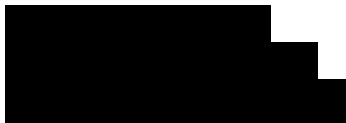


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2013-22317
Issue No: 2009;4031
Case No: [REDACTED]
Hearing Date: April 24, 2013
Menominee 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 24, 2013. Claimant personally appeared and testified. The department was represented at the hearing by Eligibility Specialist, [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 on May 1, 2011.
2. On September 9, 2011, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On December 3, 2012, the Medical Review Team denied claimant's application stating that claimant's impairments are non-exertional and claimant had medical improvement.
4. On December 7, 2012, the department caseworker sent claimant notice that her Medical Assistance case would be cancelled based upon medical improvement.

5. On January 8, 2013, claimant filed a request for a hearing to contest the department's negative action.
6. On March 21, 2013, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: the February 25, 2011 determination does not define why SDA benefits were allowed at that time. However, based upon the medical evidence in file, medical conditions present at that time, primarily the claimant's abdominal issues, are not currently present based upon the current medical evidence. This current evidence supports that the claimant reasonably retains the capacity to perform simple and repetitive tasks. While there is evidence of degenerative disc disease, May 17, 2010 CT, and a history of gastric bypass, the evidence does not support the presence of current severe physical limitations. 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 simple and repetitive tasks. The evidence does not support the presence of severe physical limitations. The claimant has a history of less than gainful employment. As such, there is no past work for the claimant to perform, nor are there past work skills to transfer to other occupations. Therefore, based on the claimant's vocational profile (40 years old, a high school education and a history of less than gainful employment), MA-P is denied, 20 CFR 416.920(e&g), using Vocational rule 204.00 as a guide. Retroactive MA-P was considered in this determination and is also denied. The medical evidence of record indicates that significant medical improvement has been evidenced (20 CFR 416.994) and that 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. Listings 1.02/04, 4.04, 5.06, 11.02/03/14, 12.04/06/09 and 14.02 were considered in this determination.
7. The hearing was held April 24, 2013. At the hearing, claimant waived the time periods and requested to submit additional medical information.
8. Additional medical information was submitted and sent to the State Hearing Review Team on May 14, 2014.
9. On June 19, 2013 the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: the newly presented/added evidence continues to support the prior determinations. The February 25, 2011 determination does not define why SDA benefits were allowed at that time. However, based upon the medical evidence in file, medical conditions present at that time, primarily the

claimant's abdominal issues, are not currently present based upon the current medical evidence. This current evidence supports that the claimant reasonably retains the capacity to perform simple and repetitive tasks. While there is evidence of degenerative disc disease, May 17, 2010 CT, and a history of gastric bypass, the evidence does not support the presence of current severe physical limitations. 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 simple and repetitive tasks. The evidence does not support the presence of severe physical limitations. The claimant has a history of less than gainful employment. As such, there is no past work for the claimant to perform, nor are there past work skills to transfer to other occupations. Therefore, based on the claimant's vocational profile (40 years old, a high school education and a history of less than gainful employment), MA-P is denied, 20 CFR 416.920(e&g), using Vocational rule 204.00 as a guide. Retroactive MA-P was considered in this determination and is also denied. The medical evidence of record indicates that significant medical improvement has been evidenced (20 CFR 416.994) and that 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. Listings 1.02/04, 4.04, 5.06, 11.02/03/14, 12.04/06/09 and 14.02 were considered in this determination.

10. Claimant is a 40-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 105 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basic math skills. Claimant does have a cosmetology license and is a certified nursing assistant.
11. Claimant last worked in 2003 at a care center as a certified nursing assistant. Claimant has also worked at an Econolodge in housekeeping, at Taco Bell and at Little Ceaser's as a manager.
12. Claimant alleges as disabling impairments: degenerative disc disease, bipolar disorder, left upper extremity pain, stomach pain, seizures, gastric bypass problems, vomiting, left wrist reconstruction, hypertension, depression, mood swings, money issues and illness.

