

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-49257
Issue No: 2009

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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, a telephone hearing was held on [REDACTED]. Claimant personally appeared and testified.

ISSUE

Did the Department of Human Services (the department) properly determine that claimant was no longer disabled and deny her review application for Medical Assistance (MA-P) based upon medical improvement?

FINDINGS OF FACT

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

1. Claimant was a Medical Assistance benefit recipient and her Medical Assistance case was scheduled for review in [REDACTED].
2. In [REDACTED] claimant filed a review application for Medical Assistance benefits alleging continued disability.
3. On [REDACTED] the Medical Review Team denied claimant's application stating that claimant had medical improvement.
4. On [REDACTED] the department caseworker sent claimant notice that her Medical Assistance case would be cancelled based upon medical improvement.
5. On [REDACTED] claimant filed a request for a hearing to contest the department's negative action.

6. On [REDACTED] the State Hearing Review Team again denied claimant's review application stating in its analysis and recommended decision: The claimant's lymphoma is in remission. The tremors are being treated, but getting worse. She has been evaluated for Parkinson's disease which was negative. According to the progress note she is being referred to a neurologist for further. There are no current medical records regarding the depression and anxiety. The objective medical evidence in the file demonstrates the physical residual capacity to perform light work. The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform light work. Therefore, based on the claimant's vocational profile (younger individual, 12th grade education and light work history); MA-P is denied using Vocational Rule 202.20 as a guide.
7. The hearing was held on July 11, 2012. At the hearing, claimant waived the time periods and requested to submit additional medical information.
8. Additional medical information was received and sent to the State Hearing Review Team on [REDACTED]
9. On [REDACTED], the State Hearing Review Team again denied claimant's application stating in its analysis and recommendation: The medical evidence of record indicates that the claimant's condition is significantly improved. There is evidence that the claimant would reasonably be limited to performing light exertional tasks. There is no evidence of a severe psychiatric condition. The medical evidence of record indicates that the claimant's condition is significantly improved. The claimant is not currently engaging in substantial gainful activity based on the information that is available in the file. The claimant's impairments/combination of impairments does not meet/equal the intent or severity of a Social Security Administration (SSA) listing. The medical evidence of record indicates that the claimant retains the capacity to perform light exertional tasks. There is no evidence of a severe psychiatric condition. The claimant has a history of no employment. As such, there is no past work for the claimant to perform, nor are there past work skills to transfer to other occupations.

Therefore, based on the claimant's vocational profile ([REDACTED], a high school education and a history of no employment), continuing MA-P is denied, 20 CFR 416.920 (e & g), using Vocational Rule 202.20 as a guide. Continuing SDA is denied per BEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days. Retroactive MA- P was not considered as part of this continuing MA-P and SDA only review. Listings 1.02, 1.04, 11.14, 12.04, 12.06 and 13.05 were considered in this determination.

10. Claimant is a [REDACTED] whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 205 pounds. Claimant has a GED. Claimant is able to read and write and does have basis math skills.
11. Claimant last worked in [REDACTED] as a part time clerical worker - working 20 to 30 hours per month from home. Claimant has also worked in housekeeping, as a cashier and as a bank teller.
12. Claimant alleges as disabling impairments: tremors, back pain, anxiety, depression, B-Cell Lymphoma in remission, high thyroid levels, two bulging disks in back, radiation and chemotherapy to the neck and a mass around her thyroid and carotid artery.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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).

In general, claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to

follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the claimant is not engaged in substantial gainful activity and has not worked since 2011.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

The objective medical evidence in the record indicates that a [REDACTED] medical report on page 160 indicates a diagnosis of non-Hodgkins' lymphoma, large B-cell, otherwise normal examination; recommendation to immediately start chemotherapy (Pg. 158). A CT showed no signs of malignancy (Pg. 155). A [REDACTED] 2010 MRI showed normal brain. A [REDACTED] medical report on page 326 indicates that the doctor was re-establishing care from recent cancer with treatment. The patient was doing well and had a normal examination. A [REDACTED] medical examination report on page 328 indicates that claimant complained of blood in her urine and she was started on antibiotics.

A clinical note dated [REDACTED] indicates that a bone marrow biopsy showed no lymphoma. A follow up cat scan in the neck and thorax from February 8th showed no evidence of disease. All lymph nodes around the left subclavian artery appeared stable. On physical examination her blood pressure was 110/70, temperature was 98 degrees, height was 64", weight was 215 pounds, heart rate 68, and respiratory rate 16. The patient was well developed, well nourished woman in no acute distress. Normal affect and normal mood. The claimant now has wavy hair and has no supraclavicular or cervical lymphadenopathy. No thyromegaly. Posterior pharynx was clear. Her heart had regular rate and rhythm. S1, S2 no murmur. In the respiratory area the lung sounds were clear to auscultation. There were no wheezes, rales or rhonchi. Good inspiratory effort. Right infraclavicular MediPort has been removed in the interim. The abdomen was soft, non-tender and non-distended. No hepatosplenomegaly. The skin had no rash. Musculoskeletal area, there was no peripheral edema, cyanosis or clubbing. The neurologic area had no focal deficits. The assessment was Stage 1 diffuse large B-cell lymphoma presenting as a neck node (behind thyroid). Status post resection followed by three cycles of R-CHOP and involved field radiation, in complete remission. (Pg. 371).

An [REDACTED] progress note showed that claimant has a tremor. On examination her vital sounds were stable. She indicated that her pain level was 8 out of 10. Her HEENT exam shows the pupils to be equal, round and reactive to light and accommodation. Extraocular movements were intact. Tympanic membranes are clear.

Nose is negative. Pharynx is negative. Neck is supple. There was no lymphadenopathy. No nuchal rigidity. Cardiac exam reveals positive S1 and S2. No S3 or S4. No murmurs or rubs. Lungs were clear. Abdomen is soft. No hepatosplenomegaly or masses palpable. Extremities show no clubbing, cyanosis or edema. Neurologically though she does have very significant tremors (Pg. 379).

An [REDACTED] MRI was within normal limitations on page 382. [REDACTED] office visit on page 394 indicates that claimant complained of continued arm and shoulder pain. As pain increases, she gets headaches and tremors. Initiate epidural steroid injections. A [REDACTED] MRI imaging on page 399 indicates that claimant has a C5-6 herniation.

At Step 2, claimant's impairments do not equal or meet the severity of an impairment listed in Appendix 1.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.994(b)(1)(i). 20 CFR 416.994 (b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the claimant was disabled or continues 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 claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In the instant case, this Administrative Law Judge finds that claimant does have medical improvement and his medical improvement is related to the claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that claimant's. If there is a finding of medical improvement related to claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds claimant can perform at least sedentary work even with his impairments. This Administrative Law Judge finds that claimant can perform at least sedentary or light work even with her impairments.

In the seventh step of the sequential evaluation, the trier of fact is to assess a claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the claimant's current residual functional capacity based on all current impairments and consider whether the claimant can still do work he/she has done in the past. In this case, this Administrative Law Judge finds that claimant could probably perform his past work as a bank teller or cashier.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the claimant can do any other work, given the claimant's residual function capacity and claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the claimant's vocational profile of a younger individual, with a high school education and a history of no employment, MA-P is denied using Vocational Rule 202.20 as a guide. Claimant can perform other work in the form of light work per 20 CFR 416.967(b). This Administrative Law Judge finds that claimant does have medical improvement in this case and the department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel claimant's Medical Assistance and State Disability Assistance benefits based upon medical improvement.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. PEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied claimant's continued disability and application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits. The claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does have medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is **AFFIRMED**.

/s/
Landis Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.

LYL/jk

cc: [REDACTED]
MAHS