

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.: 2009-24045

Issue No.: 2009, 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

July 22, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on April 20, 2009. After due notice, a telephone hearing was conducted from Detroit, Michigan on July 22, 2009. The Claimant appeared and testified. Sonja Baker, ES appeared on behalf of the Department sitting in for Ray Guitard, ES.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of continued entitlement to Medical Assistance ("MA-P") and 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. Claimant was determined to be disabled and had active SDA and MA as of January, 2008.

2. On April 14, 2009, the Department sent the Claimant a Notice of Case Action informing the Claimant that she was found no longer disabled, therefore her MA and SDA benefits would cancel effective April 24, 2009.
3. On April 20, 2009, the Department received the Claimant's written request for a hearing protesting the determination that she was determined no longer disabled.
4. Claimant's impairments have been medically diagnosed as breast cancer, lymphedema, right breast removed [REDACTED] and reconstructive surgery was scheduled for [REDACTED].
5. Claimant's physical symptoms are pain in right arm and pain in lower back and left side.
6. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.
7. At the time of hearing, the Claimant was 48 years old; right handed; 5'5" tall and weighed 213 pounds.
8. The Claimant completed school through the 12th grade and has previous work experience as a certified nurses assistant.
9. Claimant takes the following prescriptions:
 - Vicodin 800 mg
 - Motrin 800 mg
 - Extra-strength Tylenol
10. New Medical Records were reviewed as follows, in part:

[REDACTED] Oncology Report (Exhibit 2, pp. 3-5)
Pt diagnosed with stage IV breast cancer with biopsy-proven metastatic disease to the lung with bilateral pleural effusions. Recently admitted to hospital after having an episode of hemoptysis as well as shortness of breath. She was found to have endobronchial lesion. Her relapse has occurred approximately 6 months following her treatment.

CT OF CHEST: Demonstrates bilateral pleural effusions with compression atelectasis and pleural thickening.

PLAN: We discussed possible participation in a clinical trial versus no therapy versus additional chemotherapy. We discussed single-agent versus combination treatment. Given the apparent aggressive nature of Mary's disease with her relapse shortly after her adjuvant treatment and the symptoms that the tumor is causing, I have recommended combination chemotherapy.

████████ Cancer Center Report (Exhibit 2, p. 6-8)

Left infuse-A-Port for chemotherapy and left pleurx catheter b/c of malignant pleural effusion. Metastatic disease is to the bone as well as the pleural space.

████████ Cancer Center Reports (Exhibit 2, pp. 12-14)

Pt reported shortness of breath with climbing stairs but normal ambulation from room to room in her home does not cause any symptoms. She has had home care nurses coming out to drain her pleural fluid.

████████ Cancer Center Report (Exhibit 2, pp. 15-19)

Pt has left Pleurx catheter placed in August 2009 as well as a left port. The port had been draining well until recently. The patient was seen in the ER recently where the catheter, since it was nonfunctioning it was attempted to be removed but this was not successful. I have scheduled the patient for an outpatient removal of the Pleurx catheter. I do not think that the collection at the base of the left lung will be able to be removed with a new catheter. This would require operative intervention, which is certainly not indicated in a patient with advanced stage disease and who is asymptomatic.

████████ Cancer Center Report (Exhibit 2, pp. 21-25)

Overall Pt reports good tolerance to the chemotherapy. She has some residual persistent numbness and tingling in her fingertips and balls of her feet.

████████ Internist IME Report (Exhibit 2, pp. 33-35)

COMPLAINTS: Chronic fatigue and dizziness. Shortness of breath and dyspnea on exertion with walking and going up steps or any sort of exertion. She states she has chronic swelling of her right arm and is wearing elastic hose on her right upper extremity and states she has problems with standing, stooping, squatting, lifting and has chronic shortness of breath and dyspnea on exertion.

EXTREMITIES: Positive for edema of her right arm with an elastic bandage and mild, chronic edema of her right upper extremity.

BONES AND JOINTS: Able to squat to 50% of the distance and recover and bend to 60% of the distance and recover. Straight leg raising while lying 0-50.

IMPRESSION:

1. **Breast Cancer:** The examinee has a history of breast cancer status post mastectomy of her right breast. She did have chemotherapy as well as radiation therapy but continues to have paresthesias as a side effect of her chemo.
2. **Lung Cancer:** History of lung cancer status post development of breast cancer. She is now undergoing chemotherapy and removal of chronic fluid buildup in her lung on the left side in particular with a thoracentesis.
3. **Chronic Chest pain:** The examinee has a history of chronic chest pain, fatigue and shortness of breath along with depression. She is being evaluated on a constant and ongoing basis for the chronic illness and cancer. She states that her doctor told her she would probably not live for one more year.

██████████ Medical Exam Report Oncologist (Exhibit 2, p. 1-2)

HX & Current DX: Stage IV right breast cancer

LAB & X-RAY FINDINGS: CXR – left effusion, fluid cytology + cancer

CLINICAL IMPRESSIONS: Deteriorating

PHYSICAL LIMITATIONS: Lifting 25 lbs occasionally, stand/walk less than 2 hrs in 8 hour day, sit 6 hours in 8 hour day

██████████ Cancer Institute Medical Needs Form (Exhibit 1)

Lymphedema, right arm

No lifting of 5 lbs by right hand

No overhead lifting

Cannot work near heat source or oil substance

Must wear compression sleeve & glove

Needs help grooming and with housework.

██████████ Nurse Practitioner Medical Exam Form (Exhibit 1)

DX: chronic swelling, gets larger with repetitive or heavy walking, secondary to breast cancer treatment.

PHYSICAL RESTRICTIONS: No lifting, stand/walk less than 8 hours/day

██████████ Right breast ultrasound (Exhibit 1
Right breast mass has decreased in size and now measures
27x17x19mm

██████████
Metastatic carcinomas seen in 2 lymph nodes – right sentinel.
Palpable axillary lymph node – metastatic carcinoma.

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”).

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).

A. Substantial Gainful Activity

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). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a).

“Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. In this case, Claimant has not worked since 2007, so the analysis will proceed at the second step.

B. Listed Impairment

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii). In this case, the following impairments were reviewed: 13.10 *Breast Cancer*, 20 CFR 404 §13.10 which states as follows:

13.10 Breast

- A. Locally advanced carcinoma (inflammatory carcinoma, tumor of any size with direct extension to the chest wall or skin, tumor of any size with metastases to the ipsilateral internal mammary nodes. Or
- B. Carcinoma with distant metastases.

Based on the hearing record, the undersigned finds that the Claimant’s medical record supports findings that the Claimant’s physical and mental impairment are “listed impairment(s)” or equal to a listed impairment because the medical evidence reviewed shows that the physical impairments meet the intent or severity of the listings. 20 CFR 416.920(a)(4)(iii). In this case, the undersigned finds that Claimant has exhibited no medical improvement.

D. Exceptions

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).

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:

- (1) Substantial evidence shows that the claimant is the beneficiary of advances in medical or vocational therapy or technology (related to claimant's ability to work).
- (2) Substantial evidence shows that the claimant has undergone vocational therapy (related to claimant's ability to work).
- (3) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques, claimant's impairment(s) is not as disabling as it was considered to be at the time of the most recent favorable medical decision.
- (4) Substantial evidence demonstrates that any prior disability decision was in error.

In examining the record, this Administrative Law Judge finds that none of the above stated exceptions apply.

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

- (1) A prior determination was fraudulently obtained.
- (2) Claimant did not cooperate.
- (3) Claimant cannot be located.
- (4) Claimant failed to follow prescribed treatment which would be expected to restore claimant's ability to engage in substantial gainful activity.

After careful review of the record, this Administrative Law Judge finds that none of the second group of exceptions apply. Claimant was present at the hearing and testified about her

medical condition. Claimant has continued to follow prescribed treatment and has been cooperative.

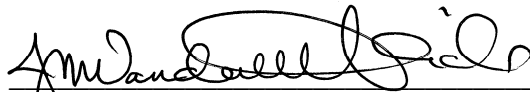
In this case, there is sufficient evidence to support a finding that Claimant's impairment continues to disable her under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled for purposes of continued benefits under MA-P and SDA.

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 March, 2011 in accordance with Department policy.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 03/02/10

Date Mailed: 03/05/10

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 mailing 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.

JV/dj

cc:

