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.: 2009-4098
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
March 11, 2009
Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on March 11, 2009. The Claimant appeared and testified, along with [redacted]. [redacted] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of further medical evidence.

The additional medical information was received, reviewed, and marked as Exhibit E, pp. 1 – 16. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes continued entitlement to Medical Assistance ("MA-P") benefits?

FINDINGS OF FACT

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

1. In July of 2007, the Claimant was determined to be disabled based meeting Listing 1.06 with a medical review scheduled for February of 2008. (Exhibit B, pp. 1, 2)
2. On April 25, 2008, the Medical Review Team ("MRT") deferred the disability determination in order for the Claimant to attend an orthopedic examination. (Exhibit A p. 1)
3. On August 13, 2008, the Claimant attended an independent orthopedic evaluation at [redacted]. (Exhibit A pp. 3 – 6)
4. On September 16, 2008, the MRT found the Claimant's condition had medically improved thus she no longer entitled to continued MA-P benefits. (Exhibit A pp. 1, 2)
5. On September 23, 2008, the Department sent the Claimant a Notice of Case Action informing the Claimant that she was found no longer disabled therefore her MA-P benefits would cancel effective October 7, 2008.
6. On October 3, 2008, the Department received the Claimant's written requests for hearing protesting the determination that she was determined no longer disabled. (Exhibit C)
7. On November 18, 2008, the State Hearing Review Team ("SHRT") determined the Claimant was no longer disabled and was capable of performing other work. (Exhibit D, pp. 1, 2)
8. The Claimant's alleged physical disabling impairments are due to left ankle pain, chronic knee and back pain, osteoarthritis, high blood pressure, kidney stones, shortness of breath, sleep disorder, and seizures.
9. The Claimant's alleged mental disabling impairment(s) are due to depression.
10. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.

11. At the time of hearing, the Claimant was 53 years old with an [redacted] birth date; was 5' 0" and weighed 180 pounds.

12. The Claimant completed through the 8th grade and does not have a work history.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, 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").

Disability is defined as 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(a) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR

416.994(b)(5)(i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether

despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) 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:

> (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work;
> (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
> (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
> (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

> (i) A prior determination was fraudulently obtained;
> (ii) The individual failed to cooperated;
> (iii) The individual cannot be located;
> (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1. In this case, the Claimant asserts physical disabling impairment(s) due to ankle pain, chronic knee and back pain, osteoarthritis,

high blood pressure, kidney stones, shortness of breath, sleep disorder, and seizures. Additionally, the Claimant asserts mental disabling impairments due to depression.

On [redacted], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The Claimant's condition was noted as deteriorating with full restrictions on lifting/carrying and standing/walking. The Claimant was able for perform repetitive actions with her hands/arms and feet/legs.

On [redacted], the Claimant had an electroencephalogram which resulted in a normal awake recording. On [redacted], the Claimant underwent a bond density test which confirmed osteoporosis.

On [redacted], the Claimant was examined at the Clinic. The physical examination noted the Claimant's gait as not very stable and that she ambulated with a walker. Further, the Claimant was found with bilateral antalgia due to painful knees and left ankle pain. The Claimant was unable to walk unassisted. X-rays of the left knee were normal, showing no gross abnormality or degenerative changes. The left ankle x-ray showed a completely healed non-displaced fracture of the distal fibula. Ankle mortise was normal and there was no evidence of any post traumatic arthritis involving the ankle or subtalar joint. The Orthopedist concluded that the Claimant's complaints cannot be accounted for and were likely related to her obesity and lack of activity. Further, the Claimant was found not to have any osteoarthritis involving her left knee or ankle with very little functional loss in her forearm.

On [redacted], the Claimant presented to the emergency room after complaints of severe left renal pain and nausea. A CT of the abdomen revealed calcification within an approximate 1 cm stone. On [redacted], the Claimant underwent a cystoscopy and retrograde

ureteroscopy. The Claimant tolerates the procedures well; was scheduled for a lithotripsy; and discharged on [redacted].

On [redacted], the Claimant underwent a lithotripsy due to a stone in the left ureteropelvic junction with significant obstructive uropathy.

On [redacted], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were listed as seizure disorder, osteoporosis, uncontrolled hypertension, sleep apnea, kidney stones, obesity, degenerative disc disease of the lower back, and cardiomegaly. These diagnoses were supported in part through lab work, EKG, and x-rays. The Claimant was listed in stable condition but restricted to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours in an 8-hour workday; and sit less than 6 hours during this same time period. No limitations were placed on the Claimant's ability to perform repetitive actions with her extremities. Additionally, the Claimant's back and knee were found to be tender and swollen with a decrease range of motion noted.

The Claimant was previously found disabled pursuant to Listing 1.06. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the

underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

* * *

1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones. With:

A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

And

B. Inability to ambulate effectively as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

In this case, the Claimant was found able to perform repetitive actions with all extremities on both the [redacted] and [redacted] Medical Examination Reports. The [redacted] x-rays of the left knee were normal with no gross abnormalities or degenerative

changes noted. The Claimant's inability to walk unassisted was documented yet the Orthopedist was unable to account for the Claimant's complaints. Ultimately, the objective medical records do not meet the intent and severity requirement of a listed impairment within 1.00 therefore the Claimant cannot be found disabled, or not disabled under this listing.

The Claimant also asserts disability due to kidney stones. Listing 6.00 discusses genitourinary impairments that result from chronic renal disease. Renal dysfunction due to any chronic renal disease due to any chronic renal disease, such as chronic glomerulonephritis, hypertensive renal vascular disease, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies is evaluated under Lising 6.02. Medical records of treatment, response to treatment, hospitalizations, and laboratory evidence of renal disease that documents the progressive nature of the disease are necessary to meet this listing. 6.00C(1) The type, response, side effects, and duration of therapy is considered as well as any effects of post-therapeutic residuals. 6.00D An impairment of renal function due to any chronic renal disease that has lasted or is expected to last continuously for a period of at least 12 months with chronic hemodialysis or peritoneal dialysis or kidney transplantation meets Listing 6.02. In addition, impairment of renal function is also met when the record documents persistent elevation of serum creatinine with renal osteodystrophy manifested by severe bone pain or persistent motor or sensory neuropathy or persistent fluid overload syndrome with diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg or persistent signs of vascular congestions despite prescribed treatment. Persistent anorexia with weight loss determined by the body mass index of less than 18 calculated at least two evaluations at least 30 days apart within a consecutive 6-month period may also establish an impairment of renal function.

In the record presented, the Claimant was treated in late September through early October 2008 for a kidney stone. The medical findings document that the Claimant tolerated a lithotripsy due to a stone with obstructive uropathy without complication. No further treatment was required. Accordingly, the record is insufficient to meet the intent and severity requirement of a listed impairment within 6.00 thus she cannot be found disabled or not disabled under this listing.

The Claimant also asserted disability due to high blood pressure, shortness of breath, sleep disorder, seizures, and depression however the objective medical records do not document treatment for any of these impairments. Listings 3.00, 3.00, 11.00, and 12.00 were considered however the record is insufficient to meet a finding of disabled, or not disabled; under these listings therefore a determination of whether the Claimant's condition has medically improved is necessary.

In [redacted], the Medical Examination Report lists the Claimant's condition as deteriorating. The [redacted] x-ray revealed a completely healed non-displaced fracture of the distal fibula. The most recent Medical Examination Report dated [redacted], lists the Claimant in stable condition. Based upon the submitted record, it is found that there has been a medical improvement in the Claimant's condition compared to the previous finding of a Listed impairment (1.06), thus a determination of whether the improvement relates to the Claimant's ability to work is required.

As previously stated, the Claimant was previously found to meet Listing 1.06 however the medical records presented establish that the fracture is completely healed thus an increase in the residual functional capacity exists which may relate to the Claimant's ability to do work. The Claimant has several impairments, to include obesity, which are considered in combination.

The Claimant has no prior work history thus cannot be found able to perform past relevant work. Accordingly, vocational factors such as age and education are evaluated to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v)

At the time of hearing, the Claimant was 53 years old thus considered to be closing approaching advanced age for MA-P purposes. The Claimant has a limited education with no prior work experience. Disability is found if an individual is unable to adjust to other work. Id. At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Individuals that are closing approaching advanced age (age 50-54) with a limited work experience may be significantly limited in vocational adaptability to adjust to other work. 20 CFR 416.963(d)

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform sedentary work. After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically

Rule 201.09, it is found that the Claimant is disabled for purposes of continued MA-P entitlement.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of continued Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the redetermination application to determine if all other non-medical criteria are met and inform the Claimant and her representative of the determination.

3. The Department shall supplement the Claimant any lost benefits she was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in July 2010 in accordance with department policy.

/s/
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 06/10/09

Date Mailed: 06/10/09

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 the Circuit 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 recip date of the rehearing decision.

CMM/jlg

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