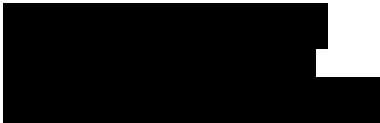


STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 20105547
Issue No. 2009
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: December 15, 2009
Kalamazoo 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, an in-person hearing was held on December 15, 2009.

ISSUE

Whether claimant has established disability 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 September and October 2009, claimant was a recipient of MA. Her assistance was due for medical review.
2. October 7, 2009, the Medical Review Team (MRT) denied claimant's medical review. Department Exhibit A.
3. October 8, 2009, the department sent written notice to claimant that her medical review was denied.
4. October 19, 2009, the department received claimant's timely request for hearing.

5. November 12, 2009, the State Hearing Review Team (SHRT) denied claimant's medical review. Department Exhibit B.
6. December 15, 2009, the in-person hearing was held.
7. Claimant asserts disability based on impairments caused by neuropathy from chemotherapy that affects hands and feet.
8. Claimant testified at hearing. Claimant is 47 years old, 5'4" tall, and weights 190 pounds. She completed high school and one year of business school and is able to read, write, perform basic math. Claimant has a driver's license and is able to drive. Claimant cares for her needs at home.
9. Claimant is currently employed 20 hours per week doing laundry, cleaning, and child care. Prior to that claimant was self-employed at an ice cream and rental store.
10. At last positive decision in January 2009, claimant was undergoing medical treatment for carcinoma of the sigmoid colon and indeterminate liver lesion. Claimant was apparently diagnosed in May 2008. Department Exhibit A, pgs 41-65.
11. At review, in July 2009, claimant underwent a CT scan of her abdomen and pelvis that revealed 1 cm low attenuation lesion within the dome of the liver that did not significantly change in size or appearance since April 2008. Seen as well was a 6 ml low attenuation lesion within the lateral segment of the left hepatic lobe also not significantly changed. A subscapular lesion is not well seen. Doctor opines that they are not definitive for humangeomas. Department Exhibit A, pgs 20-21. In January 2009, a similar CT scan was run that revealed same lesion suspicious for metastases. Department Exhibit A, pg 22. On or about April 2009, claimant underwent surgery that revealed a flat lobulated polyp of the cecum/ascending colon, status post snare polypectomy and APC coagulation and ablation of residual tumor. Pathology report reveals polyp is a villoadenomatous polyp. Department Exhibit A, pgs 32-33. September 1, 2009, claimant's oncologist completed a Medical Examination Report (DHS-49) following a physical exam that took place on July 14, 2009. Doctor indicates current diagnoses of moderately differentiated adenocarcinoma of the sigmoid colon since May 16, 2008. Clinical stage T3N1MX, stage 3; -4 microsatellite instability screen. Indeterminate liver lesion. Doctor indicates that claimant is occasionally able to lift ten pounds. She is able to stand and/or walk less than two hours in an eight-hour workday. She is able to sit six hours in an eight-hour workday. She

is unable to perform a full range of repetitive actions with upper extremities. She is unable to operate foot and leg controls with either lower extremity. These impairments are due to neuropathy from chemotherapy. Department Exhibit A, pgs 7-8.

12. When comparing the objective medical evidence at review with the objective medical evidence provided at last positive decision, it does not appear that significant medical improvement of claimant's physical condition has occurred. At last positive decision, claimant was undergoing surgery due to colon cancer. At review, claimant continues to have colon cancer and indeterminate liver lesions. In addition, claimant has neuropathy in her upper and lower extremities due to chemotherapy that prevent her from performing repetitive actions with upper and lower extremities.
13. Claimant does not have medical improvement. Claimant's lack of medical improvement is related to the ability to work.
14. Claimant is not capable of performing work activities.

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).

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).

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

At Step 2, the objective medical evidence of record indicates is not sufficient to establish that claimant has medically improved at medical review. At last positive decision, claimant was undergoing treatment for colon cancer. At medical review, claimant continues in treatment and now has indeterminate liver lesions. She has

neuropathy in upper and lower extremities due to chemotherapy. Finding of Fact 10-14.

At Step 3, claimant's lack of medical improvement is related to her ability to perform work. See discussion at Step 2 above. Finding of Fact 10-14.

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

At Step 5, claimant has current severe impairments. See discussion at Step 2 above. Finding of Fact 10-14.

At Step 6, claimant's past relevant employment has been self-employment at an ice cream and video rental shop. Claimant currently works part-time doing laundry, cleaning, and child care. Claimant does not earn sufficient money to consider her employment substantial gainful activity. The record is sufficient to establish that claimant is not capable of performing the tasks required by her past relevant employment. She performs current part-time employment with difficulty. See discussion at Step 2 above. Finding of Fact 10-14.

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 objective medical evidence of record establishes that claimant has a severe impairment that has lasted or is expected to last 12 months or more or result in death. The record establishes claimant has severe physical limitations. See discussion at Step 2 above. Finding of Fact 10-14.

After careful examination of the record and for the reasons discussed at Steps 1-7 above, the Administrative Law Judge decides that claimant meets the federal statutory requirements for disability. Therefore, claimant meets the disability requirements for MA based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, decides that the Department of Human Services has not established that claimant is no longer disabled for purposes of Medical Assistance.

Accordingly, the department's action is, hereby, REVERSED. The department is to initiate a determination of claimant's financial eligibility for Medical Assistance in compliance with department policy and this decision and order. If otherwise eligible, medical review is set for February 2012.

/S/
Jana A. Bachman
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 1, 2011

Date Mailed: March 3, 2011

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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

cc:

