

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-42377
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 13, 2012
Wayne County DHS (31)

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, June 13, 2012. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. Participating on behalf of the Department of Human Services ("Department") was [REDACTED].

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 evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On September 7, 2012, this office received a copy of the May 21, 2012 SHRT determination 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 not disabled for purposes of the Medical Assistance ("MA-P") benefit program?

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 benefits on November 22, 2011, retroactive to September 2011.

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2. On March 5, 2012, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit A, pp. 1, 2)
3. On March 16, 2012, the Department notified the Claimant of the MRT determination. (Exhibit B)
4. On March 27, 2012, the Department received the Claimant’s written request for hearing.
5. On May 21, 2012, the SHRT found the Claimant not disabled. (Exhibit D)
6. The Claimant alleged physical disabling impairments due to right ear deafness, neuropathy (feet/hands), back pain with arthritis, hypertension, sleep apnea, seizure disorder, left side weakness, Bell’s Palsy, and jugular tumor.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 62 years old with a [REDACTED] birth date; was 5’7½” in height; and weighed approximately 290 pounds.
9. The Claimant is a high school graduate with an employment history in commercial property management.
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 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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claimant alleges disability due to right ear deafness, neuropathy (feet/hands), back pain with arthritis, hypertension, sleep apnea, seizure disorder, left side weakness, Bell's Palsy, and jugular tumor.

On [REDACTED] an MRI of the brain and neck found an elongated insignificantly enhancing mass within and extending through the right jugular foramen, likely a glomus jugulare tumor and fatty atrophic changes in the tongue. The findings were consistent with moderate chronic microvascular ischemic disease.

On [REDACTED] a CT of the head and chest found a right-sided mass extending from carotid sheath into the skull base with associated bony change and narrowing of the petrous segment of the right internal carotid artery believed to be a glomus jugulare tumor.

On [REDACTED] the Claimant was admitted to the hospital with right-sided tongue atrophy. Testing revealed a large jugular foramen tumor. A cerebral angiogram and transarterial embolization was performed without complication with reduction of the tumor by approximately 80 to 90 percent. Fourteen lymph nodes were benign. The Claimant was discharged on November 14th with the diagnoses of right glomus jugulare tumor, left Bell's palsy, hypertension, and diabetes, type II.

On [REDACTED] an MRI revealed status post partial resection of right glomus jugulare along with residual tumor in the right jugular foramina tracking inferiorly into the nasopharyngeal carotid space up to C1-2 level along with scattered foci of high T2 signal in the cerebral white matter bilaterally.

On [REDACTED] x-rays of the lumbar spine revealed advanced spondylotic changes throughout the lumbar spine.

On [REDACTED], the Claimant attended a follow-up appointment for her left thigh pain. An EMG showed evidence of an axonal sensorimotor peripheral neuropathy with ongoing denervation in the foot muscle on the left. Pain persisted despite adherence to prescribed treatment. X-rays confirmed advanced spondylotic changes in the lumbar spine. Since the surgery, the Claimant experienced right ear hearing loss. The diagnoses were essential hypertension, hypothyroidism, peripheral autonomic neuropathy, and lumbago.

On [REDACTED] the Claimant attended a follow-up appointment for evaluation of her thigh numbness. The diagnoses included peripheral autonomic neuropathy and hypothyroidism.

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On [REDACTED], blood work revealed vitamin D deficiency/insufficiency and possible toxicity as well as abnormal A1c, noting an increased risk of developing diabetes mellitus.

On [REDACTED] the Claimant attended a follow-up with the primary diagnoses of left thigh pain and numbness status post right glomus jugulare tumor removal. Functional limitations included mild impairments with lifting/carrying, sleeping, prolonged sitting/standing, and gait with stairs, curbs and level surfaces. Moderate impairment with squatting was noted as well as the need for a cane.

On [REDACTED], an MRI revealed disc space fusion within the lower thoracic spine at the L5-S1 level along with significant disc disease at the thoracolumbar junction with posterior displacement of the conus at T12-L1 and significant central canal stenosis and foraminal narrowing at L1-2.

On [REDACTED] the Claimant attended a follow-up appointment with complaints of hair coming out in clumps. The diagnosis was abnormalities of the hair.

On [REDACTED] the Claimant attended a follow-up neurological evaluation of her left anterior and lateral thigh numbness and tingling along with bilateral lower extremity numbness and tingling. An EMG nerve conduction study previously performed showed evidence of axonal sensorimotor peripheral neuropathy. An MRI of the lumbar spine, revealed diffused osteoarthritic changes. The physical examination noted obesity, tongue protrusion, decreased pinprick and light touch to the left anterior and lateral aspects of the thigh, as well as from the toes to the knees bilaterally. Decreased pinprick and light touch with the hands from the fingers to the wrists, bilaterally, was also noted. The diagnoses were left meralgia paresthetica (improved with medication) and sensorimotor axonal peripheral neuropathy.

On [REDACTED], the Claimant attended a follow-up appointment with continued complaints of hair loss. The diagnosis was abnormalities of the hair.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were hypertension, hypothyroidism, morbid obesity, Bell's Palsy, angioedema, right large glomus jugulare tumor status post removal in 2011 with post operative benign paroxysmal positional vertigo, and left meralgia paresthetica. The Claimant was improving but still required an assistive device to ambulate (noting dizziness).

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The

medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR Part 404. The evidence confirms treatment/diagnoses glomus jugulare tumor status post removal of approximately 80 to 90 percent with residual tumor in the right jugular foramina; hypertension; Bell's palsy; diabetes type II; advanced spondylotic changes throughout the lumbar spine; axonal sensorimotor peripheral neuropathy with ongoing denervation of the foot muscle on the left; right ear hearing loss; hypothyroidism; significant disc disease at the thoracolumbar junction with posterior displacement of the disc at T12-L1; significant central canal stenosis and foraminal narrowing at L1-2; osteoarthritic changes in the lumbar spine; left meralgia paresthetica; and post-operative benign paroxysmal positional vertigo.

Listing 1.00 (musculoskeletal system), Listing 2.00 (special senses and speech), Listing 4.00 (cardiovascular system), Listing 9.00 (endocrine system), Listing 11.00 (neurological), and Listing 13.00 (malignant neoplastic disease) were considered in light of the objective medical evidence. The evidence confirms several severe impairments; however, the evidence does not meet the intent and severity of a Listing, or its equivalent. Accordingly, the Claimant cannot be found disabled, or not disabled at Step 3; therefore, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

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 the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty to function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); 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)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In this case, the evidence confirms treatment/diagnoses glomus jugulare tumor status post removal of approximately 80 to 90 percent with residual tumor in the right jugular foramina; hypertension; Bell's palsy; diabetes type II; advanced spondylotic changes throughout the lumbar spine; axonal sensorimotor peripheral neuropathy with ongoing denervation of the foot muscle on the left; right ear hearing loss; hypothyroidism; significant disc disease at the thoracolumbar junction with posterior displacement of the disc at T12-L1; significant central canal stenosis and foraminal narrowing at L1-2;

osteoarthritic changes in the lumbar spine; left meralgia paresthetica; and post-operative benign paroxysmal positional vertigo. The Claimant testified that she is able to walk short distances with an assistive device; grip/grasp with issues because of her neuropathy; sit for less than 2 hours; lift/carry less than 10 pounds; stand for about 15 minutes with her walker; and is unable to bend and/or squat. The objective medical evidence noted functional limitations with lifting/carrying, sleeping, prolonged sitting/standing, and gait with stairs, curbs and level surfaces. Moderate impairment with squatting was noted as well as the need for a cane for ambulation. After review of the entire record and considering the Claimant's testimony, it is found, at this point, that the Claimant maintains the residual functional capacity to perform at least unskilled, limited sedentary work as defined by 20 CFR 416.967(a). Limitations being the alternation between sitting and standing at will.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

The Claimant's prior employment was that of a commercial property manager. In consideration of the Claimant's testimony and Occupational Code, the prior employment as a general laborer and factory worker is classified as semi-skilled, light work. 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 light of the entire record and the Claimant's RFC (see above), it is found that the Claimant is unable to perform past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4.

In Step 5, an assessment of the Claimant's residual functional capacity and age, education, and work experience is 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 62 years old and, thus, considered to be of advanced age for MA-P purposes. The Claimant is a high school graduate. 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 confirms treatment/diagnoses glomus jugulare tumor status post removal of approximately 80 to 90 percent with residual tumor in the right jugular foramina; hypertension; Bell's palsy; diabetes type II; advanced spondylotic changes throughout the lumbar spine; axonal sensorimotor peripheral neuropathy with ongoing denervation of the foot muscle on the left; right ear hearing loss; hypothyroidism; significant disc disease at the thoracolumbar junction with posterior displacement of the vertebra at T12-L1; significant central canal stenosis and foraminal narrowing at L1-2; osteoarthritic changes in the lumbar spine; left meralgia paresthetica; and post-operative benign paroxysmal positional vertigo. The Claimant still experiences residual left-side pain, numbness, and tingling that persist despite adherence to prescribed treatment. The impairments have lasted, or can reasonably be expected to last, continuously for a period of 12 months or longer. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically 201.06, the Claimant is found disabled at Step 5.

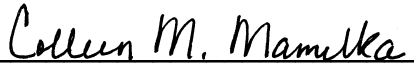
DECISION AND ORDER

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 ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate processing of the November 22, 2011 MA-P application, retroactive to September 2011, to determine if all non-medical criteria are met.
3. The Department shall notify the Claimant and her Authorized Hearing Representative of the determination in accordance with Department policy.
4. 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.

5. The Department shall review the Claimant's continuing eligibility in October 2013 in accordance with Department policy.



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

Date Signed: September 26, 2012

Date Mailed: September 26, 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

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cc:

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Wayne County DHS (31)/DHS-1843

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C.

Mamelka