimant has moderate symptoms and has moderate difficulty in social and occupational functioning. The Claimant enjoys fishing twice per year.

The Claimant is capable of caring for her personal needs, preparing meals, and shopping for groceries.

The objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, Claimant is found not to be disabled at this step. In order to conduct a thorough evaluation of Claimant's disability assertion, the analysis will continue.

Fifth, the Claimant's impairments are evaluated to determine whether you can still do work you have done in the past.

The Claimant has a very limited history of past relevant work experience. At the hearing, Claimant testified that she is currently doing work type activity. The Claimant testified that she is working 32 hours per week at a rate of \$ per hour. However, there is not sufficient evidence on the record to establish that Claimant is engaged in substantial gainful activity as defined in 20 CFR 416.971 through 416.975.

Based on the evidence and testimony available during the hearing, the Claimant is not disqualified from receiving disability benefits at step five.

Sixth, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

**Sedentary work.** Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

**Medium work.** Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

**Heavy work.** Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior employment and that she is physically able to do light or sedentary tasks if demanded of her. The Claimant's activities of daily living do not appear to be very limited and she should be able to perform light or sedentary work even with her impairments for a period of 12 months. The Claimant's testimony as to her limitations indicates that she should be able to perform heavy work.

Claimant is 44-years-old, a younger person, under age 50, with a marginal education and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform heavy work.

The residual functional capacity to perform heavy work or very heavy work includes the functional capability for work at the lesser functional levels as well, and represents substantial work capability for jobs in the national economy at all skill and physical demand levels. Individuals who retain the functional capacity to perform heavy work (or very heavy work) ordinarily will not have a severe impairment or will be able to do their past work—either of which would have already provided a basis for a decision of “not disabled”. Medical Assistance (MA) and State Disability Assistance (SDA) are denied using Vocational Rule 20 CFR 204.00 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that her doctor has told her to quit. The Claimant is not in compliance with her treatment program. 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).

The Federal Regulations at 20 CFR 404.1535 speak to the determination of whether Drug Addiction and Alcoholism (DAA) is material to a person's disability and when benefits will or will not be approved. The regulations require the disability analysis be completed prior to a determination of whether a person's drug and alcohol use is material. It is only when a person meets the disability criterion, as set forth in the regulations, that the issue of materiality becomes relevant.

When the record contains evidence of DAA, a determination must be made whether or not the person would continue to be disabled if the individual stopped using drugs or alcohol. The trier of fact must determine what, if any, of the physical or mental limitations would remain if the person were to stop the use of the drugs or alcohol and whether any of these remaining limitations would be disabling.

The objective medical evidence indicates that the Claimant has a history of drug and alcohol abuse. Applicable here is the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(J) Supplement Five 1999. The law indicates that individuals are not eligible and/or are not disabled where drug addiction or alcoholism is a contributing factor material to the determination of disability.

The objective medical evidence indicates that the Claimant continues to consume alcohol despite the fact that her treatment plan requires her to abstain from these substances. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that the Claimant does not meet the statutory disability definition under the authority of the DA &A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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. BEM 261. 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 the 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.

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 determined that the Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

**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 and State Disability Assistance benefits. The Claimant should be able to perform sedentary work or heavy work. The Department has established its case by a preponderance of the evidence. The Claimant does not have medical improvement based upon the objective medical findings in the file.

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

/s/

Kevin

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Scully  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 04/24/2013

Date Mailed: 04/24/2013

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 60 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

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