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 2003.

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 May 10, 2013 shows that claimant is 5'3" tall and weighed 113 lbs. Temperature was 96.4°, pulse 80, respirations 18, and blood pressure was 100/62. The general impression was that of a chronically ill, pleasant female who appears older than her stated age. HEENT: PERRL, EOMI. Throat is clear. The neck is supple. The lungs reveal scattered coarse breath sounds, but otherwise clear. She has no use of the accessory muscles of respiration, pursed lip breathing or digit clubbing. The heart exam revealed S1 and S2 are within normal limits without S3, S4 or murmur. Peripheral pulses are present in the ankle jerk, biceps and triceps reflexes bilaterally. She has multiple abdominal incision scars, consistent with her history of multiple surgeries. She does have bowel sounds, which are somewhat hypoactive, but present in all four quadrants. She has diffuse tenderness without rebound or guarding. There is no obvious abdominal mass. Liver edge is percussed one fingerbreadth below the right costal margin. It is generally tender, but not nodular. The musculoskeletal exam: the readings of the Jamar hand dynamometer in this right handed female are quite variable. The readings on the right are 40 lbs variably on the left 20 lbs variably. Range of motion of the small joints of the hands, the wrists, the elbows, the shoulders, the neck, the thoracolumbar spine, the hips, the knees, the ankles and feet are otherwise normal except for diffuse pain at normal range of motion of essentially all joints. She is able to ambulate, but she does walk relatively slowly. Neurological exam: mental status: the patient appears to be quite sleepy and, indeed, appears to not off at several times during the history taking. She is otherwise awake and alert. Cranial nerves II through XII are otherwise intact. Motor is 5/5 in all groups proximal and distal. Sensory exam is intact to light touch except for a general decrease in subjective sensation in the hands and feet in the stocking and glove distribution. Ankle jerk, knee jerk, biceps and triceps reflexes are equal and 2+ bilaterally. Hand grips and foot pushes are normal. Babinski's are bilaterally downgoing. Hand flap and foot pushes are normal. The assessment was chronic abdominal pain status post multiple abdominal surgeries, including gastric bypass and substantial weight loss with ongoing symptoms of nausea, emesis, weight loss and abdominal pain; history of mild elevations in the liver function studies and chronic partial small bowel obstruction; history of renal disease and low back pain without radiculopathic findings and/or without obvious renal failure and history of depression (p A1-A2). This Administrative Law Judge did consider all 400+ pages of medical information in making this determination. A mental status evaluation dated March 19, 2013 indicates that claimant was diagnosed with an axis I dysthymic disorder, generalized anxiety disorder traits and alcohol abuse, now in remission, or at least partial remission, per patient report. The prognosis is hopefully improving/improvable within the context of appropriate treatment/support from a psychological viewpoint. She would be able to manage any benefit funds without significant difficulty (p A13). She was friendly and cooperative within context of the psychological evaluation. Her sensorium was seen to be generally clear, with no signs of underlying psychosis in evidence. She appeared to be currently functioning within the "average" to "low average" limits as far as her overall higher mental processes were

concerned, but with some variation noted in various areas of her presentation. Within that overall context, gaps and/or missing pieces of information which may have been noted in her stream of thinking today were probably compensated for, at least at times, in terms of comprehension, memory, and vocabulary ability (p A12). She was a 40 year-old, well developed, and apparently adequately nourished, divorced, Caucasian female who was seen for a mental status evaluation. She arrived on time for her appointment accompanied by her son. She correctly provided her full name, address, telephone number, current date, her birth date, her chronological age, and her Social Security number from memory without apparent difficulty (p A7).

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 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 as a housekeeper or a Little Caesar's manager.

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, age 40, with a high school education, and a history of less than gainful employment, MA-P is denied using Vocational Rule 204.00 as a guide and pursuant to 20CFR416.920(e&g). 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**.

Landis

/s/

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

Date Signed: July 17, 2013

Date Mailed: July 17, 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:

