

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No.: 2009-20284  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
July 2, 2009  
Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on July 2, 2009. The Claimant appeared and testified.

ISSUE

Whether the department properly determined the claimant is not "disabled" for purposes of the Medical Assistance (MA) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as a material fact:

1. On February 1, 2008, Claimant was approved MA-P.
2. On review February 9, 2009 MRT denied the Claimant's request.
3. On March 2, 2009, the Claimant submitted to the Department a request for hearing.
4. On May 11, 2009, the State Hearing and Review Team (SHRT) denied the request.
5. The Claimant is 50 years old.

6. The Claimant completed schooling up through the 11<sup>th</sup> grade.
7. The Claimant has employment experience as a housekeeper.
8. The Claimant's limitations have lasted for 12 months or more.
9. The Claimant suffers from breast cancer and a double bi-lateral mastectomy.
10. The Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

#### CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In order to receive MA benefits based upon disability or blindness, claimant must be disabled or blind as defined in Title XVI of the Social Security Act (20R 416.901). The Department, being authorized to make such disability determinations, utilizes the SSI definition of disability when making medical decisions on MA applications. MA-P (disability), also is known as Medicaid, which is a program designated to help public assistance claimants pay their medical expenses.

The law defines disability as the inability to do substantial gainful activity (SGA) 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).

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 a substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first step to be considered is whether the Claimant can perform Substantial Gainful Activity (SGA) defined in 20 CFR 416.920(b). In this case, the Claimant is not working. Therefore, the Claimant is not disqualified at this step in the evaluation.

The second step the trier of fact must determine if the Claimant’s impairment (or combination of impairments) which meet or equal the severity of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the Claimant’s medical record does not support a finding that the 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, and the sequential evaluation process must continue.

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 any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s) (see §416.928). 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.

In this case, the Claimant was most recently approved MA-P on February 1, 2008. There has been no medical improvement and the claimant's treating physician on [REDACTED], states that he finds "no possibility" that the claimant could sustain occupational activity. (Claimant's exhibit 1)

In this case, the Administrative Law Judge, after comparing past medical documentation with current medical documentation, finds there is no medical improvement. To the contrary, evidence shows that the claimant has suffered further disabling effects from continued surgeries due to infection.

In the fifth step of the sequential evaluation, the trier-of-fact must consider whether any of the exceptions in 20 CFR 416.994(b)(3) and (b)(4) apply. If none of them apply, Claimant's disability must be found to continue. 20 CFR 416.994(b)(5)(v).

In the first group of exceptions to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred), found in 20 CFR 416.994(b)(3), are as follows:

- *Substantial evidence shows that you are the beneficiary of advances in medical or vocational therapy or technology (related to your ability to work).*
- *Substantial evidence shows that you have undergone vocational therapy (related to your ability to work).*
- *Substantial evidence shows that based on new or improved diagnostic or evaluative techniques your impairment(s) is*

*not as disabling as it was considered to be at the time of the most recent favorable decision.*

- *Substantial evidence demonstrates that any prior disability decision was in error.*

In examining the record, this Administrative Law Judge finds that there is nothing to suggest that any of the exceptions listed above apply to Claimant's case.

The second group of exceptions to medical improvement, found at 20 CFR 416.994(b)(4), are as follows:

- *A prior determination or decision was fraudulently obtained.*
- *You did not cooperate with us.*
- *Claimant cannot be found..*
- *Claimant failed to follow prescribed treatment which would be expected to restore your ability to engage in substantial gainful activity.*

After careful review of the record, this Administrative Law Judge finds none of the above mentioned exceptions apply to Claimant's case. Accordingly, per 20 CFR 416.994, this Administrative Law Judge concludes that the Claimant's disability for purposes of Medical Assistance and State Disability Assistance must continue.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant continues to be medically disabled under the Medical Assistance program.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to maintain Claimant's eligibility for MA and SDA if otherwise eligible for program benefits.



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Michael J. Bennane  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 10/22/09

Date Mailed: 10/22/09

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

MJB/jlg

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