

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.: 2009-18623
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 22, 2009
Macomb County DHS (36)

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 Wednesday, July 22, 2009. The Claimant appeared and testified, along with [REDACTED]. [REDACTED] 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 September 29, 2005, the Claimant applied for Medical Assistance ("MA-P") benefits.

2. On May 5, 2006, the State Hearing Review Team (“SHRT”) determined the Claimant was not disabled based upon insufficient medical documentation. (Exhibit 1, p. 27, 43)
3. On June 15, 2006, a hearing was held which resulted in the record being extended in order to allow for the submission of additional medical documentation. (Exhibit 1, pp. 40 – 43)
4. The additional records were received and forwarded the the SHRT for consideration.
5. On August 30, 2006, the SHRT found the Claimant disabled effective August 2005 pursuant to Listing 2.07 with a review date recommendation of September 2007. (Exhibit 1, p. 38)
6. The Department failed to review the Claimant’s application in September of 2007.
7. In November of 2008, the Department reviewed the Claimant’s continued eligibility.
8. On December 19, 2008, the Medical Review Team (“MRT”) deferred the disability determination in order for an internist evaluation and hearing examination be scheduled for the Claimant. (Exhibit 1, pp. 1)
9. On January 15, 2009, the Claimant attended the Department ordered evaluation. (Exhibit 1, pp. 3 – 13)
10. An Audiogram was performed on this same date, January 15th. (Exhibit 1, pp. 7, 8)
11. On February 11, 2009, the MRT found the Claimant no longer disabled. (Exhibit 1, pp. 1, 2)
12. On February 21, 2009, the case was placed into negative action and scheduled to close effective March 5, 2009.
13. On March 4, 2009, the Department received the Claimant’s written request for hearing protesting the negative action. (Exhibit 3)

14. On May 4, 2009, the SHRT found the Claimant not disabled and capable of performing light work.
15. The Claimant's alleged disabling impairments are due to chronic back, leg, knee, neck and hand pain, dizziness, and brain tumor.
16. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.
17. At the time of hearing, the Claimant was 53 years old with a [REDACTED] birth date; was 5' 1" and weighed 145 pounds.
18. The Claimant has a limited education with a work history as a cashier, machine operator, and packager.

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-related activities or ability

to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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 support of the Claimant's claim of disability, Medical Examination Reports from 2005 were submitted, which were likely used in the Claimant's initial determination.

An undated Medical Examination Report was completed on behalf of the Claimant with the date of last examination being [REDACTED]. The current diagnoses were listed as dizziness with hearing loss, noting possible multiple sclerosis ("MS"). The Claimant was in stable condition and found able to occasionally lift/carry 10 pounds; stand and/or walk less than 2 hours during an 8 hour period; able to perform repetitive actions with both upper extremities but unable to operate foot/leg controls with either lower extremity.

On [REDACTED], a Medical Examination Report was completed by an internist on behalf of the Claimant apparently in response to an earlier application. The then current diagnoses were listed as a MS-like disease, degenerative joint disorder, and uterine fibroids. The physical examination noted dizziness, numbness, with a limited range of motion with associated pain. The Claimant condition was listed as deteriorating with full restrictions except in her ability to perform simple grasping, reaching, and operating foot/leg controls. In addition, the Claimant's ability for sustained concentration was also limited.

On [REDACTED], a Medical Examination Report was completed by a general surgeon on behalf of the Claimant. The current diagnosis was sebaceous cyst (removed on [REDACTED]). The Claimant was found to have no physical and/or mental limitations.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as fibromyalgia and disc herniation at C5-C6. The

disc herniation was confirmed by an MRI. The Claimant was listed in stable condition with limitations on her ability to perform repetitive pushing/pulling. Further, the Claimant was found capable of lifting/carrying 10 pounds; standing and/or walking was less than 2 hours in an 8 hour day with sitting less than 6 hours. Assistive devices were not medically required.

On [REDACTED], the Claimant attended a department order examination. The physical examination documented kyphosis of the thoracic spine however the Claimant's gait and stance were normal, noting she was able to ambulate without assistance. Ultimately, the Claimant was found to have a history of hearing loss (currently wears hearing aids) along with chronic hand pain and paresthesias in both hands. The physician opined that the Claimant was able to occasionally lift/carry 10 – 15 pounds; stand, walk, and/or sit for about six hours in an 8-hour day; and is able to perform simple grasping, reaching, pushing, pulling and fine manipulation without repetition. The Claimant was found able to operate foot/leg controls.

The Claimant asserts physical disabling impairment(s) due, in part, to chronic back, leg, knee, neck and hand pain. 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.*

Categories of Musculoskeletal include:

- 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, 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)

In this case, the objective medical findings document the Claimant suffers with degenerative joint disorder with pain and a limited range of motion. In addition, an MRI confirmed disc herniation. The medical records presented conflicting statements regarding the Claimant's ability to ambulate without the use of assistive devices. There was no evidence of nerve root compression, spinal arachnoiditis, and/or lumbar spinal stenosis. Ultimately, the medical documentation is insufficient to meet the intent and severity requirement of a listed impairment within 1.00 thus the Claimant cannot be found disabled under this listing.

The Claimant also uses hearing aids. Previously, the Claimant was found disabled pursuant to Listing 2.07. Special Senses and Speech disabilities are detailed in Listing 2.00. Hearing ability is evaluated in terms of the person's ability to hear and distinguish speech.

2.00B1 Loss of hearing may be quantitatively be determined by an audiometer which meets the standards of the American National Standards Institute (“ANSI”). *Id.* Hearing tests should be preceded by an otolaryngologic examination and performed under the supervision of an otolaryngologist or audiologist. *Id.*

Listing 2.07 relates to disturbance of labyrinthine-vestibular function, to include Meniere’s disease, which is characterized by a history of frequent attacks of balance disturbance, tinnitus, and progressive loss of hearing both:

- A. Disturbed function of vestibular labyrinth demonstrated by caloric or other vestibular tests; and
- B. Hearing loss established by audiometry.

Listing 2.08 defines hearing impairments as hearing not restorable by a hearing aid) manifested by:

- A. Average hearing threshold sensitivity for air conduction of 90decibels or greater, and for bone conduction to corresponding maximal levels, in the better ear, determined by the simple average of hearing threshold levels at 500, 1000, and 2000hz. (see 2.00B1); or
- B. Speech discrimination scores of 40 percent or less in the better ear.

In this case, the Claimant’s documented hearing loss is restored through the use of hearing aids. In consideration of the objective findings, it is found the Claimant’s hearing impairment does not meet the intent and severity requirement of a listed impairment within Listing 2.00 as detailed above.

The Claimant also asserts disability due to a brain tumor. Listing 11.00 defines adult neurological disabilities. Sensory or motor aphasia resulting in ineffective speech or communication or significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station

occurring more than 3-months post vascular accident meet Listing 11.04. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. 11.00C The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms. *Id.*

The record is devoid of objective documentation to establish the Claimant has a brain tumor and/or that as a result of this impairment the Claimant is disabled therefore the Claimant cannot be found disabled, or not disabled under this Listing.

Based upon the submitted medical documentation, the Claimant's impairment(s) may meet a listed impairment, or the equivalent thereof, however the record is insufficient to support such a finding, therefore, a determination of whether the Claimant's condition has medically improved is necessary.

As noted above, the Claimant was previously found disabled pursuant to a listed impairment. In comparing those medical records to the recent evaluation, it is found that the Claimant's condition has medically improved therefore the Claimant's Residual Functional Capacity it considered pursuant to Step 3.

RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations. To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more

than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

The Claimant's prior RFC is not known therefore federal regulations require a determination of whether an individual can engage in substantial gainful activity. 20 CFR

416.994(b)(2)(iv)(E) In this case, the Claimant previously worked as a cashier, machine operator, and packager. At the time of the hearing, the Claimant was 53 years old thus considered to be closely approaching advanced age for MA-P purposes. The Claimant also has a limited education having completed through the 7th grade. The medical records and testimony establish that due to the Claimant's continuing impairments, she is limited to, at best, unskilled sedentary work. Thus, the Claimant's medical improvement is not related to her ability to work therefore a determination of whether a listed exception applies is considered and found that substantial evidence does not show that the Claimant is a beneficiary of advances in medical or vocational therapy; has undergone vocation therapy; new or improved diagnostic/evaluative techniques have demonstrated that the impairment(s) is not disability as previously determined; or that the prior decision was in error. In addition, the record does not reveal that the prior determination was fraudulently obtained or that the Claimant cannot be located or failed to cooperate. There was no indication that the Claimant failed to follow prescribed treatment. Accordingly, the listed exceptions to medical improvement are not met. In light of the finding that the Claimant's medical improvement is not related to the ability to work and no listed exception is applicable, the Claimant's disability if found to have continued at Step 4.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant 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 impairment 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 any) if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant’s continued eligibility in August 2010 in accordance with department policy.

/s/

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

Date Signed: 08/11/09

Date Mailed: 08/12/09

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 receipt date of the rehearing decision.

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