

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014 18373
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 31, 2014
County: Wayne County (82-18)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 March 31, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist/Medical Contact Worker.

ISSUE

Whether the Department properly determined that 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. Claimant was an ongoing MA-P recipient based on a July 23, 2012 application and finding of eligibility finding that Claimant was disabled.
2. On January 1, 2013, the Department reviewed Claimant's ongoing MA-P eligibility.
3. On December 2, 2013, the MRT found Claimant no longer disabled. Exhibit 1, pp2.

4. On December 6, 2013, the Department sent Claimant a Notice of Case Action closing the MA-P case.
5. On December 13, 2013, the Department received Claimant's timely written request for hearing.
6. On February 25, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
7. An Interim Order was issued April 7, 2014 to obtain updated medical information and DHS 49 from Claimant's treating doctors. On May 23, 2014, the new evidence was submitted to the State Hearing Review Team.
8. On June 18, 2013, the SHRT issued a decision and found the Claimant not disabled.
9. Claimant has not alleged any mental disabling impairments.
10. The Claimant has alleged physical disabling impairments, including non-Hodgkin's Lymphoma located in the groin with ongoing chemotherapy, chronic low back pain and cervical spine surgery and pain.
11. At the time of hearing, Claimant was 56 years old with a [REDACTED] birth date.
12. At the time of hearing, Claimant was 5'2" in height and weighed approximately 190 pounds.
13. Claimant has a GED and has an employment history of working as a quality control inspector for computer parts, and secretarial work.
14. 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 (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) 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 the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (RFT).

A disabled individual is eligible for MA-P and SDA. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. In order to receive MA benefits based upon disability or blindness, Claimant must be disabled or blind as defined in Title XVI of the Social Security Act. 20 CFR 416.901. Disability is defined as the inability to do any substantial gainful activity (SGA) 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).

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(a). In evaluating whether an individual's disability continues, 20 CFR 416.994 requires the trier of fact to follow a sequential evaluation process to assess current work activities, severity of impairment(s), and the possibility of medical improvement and its relationship to the individual's ability to work. 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. 20 CFR 416.994(b)(5). Prior to deciding an individual's disability has ended, the Department will develop, along with 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).

Step One

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.

In the present case, Claimant alleges a disability due to and including non-Hodgkin's Lymphoma located in the groin with ongoing chemotherapy, chronic low back pain and cervical spine surgery and pain.

The Claimant has not alleged any mental disabling impairments.

A DHS 49 was completed by the Claimant's hematologist/oncologist on April 14, 2014. The diagnosis was Non-Hodgkin's Lymphoma, low grade. Limitations were imposed that were expected to last more than 90 days. The evaluation indicated that the Claimant could lift/carry less than 10 pounds frequently and occasionally 10 pounds. The Claimant could stand and/or walk less than two hours in an eight-hour work day. The Claimant could not push or pull with either hand or arm. The Claimant could not operate foot/leg controls with either foot/leg. The exam further notes that the Claimant is receiving chemotherapy and has progression of lymphoma. Assistance in the home was indicated as necessary on days of chemo therapy, one to two days after due to fatigue.

The Claimant's family practice doctor completed a Physical Residual Functional Capacity questionnaire on October 29, 2013. The diagnosis was cervical and lumbar disc herniation times three. The prognosis was guarded. The symptoms were listed as neck and low back pain, with numbness in the right foot and numbness in the fingers of the left hand, and noted limited range of motion in the lower back. The doctor's evaluation further noted that the Claimant could not work over a computer, stand too long or walk too long due to ongoing low back pain, and restricted her to lifting nothing over 10 pounds. The clinical findings were supported by limited range of motion and trunk flexion restriction to 50°. The doctor ruled out psychological conditions as affecting the Claimant's physical condition and noted that pain and limitations are organic or somatic.

The doctor gave an opinion that during a typical workday, the Claimant's experience of pain and other symptoms are severe enough to interfere with attention and concentration needed to perform simple work tasks frequently. The Claimant was rated as capable of walking one block without rest or severe pain. The Claimant could sit 30 minutes and could stand 30 minutes. In an eight-hour workday, the Claimant could stand and/or walk less than two hours, and sit about two hours. The Doctor also indicated that the Claimant needs to include periods of walking during an eight-hour workday, requiring the necessity to walk every 30 minutes for at least 10 minutes. The doctor further noted that the Claimant sometimes would need to take unscheduled breaks during an eight-hour workday at least four times a day with an average rest of 30 minutes. As regards physical activity, the Doctor indicated the Claimant could never hold her head in a static position, rarely looked down in a sustained flexion of the neck, or turn her head to the left or right. The Claimant could not stoop, crouch or climb ladders and could rarely twist. The Claimant's ability to climb stairs was rated as

capable of doing so occasionally. The Claimant was further restricted to significant limitations in doing repetitive reaching handling or fingering. The doctor also described other limitations as follows. Patient has lymphoma cancer referred to oncologist and has arthritis in back and joints, seen on a bone scan taken in September 2013.

The Claimant's oncologist reported on April 1, 2014 that the Claimant had a recurrence of follicular lymphoma, described as a relapse by her oncologist, and was now in further treatment with follow up chemotherapy.

On September 9, 2013, the Claimant had a surgical biopsy of her right inguinal lymph node. The exam noted marked presence of necrosis. There was presence of an atypical B-cell infiltrate in the surrounding adipose tissue. In addition, there was also demonstrable positivity. Overall, this is consistent with involvement by the patient's known follicular lymphoma. The presence of progression to a diffuse large B-cell lymphoma, however, cannot be completely ruled out especially in light of extensive necrosis and unavailability of sufficient viable lymph node tissue for morphologic assessment. A CT of both groin areas and pelvis was conducted on September 6, 2013. There were multiple lymph node enlargements at both groin and adjacent pelvic fossa. Largest one measured 3.5 cm.

On February 18, 2013, the Claimant was seen for a second time in the emergency room due to severe abdominal pain. A comparison with a prior CT of the abdomen done in January 2013 noted an enlarged retroperitoneal lymph node in the space below the level of the renal vasculature. It appears to have slightly increased in size as compared to prior imaging and now shows some central hypo density not evident on the prior study.

An MRI of the lumbar was performed on January 22, 2013. The impression was central disc protrusion at L5 S1, contacting the origin of the bilateral S1 nerve root without spinal canal stenosis retroperitoneal lymphadenopathy. The impression was mild to moderate spondylosis of the lower lumbar spine.

A CT of the Claimant's abdomen and pelvis was performed on January 22, 2013. The impression was persistent retroperitoneal lymphadenopathy. The impression also noted less likely above findings could be related to other infiltrating lymphatic disease processes, such as lymphoma. Appropriate clinical correlation will be necessary.

On March 1, 2013, the Claimant received an epidural steroid injection at L5 S1. On March 8, 2013, the Claimant received an epidural steroid injection at L3 – 4 of her lumbar spine. On March 28, 2013, the Claimant underwent surgery for disc protrusion L5 – S1 right central lateral. The S1 nerve root was seen in the surgery and noted that

disc protrusion was compressing the nerve roots in that area. The surgery removed the bony spurs under the nerve root and the intervertebral disc was removed.

On January 18, 2014, the Claimant was seen in the hospital and was admitted with right lower extremity swelling a prominent lymph node in right thigh (lymphadenopathy). At the time of the admission, the Claimant was unable to ambulate. The impression was progressive rapid increase in her non-Hodgkin Lymphoma causing patient's symptoms. Extreme pain was noted with some of the lymph nodes being hemorrhagic and possible causing the pressure problem causing pain in the extremities. The Claimant was admitted to the hospital on January 28, 2014 for 4 days with severe shortness of breath. The diagnosis was dyspnea and hypokalemia. Approximately 2 weeks prior to this admission, the Claimant was seen for abdominal pain and admitted to the hospital on January 2, 2014, with a diagnosis of acute pelvic mass with history of lymphoma. The Claimant's hospital stay lasted one day.

The Claimant is still undergoing chemotherapy as of April 2014 due to the recurrence and progression of her lymphoma.

By way of history, the Claimant was diagnosed with non-Hodgkin's lymphoma based on a CT of the abdomen and pelvis, October 19, 2011 noted massive retroperitoneal and mesenteric adenopathy suspicious of lymphoma or metastases, CT imaging of the Thorax showed multiple enlarged lymph nodes. After tissue biopsies, the Claimant was diagnosed with follicular nodular lymphoma and shortly thereafter, the Claimant began chemotherapy. Based upon the biopsy the lymph node examined showed mainly small lymphocytes with occasional large cells consistent with low grade follicular lymphoma stage III.

In October 2012, the Claimant again was seen at the hospital for neck pain and a mass characterized as significant in size was noted, with possible parotitis of the parotid glands, lymph nodes, and the major salivary glands in the neck/face area. The final diagnosis was acute Non-Specific right sided neck mass, possible parotid gland infection vs necrotic node vs possible abscess. The Claimant was seen earlier in the month with complaints of chest pain.

A review of the Claimant's medical evidence provided by hospital admission records, evaluations by the Claimant's oncologist and from the Claimant's treating doctor summarized above was reviewed to determine whether listing 13.05 Lymphoma has been demonstrated. In addition, particular weight was given to both the DHS 49's completed by the Claimant's treating doctors and the biopsies and testing, which demonstrate continued progression of the Claimant's lymphoma.

The Listing requires the following:

A. Non-Hodgkin's lymphoma, as described in 1 or 2:

1. Aggressive lymphoma (including diffuse large B-cell lymphoma), persistent or recurrent following initial antineoplastic therapy.
2. Indolent lymphoma (including mycosis fungoides and follicular small cleaved cell), requiring initiation of more than one antineoplastic treatment regimen within a consecutive 12-month period. Consider under a disability from at least the date of initiation of the treatment regimen that failed within 12 months.

OR

B. Hodgkin's disease with failure to achieve clinically complete remission, or recurrent disease within 12 months of completing initial antineoplastic therapy.

Based on the evaluation of Claimant's treating oncologist, it is determined that deference must be given to this evaluation, as the Claimant has been seen for some time. The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Also considered were the medical records presented, the biopsies and testing performed, and the recurring and continuing nature and progression of the Claimant's lymphoma with no medical improvement. Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician, including the testing done September 9, 2013, showing progression referencing large B cell progression. Based upon the foregoing, it is determined that the Claimant is disabled at Step 1 on a continuing basis ongoing and meets Listing 13.05 (2) or its medical equivalent with no further analysis required.

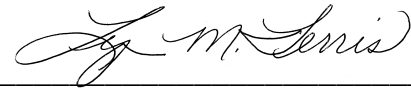
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit program.

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Review and re-process the January 2013 review application to determine if all other non-medical criteria are met and notify Claimant of its decision in writing;
2. Review Claimant's continued MA-P eligibility in July 2015 in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 8, 2014

Date Mailed: July 9, 2014

NOTICE OF APPEAL: 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.

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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.

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

LMF/tm

cc:

