

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-008853
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: October 09, 2014
County: Lenawee

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 Thursday, October 9, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the medical review of 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 and SDA by an Administrative Law Judge decision with medical review due on August 2014 because she met a listing for copd.
2. On August 11, 2014, the MRT denied the Claimant's medical review for MA-P and SDA stating that the Claimant had medical improvement.
3. On August 15, 2014, the Department Caseworker sent the Claimant a notice that she was denied for SDA and for MA-P because she had had medical improvement.
4. On August 20, 2014, the Department received a hearing request from the Claimant, contesting the Department's negative action.
5. The Claimant is a 48 year-old woman whose date of birth is [REDACTED]. The Claimant is 5' 3" tall and weighs 180 pounds. The Claimant has completed High School. The Claimant can read and write and do basic math. The Claimant was last employed as a home health aide in February 2009. The Claimant has also

been employed as a cashier, which is her pertinent work history, mail sorter, and janitor.

6. The Claimant's alleged impairments are asthma, chronic bronchitis, and right shoulder rotator cuff.

CONCLUSIONS OF LAW

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 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 client'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.

"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 February 2009. Therefore, the Claimant is not disqualified from receiving disability at Step 1.

Step 2

In the second 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. Accordingly, 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. 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 was seen by her treating physician who completed a Medical Examination Report, DHS 49. The Claimant was diagnosed and had a history of GERD, ADD, allergic rhinitis, asthma, chronic bronchitis, and right shoulder tear. The Claimant was first examined on [REDACTED] and last examined in [REDACTED]. His treating physician noted that the Claimant had an essentially normal physical examination except for right muscle tear post-surgery. She was stable for GERD, asthma, and ADHD. The Claimant was stable with physical limitations that would last more than 90 days. She could frequently lift up to 10 pounds, and occasionally lift 50 pounds or more. The Claimant could use both hands/arms and legs/feet for repetitive action. She was post-surgical status of her right shoulder. The Claimant had no mental limitations. She was taking medications for her ADHD. The Claimant needed assistance -with her housework. Department Exhibit 17-19.

On [REDACTED], the Claimant saw her treating specialist about her RC R shoulder arthroscopy and debridement on [REDACTED]. She had moved recently requiring a lot of lifting. She had good range of motion of her right shoulder with some mild impingement with overhead region. The Claimant had some mild weakness of rotator cuff strength, but actually quite good strength. She has no AC joint tenderness with good grip strength in her hand. Her specialist felt that she had reached her maximal medical improvement, but not to the point where she can return to work. She was treated with an injection of medication to allow her right shoulder to settle down. Claimant Exhibit a-d.

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 was approved because she met a listing for COPD. She had surgery in January 2014 on her right rotator cuff. She continued to receive SDA until August 2014 for her medical review. This time period covers her surgery for her right shoulder and recovery. The Claimant's treating physician stated

that she was improved and able to perform at least light work. Her specialist did not think she could perform work, but her physical exam was improved with good range of motion and good strength. As a result, the Claimant is able to perform 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 work.

At Step 4, the Claimant testified that she does perform some of her daily living activities. The Claimant testified that her condition has not gotten worse, but has not gotten better staying the same. She does not have any mental impairment. The Claimant does not or has ever smoked or used illegal or illicit drugs. She stopped drinking alcohol in 2009 where before she drank enough to get drunk. The Claimant did not think that there was any work that she could perform.

This Administrative Law Judge finds that the Claimant's medical improvement is related to her ability to do work. The Claimant should be able to perform at least light work. There was no evidence submitted that she still met the listing for copd. She had recent surgery for her right shoulder, but she has improved. 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 not 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 light work. See Steps 3 and 4. She has improved with her asthma and chronic bronchitis and no longer meets a listing. The Claimant has recent surgery, but is on the mend. Therefore, the Claimant is 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 was last employed as a home health aide, mail sorter, and janitor, which may be performed at the medium level. She was also employed as a

cashier, which is her pertinent work history and performed at the light level in the national economy. 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, as a cashier, which is performed at the light level in the national economy. 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

The objective medical evidence on the record is insufficient that the Claimant lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The Claimant's testimony as to her limitation indicates her limitations are exertional and non-exertional.

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 unskilled work, MA-P is denied using Vocational Rule 202.20 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 closed Claimant's SDA case based upon medical improvement. Because the Claimant does not meet the disability criteria for SDA, she has had medical improvement making her capable of performing light work. The Claimant is capable of performing her past, relevant work as a cashier at the light level.

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 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: **1/2/2015**

Date Mailed: **1/2/2015**

CGF/las

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 48909-8139

cc:

