

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-51635
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: December 8, 2011
Macomb County DHS (20)

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 Wednesday, December 21, 2011. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED]

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On June 25, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

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 on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking MA-P benefits on April 11, 2011.

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2. On July 28, 2011, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. On August 3, 2011, the Department notified the Claimant of the MRT determination.
4. On August 25, 2011, the Department received the Claimant’s timely written request for hearing.
5. On October 28, 2011 and June 18, 2012, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairment due to left shoulder pain, degenerative joint disease, fibromyalgia, osteoarthritis, back pain with disc herniation, neuropathy, neck pain, carpal tunnel syndrome, bilateral knee pain, chest pain, abdominal pain, and breast cancer.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 5’2” in height; and weighed 122 pounds.
9. The Claimant is a high school graduate with an employment history in line production, assembly, as a hi-lo driver, and as a paint mixer.
10. 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, 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 Tables (“RFT”).

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 416.913. 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 applicant 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 regulations 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 is 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) is 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 is 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 CF R 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 Claimant's initial approval, the Claimant was diagnosed with cancer and approved under a Listing. At the time of the approval in [REDACTED] medical records confirm treatment/diagnoses of breast cancer; degenerative changes at C5-6, C6-7 with central disc protrusion at C5-6 and left posterolateral spur at C6-7 that abuts the cervical spinal cord; mild deformity of the left ventral cord opposite the spur at C6-7; mild facet atrophy of the left L1-2 and L5-S1 levels; left facet hypertrophy at T10-11 mildly narrowing the left foramen and abutting the dorsal aspect of the thoracic spinal cord; cervical radiculopathy, CTS, multi-joint degeneration; rotator cuff tendonitis of the left shoulder; and fibromyalgia. The Claimant's condition was deteriorating and she was found unable to perform even sedentary activity.

Currently, the Claimant alleges disability due to left shoulder pain, degenerative joint disease, fibromyalgia, osteoarthritis, back pain with disc herniation, neuropathy, neck pain, carpal tunnel syndrome, chest pain, bilateral knee pain, abdominal pain, and breast cancer.

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

On [REDACTED] a bone density test revealed probable degenerative changes in the lumbar spine.

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

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On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

On [REDACTED] an MRI of the breast found no evidence of malignancy in either breast.

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

On [REDACTED] the Claimant attended a follow-up appointment. The diagnoses were breast cancer (negative for any suspicious findings), peripheral neuropathy, major depression, anxiety, osteopenia, intractable chronic pain, radiculopathy, and fibromyalgia.

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

On [REDACTED] the Claimant attended a follow-up appointment where she was diagnosed with lumbago, cervicalgia, breast cancer, arthralgia of multiple joints, peripheral neuropathy, and anxiety.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were chemotherapy related peripheral neuropathy and depression. The physical examination documented fatigue, slow gait, reduced fine motor function/dexterity, and reduced fine sensations.

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On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were cervical radiculopathy, left shoulder tendonitis, fibromyalgia with multiple joint degenerative disease, and carpal tunnel. The Claimant was found unable to work through [REDACTED]

On [REDACTED] the Claimant's mammography was benign.

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The current diagnoses were fibromyalgia, bilateral carpal tunnel syndrome, and bilateral osteoarthritis of the knees. The Claimant was restricted to lifting no more than 5 pounds with no prolonged standing, frequent bending, or pushing/pulling. The Claimant was unable to use her arms above the shoulder and had limited use of her hands. The limitations were expected to last through [REDACTED]

On [REDACTED] an Arthritis Residual Functional Capacity Questionnaire was completed on behalf of the Claimant. The Claimant was found to have moderate to severe chronic diffuses all over body pain. The Claimant's prognosis was poor placing her at the equivalent of sedentary activity (or less).

On [REDACTED] the Claimant attended an occupational therapy appointment. The Claimant was restricted to the equivalent of sedentary work with a poor to fair prognosis.

On [REDACTED] an MRI of the breast found no evidence of malignancy.

On [REDACTED] a letter was written on behalf of the Claimant by her treating physician stating that the Claimant has neuropathy secondary to chemotherapy and is unable to drive, sit or stand for long periods of time.

On [REDACTED] a Disability Form was completed on behalf of the Claimant. The diagnoses were left shoulder tendonitis, carpal tunnel syndrome, fibromyalgia, multiple disc disease, and bilateral degenerative knee joint disease. The Claimant was found unable to work through [REDACTED]

On [REDACTED] the Claimant attended a follow-up appointment. The diagnoses were breast cancer status post lumpectomy and chemotherapy, peripheral neuropathy from chemotherapy, intractable chronic back pain, radiculopathy, and fibromyalgia, major depression with anxiety disorder, osteopenia, and significant weight loss of 20 pounds over the last few months.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were breast cancer with neuropathy, back pain, depression, and osteoporosis. The physical examination documented fatigue,

peripheral neuropathy with significant tingling and numbness, and decreased sensation in hands and feet. The Claimant was in stable condition noting that her breast cancer was in remission.

On [REDACTED] a CT of the chest, abdomen, and pelvis found no convincing evidence of metastatic disease; two lesions within the liver; and emphysema and bibasilar atelectasis.

In this case, the Claimant was previously found disabled based on meeting a Listing, presumably because of her breast cancer (13.10). To meet this listing, the evidence must demonstrate locally advanced carcinoma; carcinoma with metastases to the supraclavicular or infraclavicular nodes, to 10 or more axillary nodes, or with distant metastases; or recurrent carcinoma, except local recurrence that remits with antineoplastic therapy. At this point, there is no evidence to support a finding of a Listed impairment within 13.00, specifically 13.10. Accordingly, a determination of whether the Claimant's condition has medically improved is necessary.

In comparing previous medical records to the recent evidence (as detailed above), it is found that the Claimant's condition, although severe, has medically improved and the improvement is related to her ability to perform work. Accordingly, an assessment of the Claimant's Residual Functional Capacity to perform past work is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

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).

In this case, the Claimant asserts disabling impairments due to left shoulder pain, degenerative joint disease, fibromyalgia, osteoarthritis, back pain with disc herniation, neuropathy, neck pain, carpal tunnel syndrome, chest pain, bilateral knee pain, abdominal pain, and breast cancer. The Claimant testified that she is able to walk short distances; lift/carry 10 pounds; stand for ½ hour; sit for short periods of time; and has difficulties bending and/or squattng. The objective medical evidence indicates that the Claimant's prognosis is poor finding her capable sedentary activity. Mentally, the Claimant is diagnosed/treated for anxiety and depression. There is no evidence of any marked limitations. After review of the entire record and considering the Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capacity to perform at least unskilled, limited, sedentary work as defined by 20 CFR 416.967(a). Limitations being the alternation between sitting and standing at will.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

The Claimant previously worked in line production, assembly, a hi-lo driver, and as a paint mixer. In light of the foregoing, and in consideration of the Occupational Code, the Claimant's past relevant work is classified as unskilled, medium work. 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 light of the entire record and the Claimant's RFC (see above), it is found that the Claimant is unable to perform past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4.

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.* An individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is [REDACTED] years old and, thus, is considered to be closely approaching advanced age for MA-P purposes. The Claimant is a high school graduate. 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).

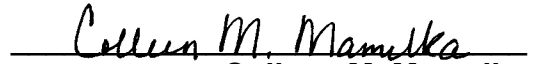
In this case, the evidence reveals that the Claimant suffers from left shoulder pain, degenerative joint disease, fibromyalgia, osteoarthritis, back pain with disc herniation, peripheral neuropathy, radiculopathy, neck pain, carpal tunnel syndrome, chest pain, bilateral knee pain, abdominal pain, and breast cancer. In consideration of the foregoing, it is found that the Claimant retains the residual functional capacity for work activities on a regular and continuing to meet at the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.12, the Claimant's disability is found to continue.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the April 11, 2011 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with department policy.
3. The Department shall supplement for lost benefits (if any) 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 August 2013 in accordance with department policy.


Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 9, 2012

Date Mailed: July 9, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc:

