

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.: 2010-11273
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 22, 2009
Wayne County DHS (17)

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 Monday, March 22, 2009. The Claimant appeared and testified. [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") 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 June 25, 2008, the Claimant submitted an application for public assistance seeking Medical Assistance ("MA-P") benefits.

2. On December 9, 2008, the Medical Review Team (“MRT”) found the Claimant met a listed impairment within 13.00 thus was disabled for purposes of the MA-P program. (Exhibit 1, p. 30)
3. In June 2009, the Claimant’s case was reviewed.
4. On June 9, 2009, the MRT deferred the disability determination requesting the Department submitted additional medical evidence. (Exhibit 1, p. 1)
5. On September 14, 2009, the MRT found the Claimant’s condition had medically improved thus found the Claimant no longer entitled to continued MA-P benefits. (Exhibit 1, p. 1)
6. The Department sent a Notice of Case Action informing the Claimant that he was found no longer disabled.
7. On October 13, 2009, the Department received the Claimant’s timely written requests for hearing protesting the determination. (Exhibit 2)
8. On December 12, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant was no longer disabled and was capable of performing other work. (Exhibit 3)
9. The Claimant’s alleged physical disabling impairments are due to colon cancer and hernia.
10. The Claimant’s alleged mental disabling impairment(s) are due to anxiety/depression.
11. At the time of hearing, the Claimant was 41 years old with an [REDACTED] birth date; was 5’ 9” in height; and weighed 165 pounds.
12. The Claimant obtained his GED and has a real estate license.
13. The Claimant’s work history consist of employment as a chauffeur and brick layer.

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”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Program Glossary (“BPG”).

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 416.927

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 medical 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 cooperate;
- (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 was previously found disabled under a listed impairment.

Listing 5.00 discusses adult digestive system impairments. Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. 5.00A These symptoms may lead to

complications, such as obstruction or may be accompanied by manifestations in other body systems. *Id.* Medical documentation necessary to meet the listing must record the severity and duration of the impairment. 5.00B The severity and duration of the impairment is considered within the context of the prescribed treatment. 5.00C1 Side effects of prescribed treatment is also evaluated. 5.00C2, 3 Surgical diversion of the intestinal tract, including ileostomy and colostomy, does not preclude any gainful activity if an individual is able to maintain adequate nutrition and function of the stoma. 5.00E4 If adequate nutrition is not maintained, weight loss due to any digestive disorder despite continuing treatment is considered. *Id.*, 5.08 Weight loss with BMI of less than 17.5 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period satisfies Listing 5.08 Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart satisfies 5.06B.

Listing 13.00 discusses malignant neoplastic diseases. This listing is used to evaluate all malignant neoplasms, except certain neoplasms associated with human immunodeficiency virus (“HIV”) infection. 13.00A Origin of the malignancy, extent of involvement, duration/frequency/response, and effects of post-therapeutic residuals are factors of consideration. 13.00B(1)-(4) Evidence about recurrence, persistence, or progression of the malignancy, the response to therapy, and any significant residuals may be required. 13.00D4 In many cases, malignancies meet listing criteria only if the therapy does not achieve the intended effect: the malignancy persists, progresses, or recurs despite treatment. 13.00G1 Multimodal therapy is a combination of at least two types of treatment modalities given in close proximity as a unified whole and usually planned before any treatment has begun. There are three types of treatment modalities: surgery, radiation, and systemic drug therapy (chemotherapy, hormonal

therapy, and immunotherapy). Examples of multimodal therapy include surgery followed by chemotherapy or radiation; chemotherapy followed by surgery; or chemotherapy and concurrent radiation. 13.00I3

To meet Listing 13.18 - carcinoma, sarcoma, or carcinoid of the small intestine, the impairment must be inoperable, unresectable, or recurrent *or* with metastases beyond the regional lymph nodes. To meet Listing 13.18, which addresses the large intestine from ileocecal valve to and including anal canal adenocarcinoma that is inoperable, unresectable, or recurrent *or* squamous cell carcinoma of the anus, recurrent after surgery *or* with metastases beyond the regional lymph nodes.

On [REDACTED], a biopsy confirmed a colon mass.

On [REDACTED], a pathology report confirmed the Claimant's right colon cancer. On this date, the Claimant was admitted to the hospital for a subtotal colectomy. The Claimant tolerated the procedure well without complication.

On [REDACTED], the Department received a Medical Examination Report from the Claimant's family physician. The current diagnosis was colon cancer. The physical/mental examination was normal however the Claimant was limited to occasionally lifting/carrying of 10 pounds; standing and/or walking less than two hours during an 8-hour workday; and was able to perform repetitive actions with his upper extremities. Due to the cancer, the Claimant experienced weakness and fatigue.

On [REDACTED], a Medical Examination Report was completed by the Claimant's oncologist. The current diagnosis was Stage III adenocarcinoma of the colon. The Claimant was restricted to the equivalent of less than sedentary activity.

The Claimant underwent chemotherapy and radiation treatment from [REDACTED] through

[REDACTED].

On [REDACTED], the Claimant presented to the emergency room requesting a referral and help for his depression. The Claimant was evaluated by a psychologist and ultimately discharged to go to a Psychiatric/Psychological Intake Center for immediate assessment. The Claimant's Global Assessment Functioning ("GAF") was 40. The discharge diagnoses were major depression with a history of colon cancer.

On [REDACTED], the Claimant's mental status was assessed. The symptoms were anger, frustration, verbal and physical aggression, distorted thinking, loss of appetite, history of insomnia, mood swings, low self esteem and concentration difficulty.

On [REDACTED], the Claimant's treating oncologist completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were colon cancer and major depression. The physical examination was normal however the Claimant's mood was depressed. The Claimant was in stable condition and found able to frequently lift/carry 20 pounds with occasional lifting/carrying of 25 pounds; able to stand and/or walk at least two hours in an 8 hour workday with sitting about 6 hours during the same time frame; and able to perform repetitive actions with all extremities. The Claimant's sustained concentration was limited.

As previously stated, the Claimant was previously found to meet a listed impairment. The Claimant was diagnosed with colon cancer resulting in a subtotal colectomy and 6 months of chemotherapy and radiation. Since that time, there is no evidence of recurrence, persistence, or progression. Based upon the submitted medical documentation, the Claimant's impairment(s) no longer meets the intent and severity requirement of a listed impairment within 5.00 and/or 13.00 thus the Claimant cannot be found disabled under these listings.

The Claimant also received limited treatment for depression/anxiety which was attributed to his cancer. In light of the objective medical records, Listing 12.00 (mental disorders), specifically 12.04 and 12.06, were considered. Ultimately, it is found that the objective medical evidence does not meet the intent and severity requirement of a listed impairment within 12.00 thus a determination of whether the Claimant's condition has medically improved is necessary.

In comparing the records from the time of MA-P approval, the Claimant was diagnosed with colon cancer necessitating the need for a subtotal colectomy, chemotherapy, and radiation. Current medical evidence shows no evidence of recurrence, persistence, or progression. Accordingly, the objective medical evidence reflects a decrease in the medical severity therefore the Claimant's Residual Functional Capacity is 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 work history consists of employment as a chauffeur and brick layer. As a chauffeur, the Claimant spent his time driving individuals to and from various functions with little or no weight requirements. As such, the Claimant's employment as a chauffeur is considered semi-skilled, sedentary employment. Conversely, the Claimant's employment as a brick layer was very physical requiring the Claimant to lift/carry up to 90 pounds. The objective medical evidence supports a finding that the Claimant is physically unable to perform his past employment as a brick layer (unskilled, medium/heavy) however this same evidence supports a finding that the Claimant is capable of performing sedentary work. That being stated, the Claimant also suffers from depression and testified that he needs to be near a bathroom because, due to the removal of much of his colon, he is unable to hold his bowels for extended periods of

time. In consideration of the foregoing and in light of the requirement for a chauffeur to be away from the bathroom, it is found that the Claimant is unable to perform past relevant employment. Accordingly, vocational factors such as age and education are evaluated to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v)

At the time of hearing, the Claimant was 41 years old thus considered to be a younger individual for MA-P purposes. The Claimant obtained his GED and, in 2006, his real estate license. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform light work as defined in 20 CFR 416.967(b) After review of the entire record finding no contradiction with the Claimant's non-exertional impairment and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II], specifically as a

guide, specifically Rule 202.20 and 202.22, it is found that the Claimant is not disabled for purposes of continued MA-P entitlement.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant not disabled for purposes of continued Medical Assistance program.

It is ORDERED:

The Department's determination is AFFIRMED.

Colleen M. Mamelka

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

Date Signed: 4/6/2010

Date Mailed: 4/6/2010

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 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.

CMM/jlg

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