

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-55001
Issue No: 2009
Case No: [REDACTED]
Hearing Date: October 23, 2013
County DHS Antrim

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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. After due notice, a telephone hearing was held on October 23, 2013. Claimant personally appeared and testified. The Department was represented by [REDACTED], Eligibility Specialist and [REDACTED], General Services Program Manager.

ISSUE

Did the Department of Human Services (the department) properly determine that Claimant was no longer disabled and deny her review application for Medical Assistance (MA-P) 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 the Medical Assistance case was scheduled for review in May 2013.
2. On March 29, 2013, Claimant filed a review application for Medical Assistance benefits alleging continued disability.
3. On June 11, 2013, the Medical Review Team denied Claimant's application stating that Claimant had medical improvement.
4. On June 17, 2013, the department caseworker sent Claimant notice that his Medical Assistance case would be cancelled based upon medical improvement.
5. On June 26, 2013, Claimant filed a request for a hearing to contest the department's negative action.

6. On August 15, 2013, the State Hearing Review Team again denied Claimant's review application stating that the Claimant has had medical improvement. Claimant is not currently engaging in substantial gainful activity based on the information that is available in the file. The Claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the Claimant retains the capacity to perform a wide range of medium work. A finding about the capacity for prior work has not been made. However, this information is not material because all potentially applicable medical vocational guidelines would direct a finding of not disabled given the Claimant's age, education and residual functional capacity. Therefore, based on the Claimant's vocational profile of advanced age, [REDACTED] [REDACTED] history of unskilled/skilled work MA-P is denied due to medical improvement and using vocational rule 203.14 as a guide.
7. Claimant is a [REDACTED]-year-old whose birth date is [REDACTED] [REDACTED]. Claimant is 5'6" tall and weighs 195 pounds. Claimant is a [REDACTED]. Claimant is able to read, write and does have basic math skills.
8. Claimant is currently employed as a [REDACTED] at the [REDACTED]. She works 20 hours per week and earns 12 dollars per hour. Claimant also attends [REDACTED] four days per week for approximately 3 hours.
9. Claimant was receiving medical assistance benefits.
10. Claimant alleges as disabling impairments: the problems, back problems, carpal tunnel syndrome, kidney cancer treatment, endometrial cancer treatment, and depression.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In general, Claimant has the responsibility to prove that he/she is disabled. Claimant's impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only Claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the Claimant has an impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Once an individual has been determined to be "disabled" for purposes of disability benefits, continued entitlement to benefits must be periodically reviewed. In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process by which current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work are assessed. Review may cease and benefits may be continued at any point if there is substantial evidence to find that the individual is unable to engage in substantial gainful activity. 20 CFR 416.994(b)(5).

First, the trier of fact must determine if the individual is working and if work is substantial gainful activity. 20 CFR 416.994(b)(5)(i). In this case, the Claimant is not engaged in substantial gainful activity based upon the fact that she does work part time, however she is engaged as a cook at the Hacienda restaurant and works 20 hours per week with no accommodations.

Secondly, if the individual has an impairment or combination of impairments which meet or equal the severity of an impairment listed in Appendix 1 to Subpart P of Part 404 of Chapter 20, disability is found to continue. 20 CFR 416.994(b)(5)(ii).

The objective medical evidence in the record indicates that the Claimant was found to have a grade 1 endometrial carcinoma in [REDACTED]. A [REDACTED] of the abdomen and pelvis dated [REDACTED] revealed and enhancing renal mass mid pole of the right kidney, suspicious for renal cell carcinoma, page 42. She underwent robotic hysterectomy and bilateral salpingo-oophorectomy with bilateral pelvic lymph node dissection in [REDACTED], page 50. A [REDACTED] in [REDACTED] showed renal cell carcinoma of clear cell type, pages 58 and 53. In [REDACTED] she underwent cryo-ablation procedure. Post [REDACTED] demonstrated no residual enhancement, page 52 to 53. A DHS – 49 form completed on [REDACTED] examination showed the Claimant had a history of [REDACTED] with no evidence of disease, page 85. Her [REDACTED] was basically negative and normal, page 84. Another [REDACTED] form dated [REDACTED] showed the Claimant had [REDACTED] adenocarcinoma, page 91. Her examination was unremarkable, page 90. The clinical impression indicates that Claimant's condition was improving and that she could use both upper extremities for simple grasping, reaching, pushing and pulling and fine manipulating. She could frequently carry 20 pounds or less, occasionally carry 25 pounds and never carry 50 pounds or more. She could stand or walk at least two hours

in an eight hour workday and she could sit less than six hours in an eight hour workday. She could operate foot and leg controls with both feet and legs, page 90.

At Step 2, Claimant's impairments do not equal or meet the severity of an impairment listed in Appendix 1.

In the third step of the sequential evaluation, the trier of fact must determine whether there has been medical improvement as defined in 20 CFR 416.94(b)(1)(i). 20 CFR 416.94(b)(5)(iii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most recent favorable medical decision that the Claimant was disabled or continues 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 Claimant's impairment(s). If there has been medical improvement as shown by a decrease in medical severity, the trier of fact must proceed to Step 4 (which examines whether the medical improvement is related to the Claimant's ability to do work). If there has been no decrease in medical severity and thus no medical improvement, the trier of fact moves to Step 5 in the sequential evaluation process.

In the instant case, this Administrative Law Judge finds that Claimant does have medical improvement and the medical improvement is related to the Claimant's ability to perform substantial gainful activity.

Thus, this Administrative Law Judge finds that Claimant does have medical improvement. If there is a finding of medical improvement related to Claimant's ability to perform work, the trier of fact is to move to Step 6 in the sequential evaluation process.

In the sixth step of the sequential evaluation, the trier of fact is to determine whether the Claimant's current impairment(s) is severe per 20 CFR 416.921. 20 CFR 416.994(b)(5)(vi). If the residual functional capacity assessment reveals significant limitations upon a Claimant's ability to engage in basic work activities, the trier of fact moves to Step 7 in the sequential evaluation process. In this case, this Administrative Law Judge finds Claimant can perform at least light work even with the impairments as demonstrated by her employment at the Hacienda restaurant.

In the seventh step of the sequential evaluation, the trier of fact is to assess a Claimant's current ability to engage in substantial gainful activities in accordance with 20 CFR 416.960 through 416.969. 20 CFR 416.994(b)(5)(vii). The trier of fact is to assess the Claimant's current residual functional capacity based on all current impairments and consider whether the Claimant can still do work he/she has done in the past. In this case, this Administrative Law Judge finds that Claimant could probably perform his past work as a **cook**.

In the final step, Step 8, of the sequential evaluation, the trier of fact is to consider whether the Claimant can do any other work, given the Claimant's residual functional capacity and Claimant's age, education, and past work experience. 20 CFR 416.994(b)(5)(viii). In this case, based upon the Claimant's vocational profile of

advanced age at [REDACTED] history of unskilled/semiskilled work, MAP is denied using Vocational Rule 203.14 as a guide. Claimant can perform other work in the form of light work per 20 CFR 416. 967(b). This Administrative Law Judge finds that Claimant does not have medical improvement in this case and the department has established by the necessary, competent, material and substantial evidence on the record that it was acting in compliance with department policy when it proposed to cancel Claimant's Medical Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied Claimant's continued disability and application for Medical Assistance benefits. The Claimant should be able to perform a wide range of light or sedentary work even with his impairments. The department has established its case by a preponderance of the evidence. Claimant does not have medical improvement based upon the objective medical findings in the file.

Accordingly, the department's decision is **AFFIRMED**.

Landis _____ /s/ Y. Lain
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 10/24/13

Date Mailed: 10/25/13

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.

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 affect the substantial rights of the Claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

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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

LYL/tb

cc:

