

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001066
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: March 05, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 March 05, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and her attorney [REDACTED] of [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], eligibility specialist, and [REDACTED], assistant payments supervisor.

Did the Department of Human Services (Department) properly determine that the Claimant was no longer disabled and deny her review application for 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. The Claimant was an ongoing State Disability Assistance (SDA) recipient based on the findings of the Medical Review Team (MRT) on December 28, 2011, which found that she met or equaled a listing under section 14.02A.
2. On September 1, 2014, the Department initiated a review of the Claimant's continued eligibility to receive benefits and determine if there has been medical improvement.
3. On January 5, 2015, the Medical Review Team (MRT) determined that the Claimant no longer met the disability standard for State Disability Assistance (SDA) because it determined that the Claimant's condition had improved to the point that she can perform light work.

4. On January 15, 2015, the Department sent the Claimant notice that it would close her State Disability Assistance (SDA) benefits effective February 1, 2015, due to the determination of the Medical Review Team (MRT).
5. On January 22, 2015, the Department received the Claimant's hearing request protesting the denial of disability benefits.
6. The Claimant is a 24-year-old woman whose birth date is [REDACTED].
7. Claimant is 5' 7 ½" tall and weighs 128 pounds.
8. The Claimant is a college student.
9. The Claimant is able to read and write and does have basic math skills.
10. The Claimant has past relevant work experience as a certified nursing assistance where she was required to lift patients weighing as much as 200 pounds.
11. The Claimant has past relevant work experience as a waitress where she was required to stand for six to eight hours at a time.
12. The Claimant alleges disability due to lupus and fibromyalgia.

CONCLUSIONS OF LAW

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

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

The Claimant's attorney submitted a memorandum brief in support of Claimant that was made part of the hearing record. The Claimant's attorney argues that the Department improperly made a finding that the Claimant does not meet the disability criteria as set forth in 20 CFR 404.1520 and the five step analysis set forth in the federal regulations. This Administrative Law Judge finds these federal regulations cited by the Claimant's attorney to be irrelevant to this case. The Claimant had been previously been found to be disabled by the Medical Review Team (MRT) on December 28, 2011. The

Department initiated a review of her eligibility for continued benefits in September of 2014. While the Claimant is no longer pursuing Medical Assistance (MA-P) based on disability following her enrollment in the Healthy Michigan Plan (HMP), the Claimant requested a hearing protesting the closure of State Disability Assistance (SDA) benefits based on a finding of non-disability.

The Department uses the criteria set forth by the Social Security Administration to make a determination of disability. This Administrative Law Judge will evaluate whether the Claimant is eligible for continuing State Disability Assistance (SDA) benefits based on whether her condition has improved based on the criteria set forth in 20 CFR 416.994.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994

For purpose of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time. 20 CFR 416.994

The Department must determine whether the Claimant is engaged in substantial gainful activity. Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized (20 CFR 404.1572(b) and 416.972(b)).

No evidence was presented on the record that the Claimant is engaged in activity where she receives pay or profit. The Claimant attends college classes but she testified that her impairments cause her to miss class frequently. The Claimant testified that her instructors accommodate her frequent absences and allow her to make up school work.

This Administrative Law Judge finds that the evidence on the record supports a finding that the Claimant is not performing gainful work and that her attendance at school is performed under special conditions that take her physical impairments into account.

Next, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled. 20 CFR 416.994(b)(5)(i).

On November 10, 2014, a consultative physician examined the Claimant and determined that she is capable of performing activities of daily living including preparing meals, washing dishes, shopping for groceries, and reading. The consultative physician found the Claimant to be capable of socialize with family members as well as friends and acquaintances.

A treating physician found that for the period of July 28, 2010, through May 20, 2014, the Claimant was suffering from systemic lupus erythematosus and fibromyalgia. The treating physician found the Claimant to have marked limitations of her activities of daily living, marked limitations of her social functioning, and marked deficiencies in concentration, persistence, or pace. The treating physician found that the Claimant's impairments are likely to last at least 12 months.

A treating source's medical opinions are given controlling weight as defined in 20 CFR 404.1527(d)(2) and 416.927(d)(2), when it is well supported by medically acceptable clinical and laboratory diagnostic techniques. Social Security Rule 96-2p (SSR – 96-2p).

This Administrative Law Judge finds the opinion of the treating physician to be controlling and not inconsistent with substantial evidence in the case record. The findings of the treating physician are that the Claimant is likely to have "good days" and "bad days" with the bad days occurring more than four times each month. The treating physician had the opportunity to observe the Claimant's condition over a multi-year period while the consultative physician observed the Claimant for only a short period.

Medical records indicate that the Claimant has been diagnosed with lupus and fibromyalgia. The Claimant testified that her illnesses cause her to suffer from severe and ongoing pain. The Claimant described her pain as being like having the flu and that her pain could be rated at 8 to 9 on a ten point scale during flare-ups. The Claimant testified that this pain is reduced to a 6-7 rating with pain medication.

This Administrative Law Judge finds that the Claimant suffers from a medically determinable condition that could reasonably be expected to produce the symptoms, including pain that were reported by the Claimant. The Claimant's treating physician evaluated her condition and indicated in a medical report that the Claimant would have flare-ups preventing her from performing work related activities more than four times each month. The Claimant has been diagnosed with post-traumatic stress disorder, which could be reasonably be expected to reduce her ability to cope with the pain caused by her lupus. While the subjective effects of pain are normally not enough to support a finding of disability, this Administrative Law Judge finds that the Claimant

suffers from severe pain that has a significant impairment on her ability to perform activities of daily living. 20 CFR 416.929.

This Administrative Law Judge finds that the Claimant's condition meets or equals a listing under section 14.02(B) Systemic lupus erythematosus because the objective medical evidence on the record supports finding that the Claimant suffers from repeated manifestations of lupus along with severe fatigue, fever, and malaise, along with marked limitations of her activities of daily living, social functioning, and ability to complete tasks in a timely manner.

Next, the Claimant's impairments are evaluated to determine whether there has been medical improvement as shown by a decrease in medical severity. 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). 20 CFR 416.994(b)(5)(ii).

On December 28, 2011, the Medical Review Team (MRT) found the Claimant's condition to meet or equal a listing under section 14.02 Systemic lupus erythematosus. This Administrative Law Judge finds that the Claimant's condition continues to meet or equal this listing, and that the evidence on the record does not support a finding that there has been medical improvement as shown by a decrease in medical severity.

Since there has not been medical improvement it is not necessary to determine whether there has been improvement related to the Claimant's ability to perform work. 20 CFR 416.994(b)(5)(iii).

No evidence was presented on the record that the Claimant failed to cooperate with the Department's efforts to determine her eligibility for continued benefits or that the previous finding of disability was fraudulently obtained. No evidence was presented that the Claimant's condition has benefitted from an advance in medical technology or that she had undergone new treatments that have reduced her physical impairments. This Administrative Law Judge finds that none of the exceptions to a finding of disability set forth in paragraphs (b)(3) and (b)(4) of 20 CFR 416.994 apply to the Claimant's circumstances. 20 CFR 416.994(b)(5)(iv).

This Administrative Law Judge finds that there had been no medical improvement and the Claimant's disability to found to continue, 20 CFR 416.994(b)(5)(iv).

Continuing with a full analysis of the Claimant's case, her impairments are evaluated to determine whether current impairments result in a severely restrictive physical or mental impairment. 20 CFR 416.994(b)(5)(v).

The Claimant is a 24-year-old woman that is 5' 7 ½" tall and weighs 128 pounds. The Claimant has been diagnosed with lupus and fibromyalgia resulting in marked limitations of her activities of daily living, social functioning, concentration, and pace.

This Administrative Law Judge finds a severe physical impairment that has more than a de minimus effect on the Claimant's ability to perform work activities. The Claimant's impairments have lasted continuously, or are expected to last for more than 90 days.

Next, the Claimant's impairments are evaluated to determine whether you can still do work you have done in the past. 20 CFR 416.994(b)(5)(vi).

The Claimant has past relevant work experience as a certified nursing assistance where she was required to lift patients weighing up to 200 pounds. This work fits the definition of heavy work and semi-skilled work.

The Claimant has other past relevant work experience as a waitress where she was required to stand for up to 8 hours at a time.

A treating physician found the Claimant to be capable of lifting no more than 5 pounds frequently and that she is capable of standing for no longer than 15 minutes at a time.

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work in which she has engaged in, in the past.

Next, the Department has the burden to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity. 20 CFR 416.994(b)(5)(vii).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

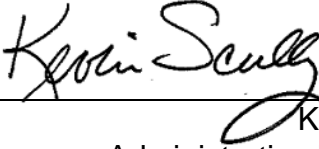
Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969.

Claimant is 24-years-old, a younger person, under age 50, with a high school education and above, and a history of semi-skilled work. If the Claimant had the residual functional capacity to perform a full range of sedentary work, considering the Claimant's age, education, and work experience, a finding of "not disabled" would be directed by Medical-Vocational Rule 201.29.

However, the additional limitations so narrow the range of work the Claimant might otherwise perform that a finding of "disabled" is appropriate under the framework of this rule. This Administrative Law Judge finds that the Department has failed to establish that the Claimant has experienced medical improvement, or that she is capable of performing sedentary work activities on a sustained basis. Therefore, the Claimant is found to be disabled for the purposes of receiving State Disability Assistance (SDA) as defined in Department of Human Services Bridges Eligibility Manual (BEM) 261.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED** and the Department is ORDERED to initiate a review of the Claimant's eligibility to receive continuing State Disability Assistance (SDA) benefits as of February 1, 2015, if not done previously, to determine her continuing non-medical eligibility. The Department shall inform Claimant of its revised determination in writing. A review of this case shall be set for April of 2016.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Acting DHS Director
Department of Human Services

Date Signed: **3/27/2015**

Date Mailed: **3/27/2015**

KS/sw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which 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:

