

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-61174
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 7, 2013
County: Montcalm

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 7, 2013, from Lansing, Michigan. Claimant personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] [REDACTED].

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 her Medical Assistance case was scheduled for review in October, 2012.
- (2) On August 30, 2012, Claimant filed a Redetermination for MA benefits alleging continued disability.
- (3) On July 11, 2013, the Medical Review Team denied Claimant's application indicating that Claimant was denied for continuing eligibility. (Depart Ex. A, pp 209-210).
- (4) On July 16, 2013, the department case worker sent Claimant notice that her MA case would be closed based upon medical improvement.

- (5) On July 25, 2013, Claimant filed a request for a hearing to contest the department's negative action.
- (6) On September 13, 2013, the State Hearing Review Team denied Claimant's Redetermination based on Claimant retaining the capacity to perform light exertional tasks.
- (7) Claimant was receiving MA and SDA at the time of this review.
- (8) Claimant alleges her disabling impairments are post colon cancer with resection and chemotherapy completed 2/2012, mild splenomegaly, hepatic cirrhosis, fatigue, dyslipidemia, carpal tunnel syndrome, neuropathy, spitting up blood and nosebleeds.
- (9) Claimant is a 52-year-old woman whose birth date is [REDACTED]. Claimant is 5'4" tall and weighs 220 pounds. Claimant has a high school education. She is able to read and write and has basic math skills.
- (10) Claimant last worked in October, 2004, as a welder and press operator.

CONCLUSIONS OF LAW

As a preliminary matter, Claimant was entitled and receiving both MA and State Disability Assistance (SDA) at the time of her August, 2012, Medical Review. According to testimony during the hearing, SDA was not reviewed at the time of the MA review, and therefore, Claimant is still entitled to continue receiving SDA as there has never been an MRT review denying her SDA benefits.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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 CFR 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 benefits on the basis that the Medical Review Team found Claimant's medical condition had improved.

In February, 2012, the Medical Review Team approved Claimant's application for MA, Retro-MA and SDA based on reports from her oncologist.

Medical records from May, 2012, indicate Claimant was diagnosed with Stage III adenocarcinoma of the colon in May, 2011, and she has no signs of active disease. She now has hepatic cirrhosis, with a question of whether the chemotherapy contributed to the sources for causing hepatic damage. She also has leukopenia and thrombocytopenia, likely due to mild splenomegaly. She has oxaliplatin-induced neuropathy which has not improved as predicted, according to Claimant's testimony and medical records.

In January, 2013, Claimant presented to the emergency department with chest pain. She was given some sublingual nitroglycerin which resolved her pain. With no EKG changes and normal troponins, a stress test was suggested. The examining physician opined that Claimant may have a gastrointestinal etiology with an aspect of esophageal spasm, based on her response to the sublingual nitroglycerin after such persistent symptoms.

Claimant credibly testified that her hands and feet go numb several times a day and she has had nosebleeds and has been spitting up blood since May, 2013, but due to a lack of insurance has been unable to see a specialist. According to the department's testimony, Claimant's MA and SDA were mistakenly closed on 7/31/13 up until October, 2013, when the department was finally able to reinstate Claimant's MA and SDA pending this hearing. Claimant also stated that she continues to see her oncologist every four months to monitor for a return of the cancer.

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).

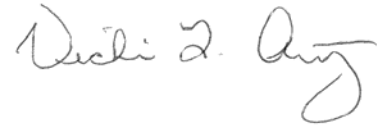
In this case, the agency has not met its burden of proof. The agency has provided some evidence that indicates Claimant's condition has improved, but no evidence on how that improvement relates to her ability to do basic work activities. The agency provided no objective medical evidence from qualified medical sources that show Claimant is currently capable of doing basic work activities. Accordingly, the agency's MA 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 case 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 October, 2014, (unless he is approved eligible for Social Security disability benefits by that time).

It is SO ORDERED.



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

Date Signed: November 8, 2013

Date Mailed: November 8, 2013

NOTICE OF AP PEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

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The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

VLA/las

cc:

