

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-71245
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: December 6, 2012
Wayne County DHS (17)

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, December 6, 2012. The Claimant appeared, along with [REDACTED], and testified. Participating on behalf of the Department of Human Services ("Department") was [REDACTED].

During the hearing, the Claimant waived the time frame 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 February 4, 2012, this office received the SHRT decision 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") 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. On July 25, 2012, the Medical Review Team ("MRT") found the Claimant no longer disabled. (Exhibit 1, pp. 9 – 10)

3. On July 30, 2012, the Department notified the Claimant of the MRT determination. (Exhibit 1, pp. 1 – 3)
4. On August 3, 2012, the Department received the Claimant's timely written request for hearing.
5. On October 8, 2012 and January 30, 2013, the SHRT found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to chronic irritable bowel syndrome, fibromyalgia, left hip pain, back pain, chronic fatigue, abdominal pain, pancreatitis, and carpal tunnel syndrome.
7. The Claimant alleged mental disabling impairments due to depression and anxiety.
8. At the time of hearing, the Claimant was 48 years old with a [REDACTED], birth date; was 5'5½" in height; and weighed approximately 152 pounds.
9. The Claimant is a high school graduate with some college and an employment history as an executive administrator, care provider, administrative assistant and caterer. (Exhibit 1, p. 20)
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 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 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 requires 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;

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- (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 chronic irritable bowel syndrome, fibromyalgia, left hip pain, back pain, chronic fatigue, abdominal pain, pancreatitis, carpal tunnel syndrome, anxiety, and depression.

On February 14, 2011, the Claimant was admitted to the hospital with pain and swelling in the mouth and left side of face. A CT was suggestive of apical abscess. The Claimant was treated and discharged with the diagnoses of dental abscess, cellulitis of the left side of face, chronic pancreatitis, generalized anxiety disorder, and gastroesophageal reflux disease.

On April 24, 2012, EMG findings were suggestive of mixed lower motor neuron and myopathic processes.

On May 7, 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were fibromyalgia, chronic pain, pancreatitis, and migraines. The physical examination revealed muscle weakness, with difficulty extension and ambulating. The EMG confirmed neuropathy.

On May 9, 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were fibromyalgia, IBS, chronic pancreatitis, and panic attacks. The physical examination noted fatigue, low back pain, and decreased strength. The Claimant's condition was deteriorating and she was unable to meet her needs in the home.

In support of her Claimant, a procedure history from May 2012 through November 2012 show ongoing treatment to include physical therapy.

On June 8, 2012, the Claimant attended a consultative evaluation. The assessment was chronic pancreatitis and fibromyalgia.

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On this same date, a consultative mental status evaluation. The diagnosis was panic disorder without agoraphobia with a Global Assessment Functioning ("GAF") of 70. The Claimant was found to have mild to moderate mental limitations with work activities.

On July 11, 2012, the Claimant attended a follow-up appointment with complaints of abdominal pain, nausea, and vomiting. The diagnoses were acute cholecystitis with cholelithiasis and incisional hernia. A laparoscopic cholecystectomy and hernia repair was scheduled.

On July 16, 2012, the Claimant was admitted to the hospital where she underwent laparoscopic cholecystectomy and hernia repair. Extensive intra abdominal adhesions and large multiple incisional hernias were noted. The Claimant was discharged on, or about, July 18th.

On August 30, 2012, the Claimant underwent a gastroduodenoscopy.

On October 17, 2012, a Medical Source Statement regarding the Claimant's ability to perform work-related activities was completed. The Claimant was found able to lift/carry less than 10 pounds; stand/walk less than 2 hours in an 8 hour workday; sit less than 2 hours; and was limited in pushing/pulling, reaching, handling, fine manipulation, and feeling.

A letter was submitted on behalf of the Claimant confirming treatment for myofascial pain, left hip pain, and low back pain with radiating pain into her legs. Diagnostic findings for the back were consistent with degenerative disc disease, disc protrusion at L4-5 causing neural foraminal narrowing moderately. The Claimant required daily pain medication.

On November 10, 2012, a Medical Source Statement regarding the Claimant's ability to perform work-related activities was completed on behalf of the Claimant. The Claimant was found able to lift/carry less than 10 pounds; stand/walk less than 2 hours in an 8-hour workday; sit less than 6 hours during this same time span; and was limited in pushing/pulling.

In this case, the Claimant was previously approved as a result of a prior hearing decision dated April 11, 2011. The Claimant was found unable to perform even sedentary work as defined by 20 CFR 416.967(a). Prior records confirmed cervical degenerative joint disease with arthrosis and probable nerve root encroachment, acute pancreatitis, abdominal pain, anxiety, carpal tunnel syndrome, fatigue, and anxiety. In December 2009, the Claimant was found able to perform physical activity comparable to sedentary activity. In September 2010, the Claimant was restricted to less than sedentary activity. Current medical evidence, as detailed above, continues to place the Claimant at less than sedentary activity with the need for assistance in the home noting

her condition is deteriorating. The Claimant does not meet a Listed impairment; however, there is no evidence to support a finding of medical improvement. Accordingly, the Claimant's disability is found to have 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 pursuant 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 impairment 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 the MA-P benefit program.

Accordingly, it is ORDERD:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the May 2012 review 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.

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4. The Department shall review the Claimant's continued eligibility in March 2014 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: February 26, 2013

Date Mailed: February 26, 2013

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

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cc:

