

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-31029
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: July 17, 2014
County: Iosco

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

AMENDED 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 March 5, 2014, from Lansing, Michigan. Participants on behalf of Claimant included claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist and [REDACTED], Assistance Payments Supervisor.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer disabled and deny his 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 the Medical Assistance case was scheduled for review in November 2013.
2. On November 30, 2013, claimant filed a review application for Medical Assistance and State Disability Assistance benefits alleging continued disability.
3. On January 28, 2014, the Medical Review Team denied claimant's application stating that claimant had medical improvement.

4. On February 21, 2014, the department caseworker sent claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.
5. On March 6, 2014, claimant filed a request for a hearing to contest the department's negative action.
6. On May 13, 2014, the state hearing review team again denied claimant's application.
7. On July 17, 2014, the hearing was held. At the hearing, claimant waived the time periods and requested to submit additional medical information.
8. On September 8, 2014, no additional medical information had been received. The record was closed September 8, 2014.
9. Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5'2" tall and weighs 113 pounds. Claimant is a high school graduate and has an emergency medical technician license. Claimant is able to read and write and does have basis math skills.
8. Claimant last worked in 2010 at [REDACTED] as logistics and stacking person. Claimant has also worked as a [REDACTED], stocking shelves at [REDACTED], and [REDACTED] and logistics and as a physician's assistant for three months.
9. Claimant was receiving Medical Assistance and State Disability Assistance based upon approval of disability status by the Administrative Law Judge Janice G. Spodarek's hearing decision dated March 1, 2013.
10. Claimant alleges as disabling impairments: herniated stomach, trigeminal morale chair, herniated discs, asthma, posttraumatic stress disorder, obsessive-compulsive disorder, fibromyalgia, arthritis, depression, anxiety, migraines, right eye pain and agoraphobia.
11. On September 26, 2014, Administrative Law Judge Landis Y. Lain issued a Decision and Order affirming the Department's decision to deny claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits based upon disability.
12. On October 13, 2014, claimant filed a request for rehearing/reconsideration stating that she believed that complete consideration cannot be obtained without no medical records evidence that existed at the time of the original hearing. New medical records were sent to losco County DHS office but were not provided to the Administrative Law Judge.

12. On October 24, 2014, the Iosco County DHS office faxed the additional medical information to the Bureau of Administrative Hearings for consideration.
13. This Administrative Law Judge did reopen the record, allow the department to submit the additional medical information and considered the additional medical information in making an Amended Decision and Order.

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).

The Department caseworker filed a supplemental hearing summary indicating that on August 13, 2014, the Department of Human Services verbally requested and was granted an additional 60 days to obtain and submit evidence. All medical records were to be submitted by October 18, 2014. The Bureau of Administrative Hearings has no record of such a request. This Administrative Law Judge determines that requests for extensions are never verbally granted. When a proper written request for an extension of time is placed before the Administrative Law Judge, the appropriate Administrative Law Judge issues an Order allowing/granting extension of time for the presentation of the additional medical information. No such proper written request for an extension of time was placed before this Administrative Law Judge. There was no evidence provided to Administrative Hearings that an extension of interest to DHS to provide the medical information. However, on Thursday, October 16, 2014, DHS provided additional documentation of claimant's medical reports which included exhibit E: Alcona health center, including records from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

[REDACTED], pages 1 – 63; exhibit F: [REDACTED], including records from [REDACTED], pages 1 – 12; exhibit G [REDACTED], including records from [REDACTED], pages 1 – 11; and exhibit Tawas St. Joseph Hospital, pages 1 – 11. All additional medical information was considered in making this determination.

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 approximately **2011**.

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 an MRI of the left knee indicates a small knee effusion in the knee joint. No meniscal or ligamentous tears seen, page 66. An [REDACTED] MRI of the lumbar spine indicates no spondylolisthesis a retro list thesis. Disc degeneration with disk space narrowing, broad-based disc osteophyte complex, central annular fissure formation and facet joint degeneration at L5 – S1 with bilateral neural foramina stenosis stable since prior study. No spinal stenosis seen. Disc degeneration with disk bulge and broad-based central disc herniation at L4 – L5 less prominent since prior examination. No evidence of spinal stenosis or neural foramina stenosis. The coldness is a normal position, page 67. A CT of the abdomen and taking [REDACTED] indicates a normal CT of the abdomen, page 28. A medical examination report dated [REDACTED] indicates the claimant is 5'3" tall and weighed hundred and 15 pounds. Her blood pressure is 98/66 and she's right hand dominant, page 33.

Summary of additional medical information considered in making this decision:

A [REDACTED], medical examination report indicates that claimant's temperature was 96 by 9°F. Respiratory rate was 16 bpm. Pulse rate was 80 bpm. Blood pressure 110/66. Her weight was 117.6 pounds and her body mass index was 20.8. Her height was 63 inches. Claimant was alert, oriented to time, place and person. Respiration rhythm in depth was normal. Lungs were clear to auscultation. Cardiovascular heart rate and rhythm was normal. Heart sounds were normal. Lumbar and lumbosacral spine exhibited abnormalities. Sensory examination abnormalities were noted neurologically and motor examination demonstrated dysfunction. A deep tendon reflexes were normal. The assessment was lower back pain and sciatica, exhibit E, page 7 – 8.

A psychological evaluation dated [REDACTED], indicates that claimant's global assessment of functioning was 50 and she was assessed with psychiatric disorders and moderate recurrent major depression, exhibit E, page 9. A November 25, 2013 MRI of the left knee indicates a small effusion knee joint. No meniscal or ligamentous tears seen, exhibit E, page 50.

An MRI of the lumbar spine taken [REDACTED], indicates no spondylolisthesis or retrolisthesis. Disc degeneration with disk space narrowing, broad-based disc osteophyte complex, central annular fissure formation and facet joint degeneration at L5 – S1 with bilateral neural foramina stenosis stable since prior study. No spinal stenosis seen. This degeneration with disk bulge and broad-based central disc herniation at L4 – L5 is less prominent since prior examination. No evidence of spinal stenosis or neural foramina stenosis. Because is normal in position, exhibit E page 51.

On [REDACTED], [REDACTED], postoperative diagnoses was left-sided diverticulosis with it. Tortious; and mild mental tissue was small skin. The recommendation was a high-fiber diverticulosis diet and average risk screening colonoscopy and 10 years unless she develops any clinical indications, exhibit E, page 53.

A [REDACTED], [REDACTED] examination indicates that the impression was right trigeminal neuralgia, chronic migraines and memory loss most likely due to underlying anxiety and depression and impart drug related. Workup has been negative. The patient was alert and cooperative. Speech was full. No danger at dysarthria. Naming, repetition and comprehension were intact. The fund of knowledge was normal. Cranial nerves two through 12 were normal. No sensory loss to light touch. Reflexes were normal active and symmetric. Plantar is an ongoing. Finger to nose and rapid alternating movements are normal. Gait was slow in antalgic. The patient did very well in mini-mental State examination, exhibit E page 56.

In [REDACTED], MRI of the lumbar spine indicates minimal degenerative changes without evidence of compression deformity or subluxation, exhibit E page 16.

An [REDACTED], [REDACTED]. off work slip indicates that claimant should be off work due to injury beginning October 6, 2014 and returning to work October 6, 2014.

She can lift the restrictions when she feels she's able and would return to her orthopedic doctor in two weeks, exhibit E page 63.

MRI of the brain taken [REDACTED], indicates an unremarkable magnetic resonance imaging examination of the brain, exhibit F page 8.

At Step 2, claimant's impairments do not equal or meet the severity of an impairment listed in Appendix 1. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of her body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by the claimant. There are insufficient laboratory or x-ray findings listed in the file which support claimant's contention of disability. The clinical impression is that claimant is stable. There is no medical finding that claimant has any muscle atrophy or trauma, abnormality or injury that is consistent with a deteriorating condition. In short, claimant has restricted herself from tasks associated with occupational functioning based upon her reports of pain (symptoms) rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restrictive physical or mental impairment (s) and as she does have medical improvement. There is insufficient objective medical/psychiatric evidence contained in the file of depression or a cognitive dysfunction that is so severe that it would prevent claimant from working at any job. Claimant was able to answer all the questions at the hearing and was responsive to the questions. Claimant was oriented to time, person and place during the hearing. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to claimant's ability to perform work.

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 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 the 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 past work as a manager or store clerk.

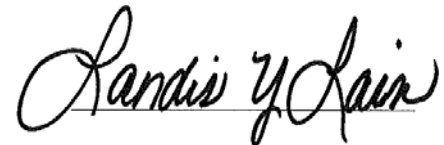
In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). Claimant's vocational profile of **closely approaching advanced age of 52, high school education history of unskilled work**, continued MA-P is denied using Vocational Rule **202.13** as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). 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.

AMENDED DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and upon consideration of the additional medical information submitted October 24, 2014, 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 the 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 Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/13/2014

Date Mailed: 11/13/2014

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 client;
- 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:

2014-31029/LYL

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 48909-8139

LYL/sw

cc:

