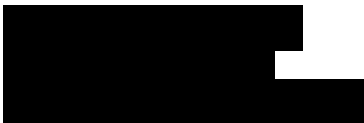


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012-44684
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: June 19, 2012
County: Livingston County

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 received on April 5, 2012. After due notice, a telephone hearing was held on June 19, 2012. Claimant, and her mother, personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly determined that Claimant was no longer disabled and denied her review application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 February, 2012.
- (2) In February, 2012, Claimant filed a Redetermination for Medical Assistance and State Disability Assistance benefits alleging continued disability.
- (3) On March 23, 2012, the Medical Review Team denied Claimant's application indicating that continuing eligibility for MA was denied. (Department Exhibit A, pages 8-9).

- (4) On March 29, 2012, the department caseworker sent Claimant notice that her MA and SDA benefits cases would be closed based upon medical improvement.
- (5) On April 5, 2012, Claimant filed a request for a hearing to contest the department's negative action.
- (6) On May 18, 2012, the State Hearing Review Team again denied Claimant's Redetermination stating that Claimant is capable of performing light work per 20 CFR 416.967(b) pursuant to Medical-Vocational Rule 202.21. SDA was denied per BEM 261 because the nature and severity of Claimant's impairments would not preclude work activity at the above stated level for 90 days.
- (8) Claimant has a history of ovarian cancer, joint and back pain, fatigue, lymphedema, osteoarthritis and weakness.
- (9) On October 15, 2011, Claimant saw her oncologist for follow-up evaluation eight months after having completed seven cycles of chemotherapy, which started on 9/13/10 and ended on 2/28/11 for Stage 1C, poorly differentiated papillary serous cancer of the left ovary with component of clear cell noted adjacent to the papillary cancer. She was status post a CT scan of the abdomen, pelvis and chest performed on 10/10/11. The CT scan revealed no enlarged lymph nodes from the hilum, mediastinum, or axilla. There was no pleural or pericardial effusion. The thoracic aorta was normal in caliber. There was linear scarring of the anterior aspect of the left upper lobe unchanged. There was nodular thickening of the peritoneum along the posterior aspect of the right hepatic lobe similar to the prior study. There was no hepatic biliary duct dilation. There was significant decrease in the loculated anterior pelvic fluid collection, which now measured 8.5 x 3.7 cm in size. There were multiple surgical clips in the abdomen and pelvis, consistent with hysterectomy, omentectomy and retroperitoneal lymph node dissection. No new masses noted. No new findings of the chest, abdomen and pelvis. A large ventral hernia was identified. (Department Exhibit B, pp 3-5).
- (10) On December 31, 2011, Claimant was seen by her oncologist. Claimant underwent an exploratory laparotomy, extensive lysis of adhesions, multiple intraabdominal biopsies with resection of a ventral hernia, umbilicus and resection marsupialization of a pelvic lymphocele on the left side on 12/19/11. She had numerous mesenteric biopsies, which contained proliferation of hemosiderin laden macrophages associated with hemorrhage, cannot exclude hemorrhagic focus of endometriosis. The lymphocele contained portions of benign hemorrhagic cyst wall with extensive needle hemosiderin deposition and fibrosis. The differential diagnosis was endometriosis with extensive hemorrhagic changes versus

lymphocele with intraluminal hemorrhage and organizing changes versus other hemorrhagic cystic lesions. No evidence of malignancy was identified. She appeared to be doing well and had her ventral hernia repair with the help of a mesh. Follow-up evaluations were recommended based on her history of ovarian malignancy. (Department Exhibit A, p 3).

- (11) On February 3, 2012, Claimant underwent a medical examination. She was diagnosed with ovarian cancer in remission, post chemotherapy fatigue, polyarthralgia and hyperlipidemia. Claimant moved slowly and had difficulty bending and stooping. She had scars from abdominal surgery. She had decreased straight leg raise findings, and mild joint swelling in her fingers and knees. She had difficulty turning hand and opening jars. Her grip was 4/5. (Department Exhibit A, pp 23-24).
- (12) On May 17, 2012, Claimant was evaluated by her physician and indicated that Claimant was not capable of performing even a sedentary low stress job on a 40-hour work week on a regular and sustained basis, due to post chemotherapy pain, edema and fatigue. (Claimant Exhibit A).
- (13) Claimant is a 47 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 160 lbs. Claimant graduated from high school and completed a year of college. Claimant last worked in 2009.
- (14) Claimant was appealing the denial of Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

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, (DHS or department), 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 Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or 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 the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

Pursuant to the federal regulations at 20 CFR 416.994, once a client is determined eligible for disability benefits, the eligibility for such benefits must be reviewed periodically. Before determining that a client is no longer eligible for disability benefits, the agency must establish that there has been a medical improvement of the client's impairment that is related to the client's ability to work. 20 CFR 416.994(b)(5).

To assure that disability reviews are carried out in a uniform manner, that a decision of continuing disability can be made in the most expeditious and administratively efficient way, and that any decisions to stop disability benefits are made objectively, neutrally, and are fully documented, we will follow specific steps in reviewing the question of whether your disability continues. Our review may cease and benefits may be continued at any point if we determine there is sufficient evidence to find that you are still unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

The first question asks:

- (i) Are you engaging in substantial gainful activity? If you are (and any applicable trial work period has been completed), we will find disability to have ended (see paragraph (b)(3)(v) of this section).

Claimant is not disqualified from this step because she has not engaged in substantial gainful activity at any time relevant to this matter. Furthermore, the evidence on the record fails to establish that Claimant has a severe impairment which meets or equals a

listed impairment found at 20 CFR 404, Subpart P, Appendix 1. Therefore, the analysis continues. 20 CF 416.994(b)(5)(ii).

The next step asks the question if there has been medical improvement. Medical improvement is any decrease in the medical severity of your impairment(s) which was present at the time of the most recent favorable medical decision that you were disabled or continued 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 your impairment(s). 20 CFR 416.994(b)(1)(i).

If there is a decrease in medical severity as shown by the symptoms, signs and laboratory findings, we then must determine if it is related to your ability to do work. In paragraph (b)(1)(iv) of this section, we explain the relationship between medical severity and limitation on functional capacity to do basic work activities (or residual functional capacity) and how changes in medical severity can affect your residual functional capacity. In determining whether medical improvement that has occurred is related to your ability to do work, we will assess your residual functional capacity (in accordance with paragraph (b)(1)(iv) of this section) based on the current severity of the impairment(s) which was present at your last favorable medical decision. 20 CFR 416.994(b)(2)(ii).

The State Hearing Review Team upheld the denial of MA and SDA benefits on the basis that Claimant's medical condition has improved. Claimant was approved for SDA and MA benefits in 2011. Pursuant to the federal regulations, at medical review, the agency has the burden of not only proving Claimant's medical condition has improved, but that the improvement relates to the client's ability to do basic work activities. The agency has the burden of establishing that Claimant is currently capable of doing basic work activities based on objective medical evidence from qualified medical sources. 20 CFR 416.994(b)(5).

In this case, the agency has not met its burden of proof. The agency has provided no evidence that indicates Claimant's improvement relates to her ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the agency's MA and SDA eligibility determination cannot be upheld at this time.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department erred in proposing to close Claimant's MA and SDA benefit cases based upon a finding of improvement at review.

Accordingly, the department's action is REVERSED, and this case is returned to the local office for benefit continuation as long as all other eligibility criteria are met, with

Claimant's next mandatory medical review scheduled in June, 2014 (unless she is approved eligible for Social Security disability benefits by that time).

It is SO ORDERED.

/S/
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 6/28/12

Date Mailed: 6/28/12

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.

VLA/ds

■ [REDACTED]