

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201421428
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 23, 2014
County: Macomb County DHS #20

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 April 23, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department of Human Services (Department) properly determine that the 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. The Claimant was an ongoing Medical Assistance (M.A.) recipient based on disability.
2. On September 30, 2011, the Department initiated a review of the Claimant's continued eligibility to receive benefits and determine if there has been medical improvement.
3. On November 8, 2013, the Medical Review Team (MRT) determined that the Claimant no longer met the disability standard for Medical Assistance (MA-P) because it determined that the Claimant's condition had improved.
4. On November 20, 2013, the Department sent the Claimant notice that it would close her Medical Assistance (MA) benefits due to the determination of the Medical Review Team (MRT).

5. On January 8, 2014, the Department received the Claimant's hearing request, protesting the denial of disability benefits.
6. On March 26, 2014, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P and SDA benefits.
7. The Claimant is a 55-year-old woman whose birth date is [REDACTED].
8. Claimant is 151 cm tall and weighs 148 pounds.
9. The Claimant is a high school graduate.
10. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
11. The Claimant has no relevant work experience in the past 15 years.
12. The Claimant alleges disability due to ovarian and uterus cancer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance programs. Under SSI, disability is defined as:

...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.

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. 20 CRR 416.994.

First, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A Claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

The Claimant's impairment failed to meet the listing for cancer of the uterus under section 13.23(A.) (Uterus) Cancers of the female genital tract because the objective medical evidence does not support a finding of carcinoma or sarcoma of the uterus that is invading adjoining organs, with metastases to or beyond the regional lymph nodes, or that is persistent or recurrent following initial antineoplastic therapy. A treating physician found no evidence of definite masses by rectovaginal examination and carcinoma antigen testing has been negative.

The Claimant's impairment failed to meet the listing for ovarian cancer under section 12.23(E.) (Ovaries) Cancers of the female genital tract because the objective medical evidence does not demonstrate that the Claimant continues to suffer from tumors that extend beyond the pelvis, metastases to or beyond the regional lymph nodes, or are recurrent following initial antineoplastic therapy. The objective medical evidence indicates that medical evidence does not support a finding of germ-cell tumors that are progressive or recurrent following initial antineoplastic therapy. A treating physician found no evidence of definite masses by rectovaginal examination and carcinoma antigen testing has been negative.

The medical evidence of the Claimant's condition does not give rise to a finding that she would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

Second, the Claimant's impairments are evaluated to determine whether there has been medical improvement as shown by a decrease in medical severity. 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).

The Claimant has a history of chemotherapy treatments in 2010, following a diagnosis by a treating physician for stage 1B poorly differentiated papillary serous cancer of the ovary. The Claimant underwent a radical hysterectomy and excision of 26 pelvic lymph nodes that were all found to be negative for evidence of metastatic disease.

A treating physician examined the Claimant on February 8, 2013, and found no definite masses during a rectovaginal examination.

The results of carcinoma antigen testing on July 8, 2013, and November 8, 2012, were negative. Computed tomography (CT) scans revealed no evidence of intra-thoracic, abdominal, or pelvic metastases on June 31, 2013, and November 20, 2012.

On October 21, 2013, a treating oncologist physician determined that the Claimant is capable of lifting 50 pounds frequently, standing for 6 hours, walking for 6 hours, as well

as grasping, reaching, pushing, pulling, and fine manipulation of objects with both hands, and operating foot controls.

On October 22, 2013, a treating general practice physician found the Claimant to be capable of lifting 20 pounds occasionally, lifting 10 pounds frequently, standing for 2 hours, and walking for 6 hours.

This Administrative Law Judge finds that there has been medical improvement as shown by a decrease in medical severity.

Third, the Claimant's medical improvement is evaluated to determine whether it is related to her ability to do work.

The Claimant was previously found to be unable to work any job as a result of her cancer. Following chemotherapy and radical hysterectomy, the Claimant's condition has improved, and the conditions that prevented her from performing work activities are no longer present.

This Administrative Law Judge finds that the Claimant's improvement is related to her ability to perform work.

Fourth, the Claimant's impairments are evaluated to determine whether current impairments result in a severely restrictive physical or mental impairment.

The Claimant is a 55-year-old woman that is 151 cm tall and weighs 148 pounds.

The Claimant has a history of chemotherapy treatments for cancer of the ovary. Since her treatment, a treating physician found no evidence of definite masses during a rectovaginal examination and carcinoma antigen tests have been negative. The Claimant testified that she continued to suffer from severe and chronic pain that is partially alleviated by taking ibuprofen up to three times daily.

This Administrative Law Judge finds that the chronic pain the Claimant suffers from could reasonably be expected to arise from the conditions the Claimant has been diagnosed with by her treating physician.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment that meets the severity and duration standard for Medical Assistance (MA) eligibility purposes.

Fifth, the Claimant's impairments are evaluated to determine whether you can still do work you have done in the past.

There was no evidence presented on the record showing any past relevant work experience during the previous 15 years. The Claimant is not disqualified from receiving Medical Assistance (MA) based on disability at this step.

Sixth, the Department has the burden to establish that the Claimant has the Residual Functional Capacity (RFC) for Substantial Gainful Activity.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor... 20 CFR 416.967.

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some work related tasks and that she is physically able to do medium work if demanded of her. The Claimant's activities of daily living do not appear to be very limited and she should be able to perform medium work even with her impairments for a period of 12 months. A treating oncologist physician found the Claimant capable of lifting 50 pounds frequently and sitting and standing for up to 6 hours. The Claimant alleges disability due to her ovarian cancer, and the medical opinion of her oncologist is therefore given more weight than the medical opinion of her family doctor.

Claimant is 55-years-old, a person of advanced age, over 55, with a high school education, and no work history. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform medium work, and Medical Assistance (MA) is denied using Vocational Rule 20 CFR 203.06 as a guide.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled not disabled for purposes of the Medical Assistance (MA).

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED REVERSED.



Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 14, 2014

Date Mailed: May 14, 2014

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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 60 days of the filing of the original request.

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.

KS/hj

cc:

