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.: 2009-6118
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
April 9, 2009
Monroe County DHS

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 hearing was conducted in Monroe, Michigan on April 9, 2009. The Claimant appeared, along with [redacted] and testified. The Claimant was represented by [redacted]. Cindy Nolan appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes continued entitlement to Medical Assistance ("MA-P") and the State Disability Assistance ("SDA") 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. On November 21, 2007, the Medical Review Team ("MRT") found the Claimant disabled for purposes of the MA-P and SDA programs. (Exhibit 1, pp. 26, 27)

2. At the time of the approval, the Claimant was diagnosed with a brain aneurysm which required surgery. (Exhibit 1, pp. 36, 37)

3. In late [redacted] the Claimant underwent stent coiling of a left hypophyseal artery aneurysm.

4. On November 3, 2008, the Medical Review Team ("MRT") found the Claimant was no longer disabled for purposes of the MA-P and SDA programs. (Exhibit 1, p. 1, 2)

5. On November 6, 2008, the Department pended the Claimant's MA-P and SDA benefits for closure effective November 18, 2008.

6. On November 10, 2008, the Department received the Claimant's written hearing request protesting the termination of benefits.

7. On December 22, 2008, the State Hearing Review Team ("SHRT") found the Claimant not disabled based upon a medical improvement in her condition.

8. The Claimant's alleged physical disabling impairments are due to recurrent brain aneurysm, high blood pressure, "shredded" rotator cuff, neck, back, and knee pain.

9. The Claimant's alleged mental disabling impairments are due to depression and anxiety.

10. The Claimant's impairment(s) have lasted, or are expected to last, for a continuous 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' 7" and weighed 190 pounds.

12. The Claimant is a high school graduate with some college and has a work history as a construction supervisor, cook, waitress, and cashier.

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 had stint coiling of a left superior hypophyseal artery aneurysm in [redacted]. On [redacted], the Claimant was found with coil compaction with significant aneurysm recurrence with surgery recommended. On [redacted], the Claimant underwent a coil embolization of superior hyposhyseal aneurysm. The post-operative diagnosis was recurrent left superior hypophyseal previously stint coiled aneurysm. On [redacted], the Claimant went in for her six month check post stint coiling of the left ICA paraclinoid aneurysm. The Claimant underwent an

angiography which documented evidence of recurrent left internal carotid artery superior hypophyseal aneurysm, 6 months after stint coiling of the aneurysm.

In addition to the above, the medical documentation reveals that the Claimant has been diagnosed with Bipolar Disorder and Generalized Anxiety Disorder for which she attends outpatient psychological counseling.

Based upon the submitted documentation, it is unclear the basis for the original approval. Most of the supporting documentation relates to the aneurysm and surgical intervention. Assuming arguendo that the Claimant's impairment(s) were previously determined to not meet a Listing, or the equivalent thereof, the next step in the analysis requires a determination of whether the Claimant's condition has medically improved. Comparatively, the medical records from [redacted] compared to [redacted] are strikingly similar. As detailed above, the Claimant has been diagnosed with recurrent aneurysms which have required the same surgical procedure. The only "improved" record is found on a Medical Examination Report, dated [redacted], which lists the Claimant's condition as stable post-stint coiling of the artery. Subsequent records document that a 5 x 5 x 3 millimeter recurrent aneurysm at the location of the previous stint coiling was found. Ultimately, there is insufficient evidence presented that warrants a finding of a decrease in medical severity, nor is any exception applicable, therefore, it is found that the Claimant's disability continues with no further evaluation necessary.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program purusant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets

federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of continued Medical Assistance ("MA-P") entitlement, therefore the Claimant's is found disabled for purposes of continued SDA benefits.

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 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 May 2010 in accordance with department policy.

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

Date Signed: 04/20/09

Date Mailed: 04/20/09

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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