

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: 2009-9614

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 16, 2009

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

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 telephone hearing was held on April 16, 2009. Claimant was represented by [REDACTED].

ISSUE

Whether claimant continues to be disabled for Medical Assistance (MA).

FINDINGS OF FACT

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

(1) During June 2008, claimant was a recipient of MA. Claimant's assistance was due for medical review.

(2) June 27, 2008, the Medical Review Team (MRT) denied claimant's medical review. Department Exhibit A.

(3) July 3, 2008, the department sent claimant written notice that her MA would end..

(4) September 5, 2008, the department received claimant's timely request for hearing.

(5) January 29, 2009, the State Hearing Review Team (SHRT) denied claimant's medical review. Department Exhibit B.

(6) April 16, 2009, the telephone hearing was held. Prior to the close of the hearing, claimant submitted additional medical evidence. Claimant waived the right to a timely hearing decision. June 30, 2009, after review of all medical evidence, the SHRT again denied claimant's application. SHRT Decision, 6-30-09.

(7) Claimant asserts disability based on impairments caused by a goiter.

(8) Claimant testified at hearing. Claimant is 54 years old, 5'2" tall, and weighs 140 pounds. Claimant completed high school and is able to read, write, and perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.

(9) Claimant's past relevant employment has been as a child day care provider, dietary aide, and factory worker.

(10) At last positive decision on or about April 2007, claimant had been discovered to have nodular basal cell carcinoma and was in need of treatment. Department Exhibit A, pgs 61-85.

(11) At review, claimant continues to have basal cell carcinoma, persistent, by pathology of the inner ear. Claimant is to be scheduled for re-excision. Department Exhibit A, pg 36. On or about September 24, 2007, claimant underwent additional surgery on her ear. Department Exhibit A, pg 30. October 19, 2007, claimant's cancer specialist wrote a letter indicating he had examined claimant and her ear looks good and there is no need for further therapy. Frozen section margins received during surgery were negative. Department Exhibit A, pg 28. July 9, 2007, CT scan revealed claimant to have an enlarged heterogeneous thyroid gland

presumably representing a thyroid goiter. Department Exhibit A, pgs 24-25. April 30, 2008, CT scan revealed large thyroid goiter unchanged from previous study of October 22, 2007.

Department Exhibit A, pgs 15-16. Physical exam that was conducted on April 29, 2008, revealed that claimant has a large thyroid goiter. The remainder of the neck exam is normal. The oral cavity and oral oropharynx revealed pink, moist mucosa with no masses or lesions. Fiber optic laryngoscopy was performed that revealed normal vocal fold function with no masses, lesions, or pooling of saliva in the piriform sinuses. The pharyngeal walls are normal. Ceruman impaction in bilateral ears, removed under microscope using suction. Ear exam was otherwise normal.

Department Exhibit A, pg 12.

(12) When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it appears that medical improvement of claimant's physical condition has occurred or that claimant was not disabled. At last positive decision, claimant was discovered to have carcinoma of the inner ear and was just entering treatment. At review, in June 2007, claimant was found to have persistent basal cell carcinoma of the inner ear. She underwent excision during September 2007 and resulting biopsies were negative any cancer cells. At review, claimant was found to have a large fairly stable thyroid goiter. At the time of exam in March 2009, claimant had no respiratory difficulties or dysphasia. There was some deviating of claimant's trachea as found in previous imaging studies. Doctor opines that claimant is "At risk to have progressive enlargement of the thyroid which may cause compressive symptoms including shortness of breath and dysphasia. If she develops significant laryngeal and tracheal compression, she can develop significant respiratory failure up to and including death." Claimant Exhibit A, Letter, 3-31-09. As such, at review, while claimant's goiter may increase and may cause severe impairments; at the time of medical review claimant's

goiter does not and has not caused severe impairments and appears to be fairly stable. See discussion above.

(13) Claimant's medical improvement is related to the ability to work.

(14) Claimant is capable of performing work activities as of the excision of her basal cell carcinoma September 2007.

### 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).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;

- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

**Medical improvement.** Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled. A determination that there has been a decrease in medical severity must be based on changes (improvement) in the symptoms, signs and/or laboratory findings associated with your impairment(s).... 20 CFR 416.994(b)(1)(i).

**Medical improvement not related to ability to do work.** Medical improvement is not related to your ability to work if there has been a decrease in the severity of the impairment(s) as defined in paragraph (b)(1)(i) of this section, present at the time of the most recent favorable medical decision, but no increase in your functional capacity to do basic work activities as defined in paragraph (b)(1)(iv) of this section. If there has been any medical improvement in your impairment(s), but it is not related to your ability to do work and none of the exceptions applies, your benefits will be continued.... 20 CFR 416.994(b)(1)(ii).

**Medical improvement that is related to ability to do work.** Medical improvement is related to your ability to work if there has been a decrease in the severity, as defined in paragraph (b)(1)(i) of this section, of the impairment(s) present at the time of the most recent favorable medical decision **and** an increase in your functional capacity to do basic work activities as discussed in paragraph (b)(1)(iv) of this section. A determination that medical improvement related to your ability to do work has occurred does not, necessarily, mean that your disability will be found to have ended unless it is also shown that you are currently able to engage in substantial gainful activity as discussed in paragraph (b)(1)(v) of this section.... 20 CFR 416.994(b)(1)(iii).

**Functional capacity to do basic work activities.** Under the law, disability is defined, in part, as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment(s).... 20 CFR 416.994(b)(1)(iv).

...A decrease in the severity of an impairment as measured by changes (improvement) in symptoms, signs or laboratory findings can, if great enough, result in an increase in the functional capacity to do work activities.... 20 CFR 416.994(b)(1)(iv)(A).

When new evidence showing a change in signs, symptoms and laboratory findings establishes that both medical improvement has occurred and your functional capacity to perform basic work activities, or residual functional capacity, has increased, we say that medical improvement which is related to your ability to do work has occurred. A residual functional capacity assessment is also used to determine whether you can engage in substantial gainful activity and, thus, whether you continue to be disabled.... 20 CFR 416.994(b)(1)(iv)(A).

...Point of comparison. For purposes of determining whether medical improvement has occurred, we will compare the current medical severity of that impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled to the medical severity of that impairment(s) at that time.... 20 CFR 416.994(b)(1)(vii).

...If medical improvement has occurred, we will compare your current functional capacity to do basic work activities (i.e., your residual functional capacity) based on the previously existing impairments with your prior residual functional capacity in order to determine whether the medical improvement is related to your ability to do work. The most recent favorable medical decision is the latest decision involving a consideration of the medical evidence and the issue of whether you were disabled or continued to be disabled which became final. 20 CFR 416.994(b)(1)(vi).

...Medical improvement. Medical improvement is any decrease in the medical severity of impairment(s) present at the time of the most recent favorable medical decision that you were disabled or continued to be disabled and is determined by a comparison of prior and current medical evidence which must show that there have been changes (improvement) in the symptoms, signs or laboratory findings associated with that impairment(s). 20 CFR 416.994(b)(2)(i).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant's impairments do not meet or equal any Social Security Listing.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has medically improved at medical review. At last positive decision, claimant was just entering treatment for carcinoma of the inner ear. At medical review, claimant had persistent carcinoma, however, it was excised during September 2007 and subsequent medical tests revealed claimant was cancer free. Finding of Fact 10-14.

At Step 3, claimant's medical improvement is related to her ability to perform work. Claimant's carcinoma has been treated and she is cancer free. The record does not establish that

claimant has a severe physical impairment due to carcinoma of the inner ear. Finding of Fact 10-14; Department Exhibit A; Claimant Exhibit A.

At Step 4, claimant's medical improvement is related to the ability to perform work. See Step 3 above.

At Step 5, claimant does not have current severe impairments. Claimant has a very large thyroid goiter that is causing tracheal deviation. Physical exam of the neck and other objective medical testing does not establish severe impairments due to this condition . Claimant's physician opined that claimant was at risk for enlargement of the goiter and with enlargement, she may be at risk for severe impairments. Being at risk for enlargement and at risk for impairments, is not sufficient to establish a current severe impairment. See discussion at Steps 2 and 3 above. Finding of Fact 10-14.

At Step 6, claimant's past relevant employment has been as a child day care provider, dietary aide, and factory laborer. Finding of Fact 9. The record does not appear to establish that claimant is incapable of performing the tasks required by these jobs. See discussions at Steps 1-5 above. Finding of Fact 9-14.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 7, the medical evidence of record establishes that claimant has a non-severe impairment. The record does not establish that claimant has severe physical limitations. Finding of Fact 10-14.

After careful examination of the record and for reasons discussed at Steps 1-7 above, the Administrative Law Judge decides that claimant does not meet the federal statutory requirements for disability effective October 1, 2007. Therefore, claimant does not meet the disability

requirements for MA based on disability effective October 2007. Therefore, the department properly terminated claimant's medical benefits effective July 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has established that claimant is not disabled for purposes of Medical Assistance.

Accordingly, the department's action is, hereby, UPHELD.

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/s/  
Jana A. Bachman  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: May 20, 2010

Date Mailed: May 25, 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.

The Claimant may appeal the Decision and Order to Circuit Court 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.

JAB/db

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