

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-6406
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 9, 2011
Wayne County DHS (15)

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, March 9, 2011. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

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 records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On July 14, 2011, the SHRT 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 not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

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

1. Based on the record, the Claimant was approved for MA-P and SDA benefits in 2007 due to cancer.
2. In September 2008, the Claimant's benefits were due for review.

3. On July 21, 2009, the Medical Review Team (“MRT”) deferred the disability determination requesting additional medical evidence. (Exhibit 1, pp. 47 – 48.)
4. On March 15, 2010, the MRT deferred the disability determination requesting additional medical records. (Exhibit 1, pp. 21 – 23.)
5. On May 20, 2009, the MRT deferred the disability determination requesting additional medical evidence. (Exhibit 1, pp. 44 – 46.)
6. On June 21, 2010, the MRT found the Claimant no longer disabled. (Exhibit 1, pp. 4, 5.)
7. The Department notified the Claimant of the MRT determination.
8. On July 29, 2010, the Department received the Claimant’s written request for hearing. (Exhibit 1, p. 3.)
9. On December 1, 2010 and July 14, 2011, the SHRT found the Claimant not disabled.
10. The Claimant alleged physical disabling impairments due to left knee pain, back pain, right elbow pain, neck pain, left hip pain, restless leg syndrome, shortness of breath, bronchitis, high blood pressure, abdominal pain, gout, headaches, closed head injury, and colon cancer.
11. The Claimant alleged mental disabling impairments are due to depression, anxiety, and adjustment disorder.
12. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 5’11” in height; and weighed 185 pounds.
13. The Claimant has a limited education and a work history as a grave marker, truck driver, tow truck driver, and warehouse manager.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department, 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 (“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 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 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 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) 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 Claimant's initial approval, the Claimant was diagnosed with colon cancer and was undergoing chemotherapy. All of the Claimant's prior records were not submitted so it is presumed he was found disabled within Listing 13.00 (malignant neoplastic diseases).

In support of his claim, an undated, abnormal ECG was submitted. Additionally, the first page of a Medical Examination Report from [REDACTED] revealed a current diagnosis of invasive, moderately differentiated carcinoma status post colectomy. A Medical Needs form from [REDACTED] was also submitted which showed the Claimant unable to work for 6 months.

On [REDACTED], the Claimant attended a follow-up appointment for his colon and skin cancers. There was no evidence of the colon cancer recurrence. The Claimant's chronic smoking and basal cell cancer was noted.

On [REDACTED] a Medical Examination Report was completed by a treating physician on behalf of the Claimant. The current diagnoses were back pain, history of colon cancer, dyslipidemia, left knee pain, GERD, anxiety, depression, and a history of

abdominal ulcers. The Claimant was in stable condition and he was found able to occasionally lift/carry less than 10 pounds; stand and/or walk at least 2 hours in an 8 hour workday; and able to perform repetitive actions with his extremities. Despite his anxiety and depression, the Claimant had no mental limitations.

On [REDACTED] the Claimant attended a follow-up appointment status post colon cancer. The impression was Stage II-A colonic carcinoma with out clinical evidence of recurrence, back pain (not elicitable), history of chronic smoking, and basal carcinoma.

On [REDACTED] a CT scan of the chest revealed two small nodular densities in the right upper lung measuring less than 1 cm in size.

On [REDACTED], the Claimant attended therapy for his depression.

On [REDACTED] a colonoscopy was performed. Two biopsies were obtained for a polypoid type of lesion and a small polyp.

On [REDACTED] a CT scan of the chest was performed which showed two small pulmonary nodules in the right upper lung (unchanged from previous study).

On [REDACTED] the Claimant attended a consultative psychiatric evaluation. The Claimant was found able to understand, retain, and follow instructions and was generally restricted to performing simple, routine, repetitive tasks. Due to his depression with psychomotor retardation, the Claimant was restricted to work involving brief superficial interactions with co-workers, supervisors, and the public. The diagnosis was mood disorder secondary to general medical condition. Major depressive disorder was not ruled out. A history of alcohol abuse (in remission) was also noted. The Global Assessment Functioning ("GAF") was 40.

On this same date, the Claimant attended a consultative physical evaluation. The examination revealed mild tenderness to palpitation in the lower lumbar area and was otherwise unremarkable. The diagnoses were a history of hypertension, hyperlipidemia, bronchitis, colon cancer, arthritis, and depression.

On [REDACTED] the Claimant attended a follow-up appointment. The March biopsies showed colonic polyp and serrated adenoma. The physical examination was unremarkable and the Claimant was "doing well."

On [REDACTED] the Claimant attended therapy for his depression.

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On [REDACTED] the Claimant attended a follow-up appointment. The physical examination was unremarkable.

On [REDACTED] the Claimant attended therapy where he complained of high anxiety, stress, and sleeping problems.

On [REDACTED], the Claimant attended therapy where he reported high anxiety and stress. The current diagnoses included arthritis in the leg, back, and neck with a history of colon and skin cancer.

On [REDACTED] the Claimant was treated for nausea, vomiting, abdominal pain, and unspecified intestinal obstruction.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were degenerative joint disease, depression, anxiety, history of colon cancer, bowel obstruction, and skin cancer.

On this same date, a Psychiatric/Psychological Examination Report and Mental Residual Functional Capacity Assessment were completed on behalf of the Claimant. The Claimant was found unable to work due to chronic pain and multiple medical issues. The diagnoses were dysthymic disorder and anxiety disorder. The Claimant's GAF was 43. Additionally, the Claimant was found to be markedly limited in 11 of the 20 factors and moderately limited in 6 factors.

Listing 13.00 discusses malignant neoplastic diseases. Origins of the malignancy, extent of involvement, duration, frequency, and response to antineoplastic therapy are considered as well as any post-therapeutic residuals. 13.00B1-4.

Listing 13.03 discusses skin cancer. To meet this listing, the evidence must establish sarcoma or carcinoma with metastases to or beyond the regional lymph nodes, or melanoma. 3.03A and B. Melanoma must be recurrent after wide excision or with metastases to one or more clinically apparent nodes (detected by imaging studies or clinical examination; with metastases to four or more nodes (if not clinically apparent); or metastases to adjacent skin (satellite lesions) or distant sites. 3.03B1; 3.03B2abc.

Listing 13.17 and 13.18 discuss cancer of the small and large intestines, respectively. To meet this listing(s), the cancer must be inoperable, unresectable, or recurrent (after surgery), or with metastases beyond the regional lymph nodes.

In this case, the Claimant was diagnosed with colon and skin cancer which resulted in a colectomy. Since surgery, there is no evidence of recurrence or metastases. In light of the foregoing, it is found that the Claimant no longer meets the intent and severity

requirement of a Listed impairment and, therefore, a determination of whether the Claimant's condition has medically improved is necessary.

As noted above, the Claimant was previously found disabled apparently based on meeting a listing within Listing 13.00. In comparing those medical records to the recent evidence (as detailed above), it is found that the Claimant's condition has medically improved as it relates to his ability to work. In addition, none of the above listed exceptions is applicable and, thus, 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). In this case, the Claimant previously worked as a grave marker, truck driver, tow truck driver, and warehouse manager. In light of the foregoing, and in consideration of the Occupational Code, the Claimant's past relevant work as a grave marker is classified as semi-skilled heavy work while his employment as a warehouse manager is considered semi-skilled medium work. The Claimant's driving positions are classified as semi-skilled, medium to heavy work.

The Claimant testified that he is able to walk short distances; lift/carry about 20 pounds; stand between 1½ to 2 hours; sit for 2 hours; and is able to squat but experiences pain when bending. In [REDACTED] the objective findings limited the Claimant to the occasional lifting/carrying of less than 10 pounds; standing and/or walking at least 2 hours during an 8-hour workday; and able perform repetitive actions. Mentally, the Claimant was found able to understand, retain, and follow instructions and was generally restricted to performing simple routine, repetitive tasks. 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 unable to return to past relevant work and, thus, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity, age, education, and work experience are considered 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 [REDACTED] years old thus considered to be closely approaching advanced age for MA-P purposes. The Claimant has a limited education. 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 was previously treated for cancer. There was no evidence that showed the cancer has recurred or has metastasized. The diagnoses since the prior approval include back pain, dyslipidemia, left knee pain, anxiety, depression, pulmonary nodules, mood disorder, depression, arthritis, and hypertension. In light of the foregoing and in consideration of the mental and physical limitations, it is found that the Claimant's residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.10, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

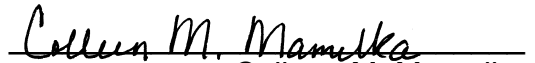
In this case, the Claimant is found disabled for purposes of continued MA-P entitlement; therefore the Claimant is found disabled for purposes of continued SDA benefits.

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 continued entitlement under the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall process the September 2008 re-determination 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 any 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 2012 in accordance with Department policy.


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

Date Signed: July 21, 2011

Date Mailed: July 22, 2011

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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