

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001254
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: February 26, 2015
County: Gogebic

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 26, 2016, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant and her Attorney, [REDACTED], P# [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Eligibility Specialist and Assistant Attorney General, [REDACTED] P# [REDACTED].

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 by an Administrative Law Judge decision with medical review due on May 2014 where the Claimant was not capable of performing sedentary work.
2. On November 3, 2014, the MRT denied the Claimant's medical review for SDA stating that the Claimant had medical improvement due to the effects of treatment.
3. On November 6, 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 January 15, 2015, the Department received a hearing request from the Claimant, contesting the Department's negative action.

5. During the hearing on February 26, 2015, the Claimant requested permission to submit additional medical information that needed to be reviewed. Additional medical information was received on April 1, 2015 and the record was closed.
6. The Claimant is a 52 year-old woman whose date of birth is [REDACTED]. The Claimant is 5' 6" tall and weighs 215 pounds. The Claimant has completed High School. The Claimant can read and write, but has a problem with big words and spelling and can do basic math. The Claimant has no pertinent work history.
7. The Claimant's alleged impairments are diabetes type II, sleep apnea where she uses a cpap machine, arthritis in bilateral knees, fingers, and feet, obsessive compulsive disorder, depression, anxiety, ADHD, and a learning disability.
8. On November 14, 2014, the Claimant received an unfavorable ruling from the Social Security Administration Appeals Council which is a controlling ruling.

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 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's treating psychologist submitted a note on her behalf. She has been in treatment for 3 years. Her diagnosis is ADHD, dysthymic disorder, and OCD. He felt that those disorders continue to completely disable the Claimant from any gainful employment opportunities. His clinical opinion was that the Claimant was totally disabled with regards to any occupation. Claimant Exhibit a1.

On [REDACTED], the Claimant's treating psychologist submitted a psychiatric note from a session. Her GAF was still close to the mid-[REDACTED]. Her chief complaint was depression, anxiety, with a history of ADHD, chronic poverty, and medical concerns. There was no evidence of a severe thought disorder or risk factors. She had ongoing interpersonal difficulties that continue to exacerbate her mental illness. His diagnostic impression was ADHD, dysthymic disorder, and OCD. Claimant Exhibit 57-59.

On [REDACTED] the Claimant was seen by her treating physician for an office visit. She was diagnosed with mild sleep apnea where she uses a cpap machine. She had to switch to a new mask because the old mask was not comfortable and she had skin breakdown. The Claimant is not snoring with the new mask and feels rested during the day. She does sometimes have trouble sleeping, which she attributed to her depression. The Claimant had a normal physical examination.

On [REDACTED], the Claimant had an x-ray of her lumbar sacral spine. No acute osseous process. She did have mild spondylotic changes. She had minimal lev-curvature of the lumbar spine. She lost disc height at L5-S1 level. She had small anterior vertebral body osteophytes at L4-L5 level. Surgical clips were present in the lower abdomen. Claimant Exhibit 70-71.

The Claimant was seen in the emergency room on [REDACTED] for back pain. She fell several months ago and fractured her wrist. Since then, she has been having low back pain. Over the past several days, the pain has worsened. It was exacerbated by getting in and out of her vehicle. She had an essentially normal physical examination except she was positive for back pain. She had normal range of motion with no edema and spasm. A recommendation was analgesia as temporary measure with possible physical therapy. Claimant Exhibit 63-69.

On [REDACTED], the Claimant had an x-ray of her right wrist. A correlation was made from an x-ray on November 2014. She has some interval callus formation involving the fracture on the dorsum of the wrist. There was no new fracture or dislocation evident or joint effusion. The joint spaces are otherwise maintained. Claimant Exhibit 80-81.

On [REDACTED], the Claimant had x-rays of her feet. They were normal except for planta calcaneal spurs on both feet. Claimant Exhibit 120-121.

The Claimant was seen in the emergency room on [REDACTED] for a fall off a snowbank. She fell on the right side with her elbow flexed and she banged her head on her flexed wrist. She has pain in her right wrist. She was negative for back pain, joint swelling, and gait problem. Her right wrist was tender to palpitation, but she still had full range of motion. Her x-ray revealed an avulsion fracture of a carpal bone. She was placed in a volar splint. Claimant Exhibit 84-91.

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 is in treatment and taking medications for her mental impairments. Her GAFs were in the mid-50s. There was no evidence of a severe thought disorder or risk factors. She had an essentially normal physical examination. As a result, 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 perform most of her daily living activities. The Claimant testified that her condition has gotten worse because she has back problems now where she is in physical therapy and she has an increase in depression.

She does have any mental impairments where she is taking medications and in therapy. The Claimant does not smoke since 15 years ago where before she smoked 4 to 5 packs of cigarettes a day. She stopped using illegal or illicit drugs of everything 30 years ago. She stopped drinking alcohol 30 years ago where before she was an alcoholic. 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 is in treatment and taking medications for her mental impairments. Her GAFs were in the mid-██████. There was no evidence of a severe thought disorder or risk factors. She had an essentially normal physical examination. The Claimant should be able to perform at least simple, unskilled, light work. Therefore, the Claimant is disqualified from receiving disability at Step 4 where the Claimant can perform simple, unskilled, 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. She is in treatment and taking medications for her mental impairments. She had an essentially normal physical examination. In this case, this Administrative Law Judge finds Claimant can perform at simple, unskilled, light work. See Steps 3 and 4. 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 this case, this Administrative Law Judge finds that Claimant should be able to perform simple, unskilled, light work. 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 obsessive compulsive disorder, depression, anxiety, ADHD, and a learning disability. She is taking medications and in therapy. See MA analysis step 2. She was given a GAF in the mid-50s from her treating psychologist that showed moderate symptoms. 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 she should be able to perform 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 closely approaching advanced age individual, with a 12th grade high school education, and a history of no pertinent work, MA-P is denied using Vocational Rule 202.13 as a guide. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as obsessive compulsive disorder, depression, anxiety, adhd, and a learning disability. 20 CFR 404, Subpart P, Appendix 2, Section 200.00. 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 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 not disabled for purposes of the medical review of SDA benefit programs.

In addition, this is a case in which the Disability Determination Service has denied the SSI claim in the past 12 months. Since the allegations are the same, the Social Security Appeals Decision is required to be used as the basis for this decision. Therefore, Claimant's application for SDA was denied and no further analysis was required.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**. In addition, the Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department correctly determined that Claimant is not currently disabled for SDA eligibility purposes. The Disability Determination Service Appeals Council has denied the Claimant's SSI claim in the past 12 months.



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

Date Signed: **4/30/2015**

Date Mailed: **4/30/2015**

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:

