

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

IN THE MATTER OF:



Reg. No.: 2014-13915
Issue No(s).: 2009; 4009
Case No.: [REDACTED]
Hearing Date: March 18, 2014
County: Newaygo

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, telephone hearing was held on Tuesday, March 18, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], LES.

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)?

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was approved for MA-P by the Medical Review Team (MRT) with medical review due on January 1, 2013.
2. On October 4, 2013, the Claimant applied for SDA.
3. On October 23, 2013, the MRT denied the Claimant's medical review for MA-P stating that the Claimant had medical improvement and .SDA is denied per BEM 261 because the nature and severity of the Claimant's impairment's would not preclude work activity at the above stated level for 90 days.

4. On November 8, 2013, the Department Caseworker sent the Claimant a notice that her application was denied for SDA and for MA-P that she had had medical improvement.
4. On November 18, 2013, the Department received a hearing request from the Claimant, contesting the Department's negative action.
5. On February 5, 2014, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of medical review of MA-P and new application of SDA for the Claimant. The Claimant is [REDACTED] and a history of skilled work. She alleges disability due to COPD, depression, degenerative disc disease (DDD), spinal stenosis, IBS, severe hemorrhoids, bladder problems, and spinal fusion at C2-7. The Claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence on the record indicates that the Claimant retains the capacity to perform a wide range of unskilled, light work. Therefore, based on the Claimant's vocational profile ([REDACTED], [REDACTED] and history of skilled work); MA-P is denied using Vocational Rule 202.21 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 impairment's would not preclude work activity at the above stated level for 90 days.
6. The Claimant is a [REDACTED] year-old [REDACTED] whose [REDACTED]. The Claimant is 5' 4" tall and weighs 150 pounds. The Claimant has completed [REDACTED]. The Claimant can read and write and do basic math. The Claimant was last employed as a [REDACTED] at the medium level in 2007. The Claimant has also been employed as a [REDACTED].
7. The Claimant's alleged impairments are COPD, severe depression, degenerative disc disease (DDD), spinal stenosis, bladder problems, severe hemorrhoids, and spinal fusion at C2-7 on December 2012 and June 2013.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

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).

"Disability" is:

...the 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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled.

We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

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).

Step 1

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. Therefore, the Claimant is not disqualified from receiving disability at Step 1.

Step 2

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the Claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

The Claimant's impairment failed to meet the listing for major depression under section 12.04 Affective disorders because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of her 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 she is unable to function outside a highly supportive living arrangement.

The Claimant's impairment failed to meet the listing for Musculoskeletal System 1.00, Respiratory System 3.00, and Digestive System 5.00 because the objective medical evidence does not demonstrate that the Claimant suffers from marked restrictions of her activities of daily living or social functioning. The objective medical evidence does not demonstrate that the Claimant suffers from repeated episodes or that she is unable to function outside a highly supportive living arrangement.

Accordingly, the Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the Claimant's impairments do not rise to the level necessary to be listed as disabling by law. In this case, the Claimant's impairments or combination of impairments do not meet or equal the severity of an impairment listed in Appendix 1. Therefore, the Claimant is disqualified from receiving disability at Step 2.

Step 3

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.

On [REDACTED], the Claimant's treating specialist submitted a M [REDACTED] on behalf of the Claimant. She was first seen on [REDACTED] and last seen on [REDACTED] 2013. Her current diagnosis and chief complaints were high blood pressure, cervical, DDD, cervical stenosis, and neck pain. His clinical impression was that the Claimant was improving. She had no mental impairments. The Claimant could meet her needs in the home. The Claimant was limited to light duty where she could not lift over 15 pounds with limited bending and twisting. Department Exhibit's 15-18.

On [REDACTED], the Claimant underwent a [REDACTED] because on neck pain. The Claimant's hardware is in a good position. There is a little bit of lucency forming in the mid aspect of the upper graft. Department Exhibit 19.

On [REDACTED], the Claimant's [REDACTED] saw the Claimant as a follow up for depression. She has chronic problems with COPD, pelvic prolapse, hematuria, neck pain, low back pain, anxiety, and depression. The Claimant was positive for a cough, depression, and back and neck pain. The Claimant felt hopeless with normal thoughts. She was found to be moderately depressed. Department Exhibit's 36-39.

On [REDACTED] the Claimant underwent a [REDACTED] of the [REDACTED] without contrast. The Claimant had a clinical history of degenerative disease of the cervical spine. The findings were mild reversal of the normal cervical lordosis centered at the C4-C5 level. There were now postoperative changes compatible with discectomy and anterior fusion at C5-C6. There was no abnormal marrow signal or evidence of tonsillar ectopia. The vertebral artery flow voids were intact. There was a disc osteophyte complex, which is slightly more focal and pronounced posteriorly and in the midline where there was a tiny superimposed high intensity zone/annular tear. Disc material flattens the ventral thecal sac. There was mild acquired reduction in AP dimension of the thecal sac at this level with encroachment of normal intrathecal CSF planes ventral to the cord. The cord was also ventrally flattened with the neural foramina present. Finally, there was significant residual disc bulging or foraminal stenosis seen. At C6-C7, there was disc osteophyte complex which flattens the ventral thecal sac. Again, there was mild acquired canal narrowing, with encroachment of normal intrathecal CSF planes ventral to the cord. The neural foramina was patent. Department Exhibit's 20-21.

On [REDACTED], the Claimant underwent a [REDACTED] [REDACTED]. The findings were that the Claimant's esophagus distends and contracts normally. There were no mucosal abnormalities of the esophagus seen on the study. There was a small hiatal hernia present. Gastro-esophageal reflux was seen into the proximal esophagus. The architect of the oropharynx and hypo pharynx was normal. Department Exhibit's 77-78.

At Step 3, this Administrative Law Judge finds that the Claimant does have medical improvement and her medical improvement is related to the Claimant's ability to perform substantial gainful activity. The Claimant underwent 2 surgeries for her back issues. Her treating specialist listed that she could perform light work and that she was improving. The Claimant was able to perform simple, unskilled, light work. Therefore, the Claimant is disqualified from receiving disability at Step 3.

Step 4

In Step 4 of the sequential evaluation, the trier of fact must determine whether medical improvement is related to Claimant's ability to do work in accordance with 20 CFR 416.994(b)(1)(i) through (b)(1)(iv). 20 CFR 416.994(b)(5)(iv). It is the finding of this Administrative Law Judge, after careful review of the record, that there has been medical improvement where she can perform her past work. The Claimant was last employed as a caretaker at the medium level in 2007 and a sandwich maker.

At Step 4, the Claimant testified that she does not perform most of her daily living activities, which is not supported by the objective medical evidence provided by her treating specialist and her treating physician. The Claimant testified that her condition has gotten worse because she has an increase in her depression and she is still having issues with medications after surgery. She did have a mental impairment of depression, where she was not taking medications nor in therapy. The Claimant stopped smoking 10 years ago where before she smoked ½ a pack of cigarettes a day. She stopped drinking alcohol in 2008 where before she drank occasionally. She stopped using illegal or illicit drugs of marijuana in high school.

This Administrative Law Judge finds that the Claimant's medical improvement is related to her ability to do work. The Claimant is not taking medication nor in therapy for her mental impairment. The Claimant completed the [REDACTED]. The Claimant should be able to perform at least light work. Therefore, the Claimant is disqualified from receiving disability at Step 4 where the Claimant can perform light work. 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.

Step 6

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 light work even with her impairments. See Steps 3 and 4. The Claimant has impairments with her back where she has undergone 2 surgeries, but her treating specialist stated that the Claimant is capable of performing light work and is improving. Therefore, the Claimant is not disqualified from receiving disability at Step 6 where the Claimant passes for severity.

Step 7

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. At Step 7, the Claimant has previously been employed at the light level as a sandwich maker. In addition, the Claimant could perform the duties of a caretaker at the light level. In this case, this Administrative Law Judge finds that Claimant should be able to perform light work. The Claimant is capable of performing past, relevant work. See Steps 3 and 4. Therefore, the Claimant is disqualified from receiving disability at Step 7 where the Claimant is capable of performing her past, relevant work.

Step 8

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, with a 12th grade high school education, and a history of simple, unskilled, light work, MA-P is denied using Vocational Rule 202.21 as a guide. 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 close Claimant's MA-P case based upon medical improvement.

The Department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA DEPARTMENT POLICY SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the Claimant's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS,**" INCLUDING "**MA While Appealing Disability Termination,**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the

person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

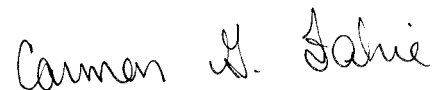
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the Claimant does not meet the definition of disabled under the MA program and because the evidence in the 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 SDA.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the medical review of MA and the new application for SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED.



Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/9/14

Date Mailed: 4/9/14

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the Claimant;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the Claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CGF/tb

cc:

