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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-010797
Issue No.: 4009
Case No.: [redacted]
Hearing Date: August 12, 2015
County: Kent (01)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on August 12, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included [redacted], supervisor, and [redacted], specialist.

ISSUE

The issue is whether MDHHS properly terminated Claimant's State Disability Assistance (SDA) eligibility for the reason that Claimant is not a disabled individual.

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 SDA benefit recipient.

2. Claimant's only basis for SDA eligibility was as a disabled individual.

3. On June 4, 2015, the Medical Review Team (MRT) determined that Claimant was not a disabled individual for purposes of SDA eligibility (see Exhibits 1-2).

4. On June 8, 2015, DHS terminated Claimant's eligibility for SDA benefits, effective July 2015, and mailed a Notice of Case Action informing Claimant of the termination.

5. On June 19, 2015, Claimant requested a hearing disputing the termination of SDA benefits.

6. Claimant alleged disability based on issues related to a partial loss of voice, back pain, and fatigue from previous anticancer treatment.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. MDHHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. MDHHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id*. To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (7/2014), p. 1.

A person is disabled for SDA purposes if he/she:
- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
  Id.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally 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. The definition of SDA disability is identical except that only a three month period of disability is required.

Substantial gainful activity means a person does the following: performs significant duties, does them for a reasonable length of time, and does a job normally done for pay or profit. BEM 260 (7/2014), p. 10. Significant duties are duties used to do a job or run a business. *Id*. They must also have a degree of economic value. *Id*. The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id*.

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. Claimant was previously certified by the DHS Medical Review Team (MRT) as unable to work for at least 90 days. At Claimant's most recent SDA benefit redetermination, DHS determined that Claimant was no longer disabled.

In evaluating a claim for ongoing disability benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). 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. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the 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).

The below-described evaluation process is applicable for clients that have not worked during a period of disability benefit eligibility. There was no evidence suggesting that Claimant received any wages since receiving disability benefits.

The first step in the analysis in determining the status of a claimant's disability 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 and no further analysis is required. This consideration requires a summary and analysis of presented medical documents.

Hospital documents (Exhibits 447-585) from an admission dated June 2, 2014, were presented. It was noted that Claimant presented with complaints of cough, weakness, and fatigue. It was noted that PET/CT testing demonstrated lesions consistent with lymphoma. A diagnosis of pericarditis was noted on June 9, 2014; chest tubes were inserted. It was noted that Claimant began chemotherapy on June 12, 2014. On June 13, 2014, it was noted that jugular vein thrombus caused neck swelling. Rare and atypical lymphocytes were discovered on June 16, 2014. It was noted that a thrombus developed in Claimant's PICC line on June 18, 2014. On June 21, 2014, Claimant became neutropenic. Claimant then developed mucositis on June 23, 2014. Claimant then developed sudden fatigue and fever on July 4, 2014; chest tubes were removed the same day. It was noted that Claimant's condition eventually improved following various medical interventions. A discharge date of July 8, 2014, was noted.

Various hematologist documents (Exhibits 57-224) from June 2014 through September 2014 were presented. Ongoing lymphoma and other treatments were indicated.

Hospital documents (Exhibits 399-444) from an admission dated July 22, 2014, were presented. It was noted that Claimant presented with complaints of severe abdominal pain. An exploratory laparotomy discovered a perforated gastric ulcer which had sealed itself off. It was noted that Claimant's abdomen was washed out and that Claimant received various antibiotics. Claimant's condition improved. A discharge date of July 30, 2014, was noted.

Various medical documents (Exhibits 390-398) dated August 5, 2014, August 11, 2014, August 12, 2014, August 18, 2014, August 21, 2014, and August 26, 2014, were presented. Ongoing lymphoma treatment was noted.

Hospital documents (Exhibits 230-235) from an admission dated August 11, 2014, were presented. It was noted that Claimant presented with complaints of abdominal pain. A recent surgery to repair ulcer rupture was noted. It was noted that Claimant improved after receiving Dilaudid. A discharge date of August 12, 2014, was noted.

Various medical documents (Exhibits 385-389) dated September 2, 2014, September 15, 2014, September 16, 2014, and September 23, 2014, were presented. Ongoing lymphoma treatment was noted.

Hematologist office visit notes (Exhibits 49-54) dated October 8, 2014, were presented. It was noted that Claimant received chemotherapy and reported body achiness. A complaint of voice hoarseness was noted.

Hematologist office visit notes (Exhibits 41-42; 1029-1031) dated October 8, 2014, were presented. It was noted that Claimant reported bone pain, especially in her arms, of 4-5/10. Abdominal pain was also noted. It was noted that Claimant received various medications.

Hospital physician office visit notes (Exhibits 375-383; 927-933) dated October 30, 2014, were presented. It was noted that a recent PET demonstrated complete resolution of abnormal areas from a PET scan dated June 11, 2014. A residual chest density or mass was noted; a plan of further radiation was noted.

Hematologist office visit notes (Exhibits 1026-1028) dated November 4, 2014, were presented. It was noted that Claimant had vocal cord paralysis.

Hospital documents (Exhibits 25-36; 325-374; 830-926) from an admission dated December 13, 2014, were presented. It was noted that Claimant presented with a complaint of chest pain and dyspnea. It was noted that Claimant fell on December 8, 2014. It was noted that Claimant was undergoing daily radiation therapy. It was noted that Claimant had a T9 compression fracture in June 2014; updated radiology demonstrated routine healing and minor degeneration. It was noted that a CT of Claimant's heart demonstrated a re-accumulation of small complicated pericardial effusion. Claimant received various medications throughout the hospitalization and

Claimant's condition improved. Noted discharge diagnoses included non-Hodgkin lymphoma and pericardial effusion. A discharge date of December 17, 2014, was noted.

Hospital documents (Exhibits 277-324; 753-829) from an admission dated December 19, 2014, were presented. It was noted that Claimant presented with complaints of a 102° fever, body pain, increased urinary frequency, and coughing (which led to an incident of vomiting). Diagnoses were noted to be complicated by ongoing lymphoma and pericardial effusion. It was noted that Claimant received various medications and her condition improved. Noted discharge diagnoses included fever secondary to radiotherapy and Dressler's syndrome. A discharge date of December 24, 2014, was noted.

Hospital documents (Exhibits 236-276; 936-1017) from an admission dated December 30, 2014, were presented. It was noted that Claimant presented with complaints of persistent chest pain, a 103.5 fever, and persistent cough. It was noted that Claimant received various medications to address her symptoms. Noted discharge diagnoses included sepsis, Stage IV diffuse large B-cell lymphoma, chest pain, T-9 compression, acute on chronic pain, labial ulceration, GERD, anxiety and depression, and port dysfunction. It was noted that Claimant regained her appetite and felt much improved. A discharge date of January 4, 2015, was noted.

Hospital documents (Exhibits 654-752) from an admission dated January 16, 2015, were presented. It was noted that Claimant presented with complaints of chest pain, dizziness, and dyspnea with exertion. It was noted that a CT of Claimant's chest, a 2D echocardiogram, and a bilateral Doppler were negative. It was noted that reported light-headedness could be caused by anxiety or low blood pressure. Noted discharge diagnoses included chest pain and dizziness. A discharge date of January 19, 2015, was noted.

Hospital documents (Exhibits 616-652) from an encounter dated February 8, 2015, were presented. It was noted that Claimant presented with complaints of generalized weakness. Claimant reported a fall after her legs "gave out" on her. It was noted that Claimant last had chemotherapy in October 2014; Claimant last radiation was noted to be on December 24, 2014. It was noted that Claimant sought narcotic medication though it was not provided. Treatment for a urinary tract infection was noted. Claimant received various medications and was discharged.

Hematologist office visit notes (Exhibits 1023-1025) dated February 10, 2015, were presented. It was noted that Claimant reported problems of weakness, low energy, difficulty with focusing, dizziness, and diarrhea. It was noted that Claimant was tearful and emotional. Physical examination findings were unremarkable. A plan for an endoscopy to address rectum bleeding was noted. A brain MRI was planned in response to complaints of dizziness.

Endoscopy center documents (Exhibits 596-597) dated February 12, 2015, were presented. It was noted that Claimant underwent an upper endoscopy; a normal examination was noted.

An MRI report of Claimant's brain (Exhibit 613) dated February 13, 2015, was presented. The radiology was performed in response to Claimant's complaint of headache. An impression of a negative MRI was noted.

An ultrasound report (Exhibit 610) dated February 19, 2015, of Claimant's kidneys was presented. No noted abnormalities were noted.

Physician notes (Exhibit 595; 599-609) dated March 9, 2015, were presented. It was noted that Claimant underwent an endoscopy. It was noted that Claimant's exam was normal, which was "great news!"

Hematologist office visit notes (Exhibits 1020-1022) dated April 10, 2015, were presented. It was noted that Claimant was "doing much better" though she continued to have occasional abdominal pain. Claimant's energy level and appetite were described as "good." Physical examination findings were unremarkable. It was noted that Claimant was "doing well' and there was no clinical evidence of disease recurrence.

Medical records verified ongoing treatment for lymphoma. Disability from lymphoma is covered by Listing 13.05 which reads as follows:

> ***13.05 Lymphoma (including mycosis fungoides, but excluding T-cell lymphoblastic lymphoma-13.06)***. (See 13.00K1 and 13.00K2c.)
> A. Non-Hodgkin lymphoma, as described in 1 or 2:
> 1. Aggressive lymphoma (including diffuse large B-cell lymphoma) persistent or recurrent following initial anticancer therapy.
> 2: Indolent lymphoma (including mycosis fungoides and follicular small cleaved cell) requiring initiation of more than on (single mode or multimodal) anticancer treatment regimen within a period of 12 consecutive months. Consider under a disability from at least the date of initiation of the treatment regimen that failed within 12 months.
> OR
> B. Hodgkin lymphoma with failure to achieve clinically complete remission, or recurrent lymphoma within 12 months of completing initial anticancer therapy.
> OR
> C. With bone marrow or stem cell transplantation. Consider under a disability until at least 12 months from the date of transplantation. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.
> OR
> D. Mantle cell lymphoma.

Presented evidence did not indicate aggressive or indolent lymphoma following treatment. Claimant's treatment history did not include a bone marrow or stem cell transplant. There was no evidence of Mantle cell lymphoma. It is found that Claimant does not meet the SSA listing for lymphoma and the analysis may proceed to the second and third steps.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). The analysis will begin with a summary or medical documents that were the basis of the finding that Claimant was a disabled individual.

The third step of the analysis considers medical improvement and its effect on the ability to perform SGA. Medical improvement is not related to the ability to work if there has been a decrease in the severity of the impairment(s) present at the time of the most recent favorable medical decision, but *no* increase in functional capacity to do basic work activities. 20 CFR 416.994(b)(1)(ii). If there has been any medical improvement, but it is not related to the ability to do work and none of the exceptions applies, benefits will be continued. *Id*. If medical improvement is related to the ability to do work, the process moves to step five.

Presumably, MDHHS initially determined Claimant to be disabled based on Claimant's initial lymphoma diagnosis and early anticancer treatment. Claimant's most recent treatment records verified that Claimant is in full remission. Claimant testimony indicated the same. Presented evidence also suggested that symptoms related to lymphoma and treatment have dramatically reduced during Claimant's period of remission. Presented evidence sufficiently verified medical improvement related to the ability to work. Accordingly, the analysis may proceed directly to the fifth step.

Step five of the analysis considers whether all the current impairments in combination are severe. 20 CFR 416.994(b)(5)(v). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe and the claimant will not be considered disabled. *Id*. If the impairments are considered severe, the analysis moves to step six. *Id*.

The impairments must significantly limit a person's basic work activities. 20 CFR 416.921 (a). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921 (b). Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment

- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting. (*Id*.)

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

Presented records verified a diagnosis and treatment of non-Hodgkins lymphoma (Stage 4). Treatment documents and Claimant testimony indicated a remission of at least 6 months. Claimant testified that she passed her first set of check-ups and body scans.

Claimant testified her left vocal cord was paralyzed by a cancerous tumor. Claimant testified that she could not talk for an extended period of time. During the hearing, Claimant's voice sounded hoarse though Claimant was not difficult to understand.

Claimant testified she fractured a back vertebra in December 2014 after falling down some stairs. Claimant testified that she needs physical therapy for her back and that she is in significant pain. Claimant testified that she regularly attends physical therapy in an attempt to avoid surgery. Claimant testified that she takes Percocet to control her pain. Claimant's testimony implies that she has ambulation, lifting/carrying, and concentration restrictions due to pain though she was unaware of any physician-stated limitations.

Generally, Claimant's testimony was credible, but also unverified. Back treatment was not presented beyond the initial injury. Physical therapy treatment was not verified. Updated radiology only noted a normally healing fracture.

Claimant testified she is tired a lot. Claimant thinks it may be a side effect to chemotherapy or radiation (last performed in 2014). It is plausible that anticancer treatment adversely affected Claimant months after the completion of treatment, but such a conclusion is speculative given presented documents. All presented documents verifying recent treatments tended to verify positive findings. All radiology was negative. Physician-stated restrictions were not presented. Claimant's most recent treatment

document not only did not note fatigue, but it stated that Claimant's energy level was good.

Based on presented records, Claimant failed to establish an ongoing severe impairment. Accordingly, it is found that MDHHS properly terminated Claimant's SDA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Claimant's SDA eligibility, effective July 2015, based on a determination that Claimant is not disabled. The actions taken by MDHHS are **AFFIRMED**.

Christian Gardocki
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **8/28/2015**

Date Mailed: **8/28/2015**

GC/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc: [redacted]