

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-005616
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 08, 2014
County: MACOMB-12 (MT CLEMENS)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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, a telephone hearing was held on October 8, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator, and [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or 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. On May 10, 2012, Claimant applied for MA-P.
2. On June 17, 2014, during a review, the Medical Review Team denied Claimant's request.
3. On June 8, 2014, Claimant submitted to the Department a request for hearing.
4. Claimant is 51 years old with a [REDACTED] birth date. The Claimant is 5'5" tall and weighs 200 pounds.

5. The Claimant was substantially gainfully employed from November 2013 through April 19, 2014, at which time she injured her knee and was not working at the time of the hearing.
6. Claimant completed education through the 11th grade.
7. Claimant has employment experience (last worked 2007 prior to factory inspection job ending in April 2014) in retail sales and as a lab assistant.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from major depressive disorder, glaucoma, cataracts in her left eye, sleep apnea and is blind in her right eye.
10. Claimant has significant limitations on physical activities including sitting, standing, walking, bending, lifting, and stooping.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

In order to receive MA benefits based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P

(disability), also is known as Medicaid, which is a program designated to help public assistance Claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

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 a substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first step to be considered is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, Claimant is not working. Therefore, Claimant is not disqualified at this step in the evaluation. It must be noted that during November 2013 through April 19, 2014 the Claimant was working and met Substantial Gainful Activity but then injured her knee and was disabled and was receiving Worker’s Compensation benefits thereafter. Thus for purposes of this decision the Claimant is deemed not working based upon her testimony at the hearing on October 8, 2014.

In the second step, the trier of fact must determine if the Claimant’s impairment (or combination of impairments) meets or equals the severity of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that Claimant’s medical record does 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. In a previous Decision and Order Issued February 4, 2013, the Claimant was found to have met Listing 2.02 for vision. The Claimant’s vision has changed since that Decision and no longer meets Listing 2.02 or its equivalent as her vision has improved and will be discussed below. Accordingly, the sequential evaluation process must continue.

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 any decrease in the medical severity of your impairment(s), which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s) (see §416.928). 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 this case, Claimant was most recently approved for MA-P on February 4, 2013. In this case, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds there is no medical improvement. The Claimant's new medical evaluations indicate that while her vision may have improved due to removal of Concretions from her left eye, (Claimant has a prosthetic right eye), the Claimant still has glaucoma and blurred Presbyopia, bifocal with vision in her good eye of 20/50 with cataracts. These conditions were confirmed by her treating ophthalmologist, and also noted that Claimant's vitreous is prolapsed and that Claimant needs multiple procedures.

The Claimant has also injured her knee on the job while working in April 2014. A Medical Examination Report was completed by the Claimant's treating doctor on May 2, 2014. The report was difficult to read. At the time of the examination, the diagnosis was jaw pain, knee pain, COPD, and lumbar radiculopathy. The examiner's impression was that Claimant was stable, and limitations were imposed with regard to lifting, standing and sitting. The Claimant could occasionally lift 10 pounds, could stand or walk less than two hours in an eight-hour workday, and sit less than six hours in an eight-hour workday, but had full use of her arms and hands and legs and feet. This evaluation places the Claimant at less than sedentary. This doctor, in a letter dated June 30, 2014, also identified the following acute and chronic problems suffered by the Claimant including allergy rhinitis, arthritis, lumbar radiculopathy, back pain (disk problem), vitamin D deficiency, anemia, anxiety and depression, over-active bladder, gynecological problems, stomach pains and high cholesterol. She has knee problems in both knees, but more problematic on right knee and is being treated by an orthopedic surgeon, and she often limps from her knee. The report notes an MRI was attached, but it was not provided. No updated medical evidence was provided regarding the Claimant's depression, other than her treating doctor who diagnosed continuing depression referenced above.

In the fifth step of the sequential evaluation, the trier of fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) applies. If none of them applies, Claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

The first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), is as follows:

- *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).*

- *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).*
- *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable decision.*
- *Substantial evidence demonstrates that any prior disability decision was in error.*

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above applies to Claimant's case.

The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), is as follows:

- *A prior determination or decision was fraudulently obtained.*
- *You did not cooperate with us.*
- *Claimant cannot be found.*
- *Claimant failed to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.*

After careful review of the record, this Administrative Law Judge finds none of the above-mentioned exceptions applies to Claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that Claimant's disability for purposes of Medical Assistance and State Disability Assistance must continue.

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 disabled for purposes of the MA benefit program.

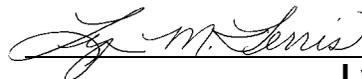
DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall reinstate the Claimant's Medical Assistance, if not already done, if the Claimant is otherwise eligible for non-medical eligibility criterion.

2. A review of the case shall be set for October 2015.



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/28/2014**

Date Mailed: **10/28/2014**

LMF / tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

