

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 2010-44531
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 15, 2010
Wayne County DHS (18)

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 held on November 15, 2010. 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 no longer disabled for purposes of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

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

1. On July 8, 2009, the Claimant submitted an application for public assistance seeking MA-P benefits.
2. On August 6, 2009, the Medical Review Team ("MRT") found the Claimant disabled based on Listing 13.18. (Exhibit 1, pp. 152, 153)
3. Upon redetermination, on July 13, 2010, the MRT found the Claimant had medically improved thus no longer disabled for purposes of the MA-P benefit program. (Exhibit 1, pp. 1, 2)
4. On July 15, 2010, the Department notified the Claimant of the MRT decision.

5. On July 26, 2010, the Department received the Claimant's timely written request for hearing.
6. On August 3, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
7. The Claimant alleges physical disabling impairments due to rectal cancer status (post surgical intervention, radiation, and chemotherapy), incontinence, and neuropathy.
8. The Claimant alleges mental disabling impairments due to anxiety and depression.
9. At the time of hearing, the Claimant was 44 years old with a [REDACTED] date of birth; was 5'5 ½" in height; and weighed 220 pounds.
10. The Claimant is a high school graduate with an employment history in child care and as a sales associate.
11. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

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 Reference Manual ("BRM").

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.

At the time of the initial approval, the Claimant met Listing 13.18. Listing 13.00 discusses malignant neoplastic diseases. The origin of the malignancy, extent of involvement, duration, frequency and response to antineoplastic therapy such as surgery, irradiation, chemotherapy, hormones, immunotherapy, or bone marrow or stem cell transplantation are considered as well as the effects of any post-therapeutic residuals. 13.00B The residual effects of treatment are temporary in most instances. 13.00G3 Listing 13.18 refers to malignancy of the large intestine from ileocecal valve to and including the anal canal. To meet this listing, an individual must establish:

- A. Adenocarcinoma that is inoperable, unresectable, or recurrent, or
- B. Suamous cell carcinoma of the anus, recurrent after surgery, or
- C. With metastases beyond the regional lymph nodes.

On [REDACTED], the Claimant was admitted to the hospital with complaints of rectal bleeding. On [REDACTED], a total colonoscopy was performed due to large cancer in the distal rectum. The Claimant was discharged on [REDACTED] with the diagnoses of GI bleed and anemia.

On [REDACTED], an endosonographic finding confirmed rectal adenocarcinoma.

On [REDACTED], a PET scan revealed positive for malignancy in the rectal area with involvement of regional lymph nodes.

On [REDACTED], insertion of a PowerPort and port placement was performed without issue.

On [REDACTED], radiation therapy options were discussed.

On [REDACTED], a biopsy of the para-aortic lymph node was performed.

On [REDACTED] through the [REDACTED] the Claimant was admitted to the hospital for her first chemotherapy and radiation treatment.

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On [REDACTED], the Claimant was admitted to the hospital for her second cycle of inpatient chemotherapy as well as radiation therapy. The Claimant was discharged on [REDACTED] with the diagnoses of rectal adenocarcinoma, iron deficiency anemia, and gastroesophageal reflux disease.

On [REDACTED], a flexible sigmoidoscopy was performed without complication. On [REDACTED], a CT of the chest, abdomen, and pelvis revealed rectal wall thickening, intra-abdominal and pelvic lymph nodes, calculus within the right renal collecting system, and nodular opacities within the left lower lobe.

On [REDACTED], the Claimant, after completing chemoradiation therapy, the Claimant was scheduled for surgical resection. The Claimant did well with her course of radiation therapy and only had a mild decrease in energy level.

On [REDACTED], the Claimant was admitted to the hospital to undergo surgical resection due to her rectal cancer. On this date, a laparoscopic low anterior resection with diverting loop ileostomy was performed without complication. The Claimant was discharged on [REDACTED].

On [REDACTED], the surgical pathology report was positive for rectal cancer.

On [REDACTED], an MRI of the pelvis found a presacral fluid collection which was likely a hematoma. There was no evidence of tumor recurrence or lymphadenopathy. Further, mild bilateral hip osteoarthritis with degeneration and tear; extensive edema/inflammation involving the bilateral piriformis muscles and perirectal soft tissue were also notes. On [REDACTED], a CT of the abdomen/pelvis found no evidence of hydronephrosis and focal fluid collection in the presacral soft tissues.

On [REDACTED], the Claimant presented to the hospital with pelvic abscess. The Claimant was discharged on [REDACTED] with the diagnoses of pelvic abscess, neuropathy, rectal carcinoma, asthma, anemia, and nephrolithiasis.

On [REDACTED], a MRI of both hips found moderate osteoarthritis of the hips. There was no evidence of metastasis.

On [REDACTED], a CT guided aspiration of presacral fluid collection was performed without complication.

On [REDACTED], an endoscopic evaluation was performed which was unremarkable.

On [REDACTED], an MRI found no evidence of nodal or metastatic disease involving the abdomen.

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On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant by her oncologist. The current diagnosis was rectal cancer. The physical examination was normal and the Claimant was stable with treatment. The Claimant was found able to occasionally lift/carry less than 10 pounds; able to stand, walk, and sit intermittently; able to perform very light repetitive actions with her upper extremities; and unable to operate foot/leg controls due to her hip abscess. The Claimant's sustained concentration was limited and she was weak mentally and physically due to the chemotherapy.

On [REDACTED], a single contrast gastrografin enema was performed. There was no evidence of obstruction, no annular constricting lesions, and partial visualization of the terminal ileum was unremarkable.

On [REDACTED], a letter was written on behalf of the Claimant confirming the Claimant's treatment for depression and anxiety as well as insomnia and feelings of hopelessness.

Listings 1.00 (musculoskeletal system), Listing 5.00 (digestive system), Listing 12.00 (mental disorders), and Listing 13.00 (malignant neoplastic diseases) were considered in light of the objective medical evidence presented. Ultimately, it is found that the Claimant's impairments do not meet the intent and severity requirement of a listed impairment thus a determination of whether the Claimant's condition has medically improved is necessary.

As noted above, the Claimant was previously found disabled under Listing 13.18. In comparing those medical records to the recent evidence (as detailed above), it is found that the Claimant's condition has medically improved 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.*

Limitations or restrictions which affect an individual's ability to meet the demands of a job, other than the strength (physical) demands, are considered nonexertional. 20 CFR 416.969a(a) Examples of nonexertional limitations or restrictions include difficulty functioning because of nervousness, anxiety, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings; or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(i)-(vi)

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) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

Previously, the Claimant worked as a child care provider and as a sales associate. In light of the foregoing, and in consideration of the Occupational Code, the Claimant's past relevant work is considered unskilled, light work.

The Claimant testified that she can walk short distances; is able to stand for ½ hour; can lift/carry approximately 10 pounds; and is able to bend and squat. The treating oncologist, as of June 2010, restricted the Claimant to the equivalent of less than sedentary activity. If the impairment or combination of impairments does not limit

physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not be able to return to past relevant work thus vocational factors (age, education, and past work experience) are considered to determine whether despite the limitations the Claimant is able to perform other work. 20 CFR 416.994(b)(5)(vii) 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). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the nonexertional limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

At the time of hearing, the Claimant was 44 years old thus considered to be a younger individual for MA-P purposes. The Claimant is a high school graduate. The total impact caused by the combination of medical problems suffered by the Claimant must be considered. In doing so, it is found that the combination of the Claimant's physical and mental impairments have a major impact on her ability to perform basic work activities such that, at this time, she is found unable to meet the full range of activities necessary for sedentary work as defined in 20 CFR 416.967(a). After review of the entire record it is found that the Claimant is disabled for purposes of continued entitlement under the MA-P program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of continued entitlement for MA-P benefits.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the June 17, 2010 redetermination application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement for any lost benefits that the Claimant 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 December 2011 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 11/29/2010

Date Mailed: 11/29/2010

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 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.

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