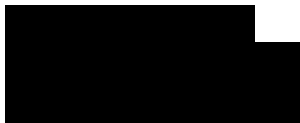


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201325584
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: May 1, 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 May 1, 2013. Claimant personally appeared and testified. The department was represented at the hearing by [REDACTED], an eligibility specialist.

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 November 2012.
2. On November 30, 2012, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On January 11, 2013, the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On January 15, 2013, the department caseworker sent claimant notice that her Medical Assistance case would be cancelled based upon medical improvement.

5. On January 22, 2013, claimant filed a request for a hearing to contest the department's negative action.
6. On March 25, 2013, the State Hearing Review Team again denied claimant's review application stating in its analysis and recommendation: the claimant had a final and binding Social Security disability denial by the appeals council on October 11, 2012 and therefore MA-P and SDA would be denied based on the Social Security denial. This case will be evaluated as an initial claim. The claimant has a history of bipolar and anxiety. In September 2012 her mood was stable and her affect was appropriate. She had never been hospitalized for psychiatric reasons. There were no psychotic symptoms. Her speech is fluent. She has a history of discectomy and L5-S1 microlaminectomy. The claimant is obese. In July 2012 her lungs were clear. In October 2012 she had 5/5 muscle strength and deep tendon reflexes were 2 in the upper extremities and 2+ in the lower extremities. She was noted to have decreased vibratory sensation in the legs and had multiple excoriations and lesions in various healing stages on the feet. She had a pustular lesion on the left lower extremity. There were multiple open sores on the lower extremities. However, in January 2013, there was no indication of any open sores or lesions in the extremities. She was able to ambulate without support. Ankle jerks were depressed. There were no obvious motor deficits. The claimant is not currently engaging in substantial gainful activity (SGA) based on the information that is available in the 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, sedentary 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 (RFC). Therefore, based on the claimant's vocational profile (a younger individual, 12th grade education and history of semi-skilled work), MA-P is denied using Vocational Rule 201.28 as a guide. Retroactive MA-P was considered in this case and is also denied. 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.
7. On October 11, 2012, Social Security Administration issued a decision stating that the Administrative Law Judge's decision is the final decision of the commission of the Social Security Administration and that claimant was not disabled.
8. Claimant is a 44-year-old whose birth date is [REDACTED]. Claimant is 5' 9" tall and weighs 280 pounds. Claimant is a high school graduate. Claimant is able to read and write and does have basis math skills.

9. Claimant last worked in 2007 as a cashier. Claimant was receiving Medical Assistance and State Disability Assistance benefits.
11. Claimant alleges as disabling impairments: diabetes mellitus, asthma, back pain, bipolar disorder, anxiety and depression.

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 2007.

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 evaluation dated July 2, 2012 showed that claimant had never been hospitalized for psychiatric reasons. (pg. 35) The claimant had good eye contact. Her speech was soft, clear and coherent. Her mood was described as "ok." Her affect appeared appropriate. There were no psychotic symptoms. Cognitive abilities appeared average. Diagnostic impression was bipolar disorder, depressed type and anxiety disorder, NOS. (pg. 36) A mental status dated September 5, 2012 showed the claimant's mood was stable and described as good. Her affect was appropriate. There were no suicidal or homicidal thoughts. There were no psychotic symptoms. (pg. 33) An MRI of the lumbar spine dated July 27, 2012 showed a tiny broad based minimally accentuated midline discal protrusion superimposed on a mildly bulging annulus and a small broad based disc herniation at L5-S1 on the left superimposed on a mildly bulging annulus producing mild left L5 and S1 root encroachment. (pg. 28-29) On July 29, 2012 the claimant presented to the emergency room with back pain. She reported a history of 2 back surgeries. (pg. 91) She had normal breath sounds and no respiratory distress. She had a well healed surgical incision in the lumbar spine. She ambulated without difficulty and was able to walk on her heels and on her toes. She was able to easily rise off the cart. Patellar reflexes were +1. There was slight extensor hallucis longus weakness on the left great toe. Sensation was grossly intact. There was no muscle atrophy to the lower extremities. She moved all extremities well with no tremor. Speech was clear. Thought contact was normal. (pg. 94) A neurological examination dated October 5, 2012 showed the claimant was 5'9" tall and 269 lbs. Her speech was clear and coherent. Her affect was mildly flat. She had notable hyperspasticity on the upper trapezius bilaterally. Vibratory sensation was decreased 95% bilaterally patella to great toe. There were multiple excoriations and lesions in various healing stages on the feet. There was a pustular lesion on the left lower extremity. There were multiple open sores again noticed hyperpigmentation of the lower extremities. Muscle strength was 5/5. Deep tendon reflexes were 2 in the upper extremities and 2+ at the bilateral patellar reflex. Gait was wide based. She was noted to be status post discectomy and L5-S1 microlaminectomy. (pg. 19) On January 11, 2013 the claimant was obese. Her speech was fluent. There were no obvious motor deficits. She had no finger-to-nose

dysmetria. Romberg test was negative. The ankle jerks were depressed. She was able to ambulate without support. The impression was dizziness - etiology unclear. History of abnormal MRI with white matter abnormalities, peripheral neuropathy – likely from diabetes and a history of cervical and lumbar spondylosis. Her blood pressure was 122/82. Her pulse was 100 and her weight was 275 lbs. Language comprehension was normal. Extraocular movements were full. There was no nystagmus. (pg. 342)

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 her medical improvement is related to the claimant's ability to perform substantial gainful activity.

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 cashier, but even if she could not perform her past work as a cashier, she can perform a wide range of sedentary work, 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 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 younger individual, 12th grade education and a history of semi-skilled/unskilled work, MA-P is denied using Vocational Rule 202.20 as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). Claimant can perform a wide variety of simple, unskilled, sedentary work even with her impairments. 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/ _____
Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 10, 2013

Date Mailed: May 13, 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/

cc:

