

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.: 2009-26552
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
November 5, 2009
Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 November 5, 2009. Claimant appeared and testified. Claimant was represented by Attorney

[REDACTED].

ISSUE

Did the Department of Human Services (DHS or department) properly determine that claimant is no longer "disabled" for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

- 1) Claimant has been an ongoing recipient of MA-P and SDA benefits based upon an April 16, 2007, application.

- 2) On April 29, 2009, the department notified claimant of its intent to terminate her ongoing program benefits effective May 12, 2009, based upon the belief that claimant no longer met the requisite disability criteria.
- 3) On May 4, 2009, claimant filed a timely hearing request to protest the department's proposed negative action.
- 4) Thereafter, the department deleted its proposed negative action pending the outcome of the instant hearing.
- 5) In [REDACTED], claimant was diagnosed with ovarian cancer (Sertoli Leydig juvenile granulosa cell tumor of the right ovary) with a large tumor extending beyond the pelvis and into the abdomen.
- 6) On [REDACTED], claimant underwent a right pelvic para-aortic lymphadenectomy and omentectomy as well as a cholecystectomy and appendectomy. Claimant's ovarian tumor weighed 7,692 grams and measured 31 cm x 23.5 cm x 10 cm and was removed intact.
- 7) Claimant was found to have hypercalcemia and elevated parathyroid hormone levels. On [REDACTED], claimant underwent parathyroid surgery. A right upper parathyroidectomy was performed and part of the thymus was removed. Pathology revealed parathyroid adenoma and hyperplasia.
- 8) Claimant underwent chemotherapy from [REDACTED] through [REDACTED].
- 9) Claimant currently suffers from dysthymic disorder.

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 (DHS or department) 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).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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

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).

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). In this case, claimant is not currently working. Accordingly, claimant is not disqualified for MA at this step in the sequential evaluation process.

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 matter, claimant meets listing 13.23E. Claimant was diagnosed with cancer of the ovary in which her tumor extended beyond the pelvis. See listing 13.23E(1)(a). Listing 13H(2) provides that, in this instance, claimant's listing will be found disabling until at least three years after the onset of complete remission. The listing provides as follows:

“When the impairment(s) has been in complete remission for at least three years, that is, the original tumor and any metastasis have not been evident for at least three years, the impairment(s) will no longer meet or medically equal the criteria of a listing in this body system.”

The listing goes on to provide at 13H(3) that “following the appropriate period, we will consider any residuals, including residuals of the malignancy or therapy (see 13.00G) in determining whether you are disabled.” In this case, claimant is still within the three-year period.

Accordingly, she must continue to be found “disabled” for purposes of MA.

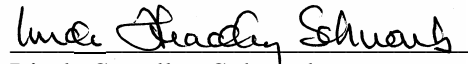
The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of

the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM Item 261. Inasmuch as claimant continues to be “disabled” for purposes of MA, she must also continue to be found “disabled” for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to be “disabled” for purposes of the Medical Assistance and State Disability Assistance programs. Accordingly, the department’s determination in this matter is hereby reversed. The department is ordered to maintain claimant’s eligibility for Medical Assistance and State Disability Assistance if claimant is otherwise eligible for program benefits. The department should review claimant’s continued eligibility for program benefits in July of 2010.


Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 3, 2010

Date Mailed: February 4, 2010

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.

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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.

LSS/pf

cc:

