

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001534
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: December 04, 2014
County: ST. CLAIR

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, December 4, 2014, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

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 State Hearing Review Team (SHRT) because the Claimant could not perform sedentary work with a medical review in April 2013.
2. The Medical Review Team (MRT) continued the MA and SDA benefits with a medical review due on April 2014.
3. On April 25, 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.

4. On April 30, 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.
5. On May 5, 2014, the Department received a hearing request from the Claimant, contesting the Department's negative action.
6. During the hearing on December 4, 2014, the Claimant requested permission to submit additional medical information. Additional medical information was received on January 15, 2015 and the record was closed.
7. The Claimant is a 38 year-old woman whose date of birth is [REDACTED]. The Claimant is 5' 4" tall and weighs 281 pounds. The Claimant has completed High School and received a certificate as a veterinarian technician. The Claimant can read and write and do basic math. The Claimant was last employed as a librarian in 2005 at the light level on a part time basis. The Claimant has also been employed as a home care specialist at the heavy level and factory worker at the medium level.
8. The Claimant's alleged impairments are bipolar disorder, depression, post traumatic stress disorder, sleep apnea, mood disorder, borderline personality disorder, neuropathy in legs, degenerative joint disease, osteoarthritis, fibromyalgia, asthma, and bursitis.

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 2005. 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.

The Claimant had to emergency room visits. On [REDACTED], she was seen for back pain. She had diffused lumbar and thoracic tenderness. Her diagnosis was acute on chronic back pain. She was given pain medication and her pain decreased. She was stable on discharge. Department Exhibit 69-80. On [REDACTED], she was seen for abdominal pain. Her back had normal range of motion and alignment. She had normal strength with no tenderness. She also had no tenderness in her back or neck. She was given a saline lock of 2300. She improved with most of the pain being resolved. Her abdomen was soft. Her diagnosis was an ovarian cyst. She was stable for discharge. Department Exhibit 102-107.

On [REDACTED], the Claimant underwent a ct scan of her lumbar spine with contrast. The radiologist's impression was osteo arthropathy in the L4-L5 and L5-S1 facets. Department Exhibit 60.

On [REDACTED], the Claimant underwent a psychiatric evaluation at Region 10. She was diagnosed with bipolar disorder, depressed, post-traumatic stress disorder, and borderline personality disorder. She was given a GAF of 47. Her current mood was depressed. There was no evidence of a severe thought disorder or risk factors. Her medications were adjusted as medically required. Department Exhibit 72-75.

On [REDACTED], the Claimant was seen by her treating pain specialist. She was seen for low back pain. She also presented with neuropathy, neck pain, carpal tunnel syndrome, fibromyalgia, and headaches. Her spine was tender with decreased range of motion. She was recommended to stop smoking cigarettes and marijuana because of potential side effects with medications. The Claimant was scheduled for a medial branch block series for her back pain. Her pain specialist gave her a prescription for a TENS unit because of the severity of her low back pain in addition to her Norco. Her headaches and fibromyalgia were controlled with medications. Department Exhibit 1-9.

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 was in treatment and taking medication for her back pain. She is also in therapy and taking medications for her mental impairments. The Claimant is 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 work.

At Step 4, the Claimant testified that she does not perform most of her daily living activities except for driving with no problems. The Claimant testified that her condition has gotten worse because she has an increase in her pain resulting in an increase in injections. The Claimant is on medications and in therapy for her mental impairments. The Claimant smokes 1 to 4 packs of cigarettes a day. She stopped drinking alcohol at 25 years of where before she drank rarely. She stopped using illegal or illicit drugs of marijuana at 16, but her objective medical records show that she has continued to smoke marijuana against doctor's orders.

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. Therefore, the Claimant is disqualified from receiving disability at Step 4 where the Claimant can perform simple, unskilled 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 light work even with her physical impairments. The Claimant has impairments with her back where she is taking medication and in treatment. See Steps 3 and 4. In addition, the Claimant has mental impairments where she is in therapy and taking medications. 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 was last employed as a librarian in 2005 at the light level on a part time basis. The Claimant has also been employed as a home care specialist at the heavy level and factory worker at the medium level. Her previous relevant work history requires her to work with other people which she may have difficult time performing and requires detailed paperwork with her medications. In addition, the Claimant did not think that there was any 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 is not capable of performing past, relevant work, which was skilled and detailed and performed at the medium and heavy level. See Steps 3 and 4. Therefore, the Claimant is not disqualified from receiving disability at Step 7 where the Claimant is not 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.

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, bipolar disorder, mood disorder, borderline personality disorder, and ptsd. The Claimant is taking medication and in therapy for her mental impairments. She was diagnosed with bipolar disorder, depressed, post-traumatic stress disorder, and borderline personality disorder. She was given a GAF of 47, which are serious symptoms. Her current mood was depressed. There was no evidence of a severe thought disorder or risk factors. The medical evidence on the record is sufficient to support a mental impairment that is so severe to prevent the Claimant from performing skilled, detailed work, but the Claimant is capable of performing simple, unskilled 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 12th grade high school education, and a history of semi-skilled, unskilled, and skilled work, MA-P is denied using Vocational Rule 202.20 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as bipolar disorder, depressed, post-traumatic stress disorder, and borderline personality disorder. 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. She is capable of performing simple, unskilled, light work.

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:

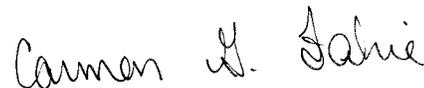
- .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma 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 simple, unskilled, 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 disabled not disabled for purposes of the medical review of MA and SDA benefit programs.

DECISION AND ORDER

Accordingly, the Department’s determination is AFFIRMED REVERSED.



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

Date Signed: **3/23/2015**

Date Mailed: **3/23/2015**

CGF/sw

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:

