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

IN THE MATTER OF:

[redacted]

Reg No.: 2012-60657
Issue No.: 2009
Case No.: [redacted]
Hearing Date: October 4, 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 telephone hearing was conducted from Detroit, Michigan on Thursday, October 4, 2012. The Claimant appeared, along with [redacted], and testified. Participating on behalf of the Department of Human Services ("Department") was [redacted] and [redacted].

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 was a MA-P and SDA recipient.

2. In May 2012, the Department reviewed the Claimant's ongoing eligibility for SDA and MA-P benefits.

3. On June 5, 2012, the Medical Review Team ("MRT") found the Claimant no longer disabled. (Exhibit 1, pp. 1, 2)

4. On June 8, 2012, the Department notified the Claimant of the MRT determination.

5. On June 15, 2012, the Department received the Claimant's written request for hearing.

6. On August 2, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)

7. The Claimant alleged physical disabling impairments due to back pain with radiculopathy, shortness of breath, status post myocardial infarction (2008), residual complications from a stroke (2011) to include right side parathesis and weakness.

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

9. At the time of hearing, the Claimant was 46 years old with an [redacted] birth date; was 5'1" in height; and weighed 119 pounds.

10. The Claimant has a limited education with an employment history as a sales associate, cashier, and in light industrial work.

11. 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 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-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.

In the present case, the Claimant alleges disability due to back pain with radiculopathy, shortness of breath, status post myocardial infarction (2008), residual complications from a stroke (2011) to include right side parathesia and weakness.

On March 16, 2012, the Claimant attended an appointment with pain management consultants. The diagnoses were lumbar radiculopathy, degenerative disc disease of the lumbar spine, history of headaches, hypertension, history of stroke, history of heart attack with stent placement, and anemia. Lumbar epidural steroid injections were scheduled.

On April 2, 2012, the Claimant attended a follow-up appointment. The diagnoses were thoracic or lumbosacral neuritis or radiculitis (unspecified) with L4-5, L5-S1 right disc herniation (MRI), chronic headache likely secondary to stroke, and essential hypertension.

On May 14, 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were CVA with hemisplegia, heart attack, coronary artery disease, hypertension, and radiculopathy. The physical examination documented decreased ability to move noting the need for a cane, right side weakness, paraspinal muscle tenderness bilaterally, sacroiliac joint pain, decreased strength in the right upper and lower extremities, and slurring of speech. The Claimant was in stable condition but required assistance with bathing, dressing, cooking, cleaning, and shopping.

On May 23, 2012, the Claimant attended a follow-up visit for her low back pain. Straight leg raising was negative in a seated position bilaterally noting normal gait. The diagnoses were lumbar radiculopathy, degenerative disc disease, hypertension, anemia, and history of headaches, cerebrovascular accident, and myocardial infarction with stent placement.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), Listing 4.00 (cardiovascular system), Listing 7.00 (hematological system), and Listing 11.00 (neurological) were considered in light of the objective evidence. The evidence confirms treatment/diagnoses of back pain with radiculopathy, right side

parathesia/weakness, right disc herniation, degenerative disc disease, hypertension status post myocardial infarction with stent placement, anemia, and headaches likely secondary to the 2011 stroke. The Claimant's straight leg raising while sitting was negative; therefore, the Listing 1.04A is not met. There was no evidence of persistent, recurrent, and/or uncontrolled (while on prescribed treatment) cardiovascular impairment; or end organ damage resulting from the Claimant's hypertension not is there evidence to meet the intent and severity requirement of a hematological or neurological listing. In light of the foregoing, the evidence shows that the Claimant continue to suffer with severe impairments; however, individually considered, the impairments do not meet the requirements of a listing. Accordingly, a determination of whether the Claimant's condition has medically improved is necessary.

Based on the submitted record, the Claimant was previously approved after suffering from a stroke in February of 2011. In comparing previous medical records to the recent evidence (as detailed above), it is found that the Claimant has improved since her stroke; however, in consideration of the recent physical impairments, the Claimant's overall condition has not medically improved. The Claimant requires a cane for ambulation, has right side parathesia/weakness, paraspinal muscle tenderness bilaterally sacroiliac joint pain, decreased strength in the right extremities, slurred speech, and requires assistance with her activities of daily living. In light of the foregoing, it is found that the Claimant's disability has continued 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 MA-P benefits; therefore, she is found disabled for purposes of continued SDA entitlement.

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 MA-P and SDA benefits.

Accordingly, it is ORDERED:

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

2. The Department shall initiate processing of the May 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 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
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: October 22, 2012

Date Mailed: October 23, 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: [redacted]