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

IN THE MATTER OF:

Reg No.: 2012-56970
Issue No.: 2009, 4031
Case No.:
Hearing Date: October 1, 2012
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 hearing was held in Detroit, Michigan on Monday, October 1, 2012. The Claimant appeared, along with , and testified. Participating on behalf of the Department of Human Services ("Department") was .

ISSUE

Whether the Department properly determined that the Claimant was no longer 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. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on December 24, 2011.

2. On May 22, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. On May 24, 2012, the Department notified the Claimant of the MRT determination.

4. On June 5, 2012, the Department received the Claimant's written request for hearing.

5. On July 18, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled for purposes of the MA-P program. (Exhibit 3)

6. On September 4, 2012, the SHRT found the Claimant not disabled for purposes of the SDA benefit programs. (Exhibit 4)

7. The Claimant alleged physical disabling impairments due to back pain, lumbar disc disease, hand pain, hypertension, coronary artery disease, stage 3 kidney disease, bladder incontinence, carpal tunnel syndrome ("CTS"), tendonitis, lupus, hypothyroidism, and obstructive sleep apnea.

8. The Claimant has not alleged any mental disabling impairment(s).

9. At the time of hearing, the Claimant was 49 years old with a [redacted] birth date; was 5'6" in height; and weighed 280 pounds.

10. The Claimant is a high school graduate with some college (1984) and vocational training with an employment history as a certified nursing assistance ("CNA").

11. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

<u>CONCLUSIONS OF LAW</u>

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-relate 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 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 medial 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 cooperated;
(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 renal failure, stage 3 kidney disease, hypertension, obesity, back pain, fibroid tumors, and coronary artery disease with stent placement.

Currently and in additions to the above, the Claimant alleges disability due to lumbar disc disease, obstructive sleep apnea, hand pain, CTS, and bladder incontinence.

In support of her claim, progress notes were submitted covering June 2011 through January 2012 which document, in part, treatment/diagnoses back pain/spasms, shoulder pain, neck pain, nose bleeds, renal insufficiency, dyslipidemia, degenerative osteoarthritis, and left hand fingers lock up, CTS, and hip pain.

On July 11, 2011, the Claimant attended a rehabilitation facility for evaluation and treatment for left carpal tunnel release and trigger thumb release. The Claimant's pain was documented as well as problems with activities of daily living. Ultimately, the prognosis was good.

On July 14, 2011, the Claimant attended a follow-up after undergoing carpal tunnel release and tenolysis of the flexor tendon in her left thumb. The Claimant was to continue wearing a wrist brace at night and continue with therapy.

On August 15, 2011, the Claimant attended a cardiac follow-up appointment with complaints of chest discomfort, shortness of breath, and leg cramps. The Claimant was prescribed potassium and additional tests were ordered.

On August 18, 2011, a renal ultrasound due to elevated creatinine and pain was essential unremarkable with the exception of possible fibroid uterus.

On August 25, 2011, the Claimant presented to the hospital with complaints of chest pain. X-rays of the right shoulder revealed degenerative changes. On August 27th, chest x-rays confirmed an enlarged heart, unchanged since March 2011. The Claimant was discharged on August 27th with the diagnoses of atypical chest pain right shoulder pain secondary to osteoarthritis, hypertensive heart disease, coronary artery disease, obstructive sleep apnea, congestive heart failure secondary to left ventricle dysfunction, and history of morbid obesity, chronic kidney disease (stage 1), and hypothyroidism.

On September 14, 2011, the Claimant attended a follow-up cardiovascular appointment. A recent ultrasound was suggestive of an intrauterine mass and/or uterine fibroid. Blood work showed a positive ANA requiring follow-up blood work in 6 months to determine if false/positive finding, lupus, or other connective tissue disease.

On December 21, 2011, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were renal insufficiency, vitamin D insufficiency, CTS, and extreme obesity (BMI 49.1). The physical examination noted some difficulty due to size and stature noting the need for a cane for ambulation. The Claimant's condition was deteriorating and she required assistance with meal preparation, shopping, cleaning, and bathing.

On January 13, 2012, The Claimant attended a follow-up appointment where a CAT scan of the abdomen and pelvis was scheduled to make sue that the mass was a fibroid and not malignant.

On January 16, 2012, a CT of the abdomen and pelvis revealed enlarged lobulated uterus likely representing underlying uterine fibroids, 8.5 mm fat filled hiatal hernia, degenerative changes of the lumbar spine, and degenerative joint disease at L4-5, L3-4 bilaterally as well as the sacroiliac joints; and spondyloisthesis of L4-5.

On January 18, 2012, the Claimant was prescribed a cane (quad or three pronged) for the Claimant for her osteoarthrosis of the lower limb. The Claimant would require a cane for her lifetime.

On April 18, 2012, the Claimant attended a consultative mental status examination. The Claimant's attention, short and long-term memory, basic vocabulary, fund of general information, ability to perform simple mental arithmetic, social judgment, and abstract thinking appeared to be at least mildly impaired. The Psychologist opined that the Claimant's ability to work would be impacted by her ability to manage her mood symptoms as well as any physical limitations. The diagnosis was dysthymic disorder with a Global Assessment Functioning ("GAF") of 51 and a fair prognosis.

In this case, it is unclear why the Claimant was originally found disabled. In consideration of the medical evidence, Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 5.00 (digestive system), Listing 6.00 (genitourinary system), Listing 9.00 (endocrine system), Listing 12.00 (mental disorders), Listing 13.00 (malignant neoplastic disease), and Listing 14.00 (immune system disorders) were reviewed. In light of the foregoing, it is found that the Claimant's impairments do not meet the intent and severity requirement of a listed impairment. 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 has not medically improved. In fact, additional diagnoses of lumbar disc disease with spasms, shoulder pain, neck pain, degenerative osteoarthritis, CTS, hip pain, congestive heart failure, hypothyroidism, obstructive sleep apnea, hiatal hernia, spondylolisthesis, and dysthymic disorder, have been added. The Claimant now requires a cane for ambulation and needs assistance with meal preparation, shopping, cleaning, and bathing. The Claimant's condition is deteriorating, despite prescribed treatment. In light of the foregoing, it is found that the Claimant has not medically improved. Accordingly, the Claimant's disability is found to continue with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program purusant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal SSI disability standards for at least ninety days. Receipt of SSI 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 entitlement to MA-P benefits; therefore, she is found disabled for purposes of the SDA benefit program.

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 and SDA benefit programs.

Accordingly, It is ORDERED:

1. The Department's determination is **REVERSED**.

2. The Department shall initiate processing of the May 14, 2012 redetermination 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 November 2013 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: October 29, 2012

Date Mailed: October 29, 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)

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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/tm

cc: