

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

IN THE MATTER OF:



Reg. No.: 14-019203
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: February 12, 2015
County: Muskegon

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, a telephone hearing was held on Thursday, February 12, 2015, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Family Independence Manager and [REDACTED], Eligibility Services.

ISSUE

Did the Department of Human Services (the department) properly determine that Claimant was no longer disabled and deny her medical review for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 the Medical Review Team (MRT) with medical review due on October 2013.
2. On December 12, 2014, the MRT denied the Claimant's medical review for MA-P and SDA stating that the Claimant had medical improvement due to the effects of treatment and her denial at the Social Security Appeals Council dated May 9, 2013.
3. On December 18, 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 December 23, 2014, the Department received a hearing request from the Claimant, contesting the Department's negative action.

5. The Claimant is a 47 year-old woman whose date of birth is [REDACTED]. The Claimant is 5' 9" tall and weighs 218 pounds. The Claimant has completed the 7th grade of school. The Claimant can read and write and do basic math. The Claimant has no pertinent work history.
6. The Claimant's alleged impairments are depression, carpal tunnel syndrome in the right hand, left knee has plate and screws, back surgery in 2014, left rotator cuff surgery in 2012, neck surgery in 2012, pinched nerve in back and neck, emphysema, COPD, and hepatitis C.

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 no pertinent work history. 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 had surgery at [REDACTED] for a L5-S1 transforaminal lumbar interbody fusion, L5-S1 pedicle screw fixation, posterior lateral fusion using allograft, autograft, bone marrow aspirate, bone morphogenetic protein, with left L5-S1 trends pedicular foraminotomy. The Claimant tolerated the procedure well. Department Exhibit 428 and 430.

On [REDACTED], the Claimant was given an x-ray of the lumbar spine as a result of her S/P lumbar fusion. Her screws were intact in the posterior bone graft was noted. Her alignment was anatomic. There were no acute abnormalities seen. There was facet arthritis at L3-4 noted. Department Exhibit 433.

On [REDACTED], the Claimant was seen by her treating specialist. She had a lumbar fusion on April 9, 2014. She reported today that she feels that her pain has actually gotten worse than it was preoperatively. She denied any trauma to the area or falls. She did have tenderness to palpitation in her buttock. She had a positive straight

leg raise. The Claimant had quite a bit of guarding to her left side when she was ambulating. Department Exhibit 397-398.

On [REDACTED], the Claimant underwent an x-ray of her lumbar spine. The radiologist's impression was solid appearing anterior and posterior fusion at the L5-S1, apparent is bulge at L4-5 with mild impingement on the L5 nerve roots as they crossed to the disc space, minimal disc bulging at L3-4 and L5-S1. Department Exhibit 343-346.

On [REDACTED], the Claimant was seen by her treating physician. Her list of complaints was degenerative of lumbar or lumbar sacral intervertebral disc, tobacco use disorder, degeneration of cervical intervertebral disc, left foot fracture with nondisplaced fracture of proximal metatarsals 3-5, esophageal reflux, bunion, cocaine abuse, hepatitis C chronic without mention of hepatic coma, sciatica, and major depressive affective disorder, recurrent episode, severe degree, without mention of psychotic behavior. She had full range of motion of all joints with normal muscle tone. She was followed by the pain clinic for degeneration of lumbar intervertebral disc. Department Exhibit 385-387.

On [REDACTED], the Claimant underwent an independent psychological evaluation with [REDACTED]. She was diagnosed with major depressive disorder, recurrent, moderate, secondary to physical complaints. She was given a GAF of [REDACTED]. Her prognosis was guarded to poor. She was able to manage her own benefit funds. There was no evidence of a severe thought disorder or risk factors. Her affect was depressed. She complains of daily and constant pain to the point where she cannot sit, stand, walk, or lay very long. Department Exhibit 444-448.

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. She had surgery in April 2014 of a lumbar fusion. The Claimant's x-rays showed that the surgery was successful, but the Claimant reported an increase in pain. Her pain is not supported by the objective medical evidence on the record. 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 not perform any of her daily living activities. However, her testified level of impairment is not supported by the objective medical evidence in the file. The Claimant testified that her condition has gotten worse because she can't walk after her surgery. She does have mental impairments where she is taking medications, but not in therapy. The Claimant smokes 5 cigarettes a day. She does not or has ever drunk alcohol. She stopped using illegal or illicit drugs of marijuana one year ago.

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. 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. See Steps 3 and 4. She has limitations with her back. The Claimant has mental impairments where she is taking medications, but not in therapy. 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 no pertinent work history. In addition, the Claimant did not know what type of work she could do. In this case, this Administrative Law Judge finds that Claimant should be able to perform light work. The Claimant has no pertinent work history. See Steps 3 and 4. Therefore, the Claimant is disqualified from receiving disability at Step 7 where the Claimant has no pertinent work history.

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.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the Claimant testified that she has depression. The Claimant is taking medication, but not in therapy for her mental impairments. The medical evidence on the record is insufficient to support a mental impairment that is so severe to prevent the Claimant from performing skilled, detailed work.

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 limited education, and no work history, MA-P is denied using Vocational Rule 202.17 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 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 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 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.

Because the Claimant does not meet the disability criteria for SDA where she has had medical improvement making her capable of performing light work.

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 SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Carmen G. Fahie
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/31/2015**

Date Mailed: **3/31/2015**

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:

