STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

RICK SNYDER
GOVERNOR

MIKE ZIMMER
DIRECTOR

Date Mailed: March 11, 2016
MAHS Docket No.: 16-000118
Agency No.:
Petitioner:

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on February 29, 2016, from Taylor, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by , medical contact worker.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Medical Assistance (MA) eligibility for the reason that Petitioner 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. Petitioner was an ongoing MA benefit recipient.

2. Petitioner's only basis for MA eligibility was as a disabled individual.

3. On , the Medical Review Team (MRT) determined that Petitioner was not a disabled individual for purposes of MA eligibility (see Exhibit 1, pp. 1-7).

4. On MDHHS terminated Petitioner's eligibility for MA benefits, effective February 2016, and mailed a Notice of Case Action (Exhibit 1, pp. 319-322) informing Petitioner of the termination.

5. On [redacted], Petitioner requested a hearing disputing the termination of MA benefits.

6. Petitioner alleged disability based on restrictions related to lumbar pain, headaches, carpal-tunnel syndrome (CTS), urinary incontinence, knee pain, and foot pain.

CONCLUSIONS OF LAW

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). MDHHS (formerly known as the Family Independence Agency) 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).

The Medicaid program comprise several sub-programs or categories. BEM 105 (January 2016), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MIChild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.* It was not disputed that Petitioner's only potential category for Medicaid eligibility would be as a disabled individual.

MDHHS policy lists circumstances which qualify clients as disabled individuals. Disability for purposes of MA benefits is established if one of the following circumstances applies:

- death [MA is established for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).
  (see BEM 260 (July 2015), p. 1)

There was no evidence that any of the above circumstances apply to Petitioner. If the client is not eligible for RSDI based on disability or blindness [or fails to meet any other qualifying circumstance for disability]… the Disability Determination Service (DDS) certifies disability and blindness. *Id.*, p. 3. A client not eligible for RSDI based on disability or blindness [or fails to meet any other qualifying circumstance for disability] must provide evidence of his disability or blindness. *Id.* BAM 815 contains the procedures to process the medical determination. *Id.*, p. 4.

Generally, state agencies such as MDHHS 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. A functionally identical definition of disability is found under MDHHS regulations. *Id.*, p. 10.

Substantial gainful activity means a person does the following (see *Id.*):

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit.

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.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

The analysis of Claimant's MA benefit eligibility depends on whether a client was an applicant or an ongoing recipient. 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. It was not disputed Petitioner was an ongoing MA recipient, based on a previous determination of disability.

In evaluating a claim for ongoing MA 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 presented evidence that Petitioner received any wages since receiving MA disability-related 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.

Physician office visit notes (Exhibit 1, pp. 65-67) dated [redacted], were presented. It was noted that Petitioner reported back pain, stiffness, and decreased range of motion. Petitioner complained of lower, upper, and mid-back pain. Petitioner reported pain radiating from her lower back to her buttocks, thighs, and legs. Associated symptoms included difficulty with sleep and ambulation. Petitioner reported bilateral wrist pain radiating into her forearms; pain was reported to be exacerbated by wrist flexion. Petitioner reported recurring migraine headaches. Assessments of hip contusion, herniated lumbar disc, and lumbar spine radiculopathy were noted. Norco, Relpax, Topiramate, and Soma were prescribed. A recommendation of back exercises and increased water intake was noted. Petitioner was restricted from heavy lifting or pushing/pulling of 25 pounds.

Various physician office visit notes (Exhibit 1, pp. 44-64) from February 2015 through June 2015 were presented. Ongoing complaints of lumbar pain, headaches and wrist pain were noted. Physical examination findings consistently noted normal gait, motor strength (5/5) in all muscles, and reported pain on movement.

Urologist office visit notes (Exhibit 1, pp. 73-78) dated [redacted], were presented. Petitioner complained of urinary leakage (reported to be a few drops). Petitioner reported laughing, sneezing, coughing and walking are activities that can cause leakage. Petitioner reported she wears 3 maxi pads. A urinalysis, urine culture were ordered. Urodynamic stress testing was planned.

Urologist office visit notes (Exhibit 1, p. 79) dated [redacted], were presented. An impression of abdominal strain was noted following urodynamic stress testing.

Urologist office visit notes (Exhibit 1, pp. 80-82) dated [redacted], were presented. Petitioner underwent a cystourethroscopy. A plan for a Macroplastique urethral bulking procedure was noted.

Physician office visit notes (Exhibit 1, pp. 41-43) dated [redacted], were presented. Ongoing complaints of lumbar pain, headaches and wrist pain were noted. Physical examination findings included normal gait, motor strength of 5/5 in all muscles, and reported pain on movement.

Physician office visit notes (Exhibit 1, pp. 38-40) dated [redacted], were presented. It was noted Petitioner reported ongoing radiating lumbar pain, headaches

and wrist pain. Physical examination findings included normal gait, motor strength 5/5 in all muscles, and reported pain on movement.

Physician office visit notes (Exhibit 1, pp. 35-37) dated [redacted], were presented. It was noted that Petitioner reported lumbar pain and stiffness. Petitioner reported pain radiated to her hips and legs. Petitioner reported difficulty with walking and sleeping due to pain. Petitioner reported increased pain throughout a week; the exacerbations reportedly lasted for several hours. Additional complaints of migraine headaches and CTS were noted. Assessments of herniated lumbar disc, lumbar spine radiculopathy, and CTS were noted. Physical examination findings included normal gait, motor strength of 5/5 in all muscles, and reported pain on movement. Norco, Soma, and Imitrex were noted as prescribed.

A Physical Residual Functional Capacity Assessment (Exhibit 1, pp. 8-15) dated [redacted], was presented. The assessment was completed by a SSA physician with no history with Petitioner. Petitioner was assessed as capable of occasional lifting/carrying of 20 pounds and frequent lifting/carrying of 10 pounds. Petitioner was capable of sitting about 6 hours in an 8 hour workday. Petitioner had unspecified upper extremity limitations in pushing/pulling. A question about Petitioner's standing abilities was unanswered. The basis for restrictions was an MRI from 2012, respiratory testing from 2013, and physician office visit notes from September 2015.

Petitioner testified she hurt her back after a slip and fall in 2011. Petitioner testified she utilizes a back brace. Petitioner testified she was diagnosed with a herniated disc at L4-L5. Petitioner testified her back pain is worse when she stoops, bends, or lifts. Petitioner testified she has not tried physical therapy. Petitioner testified she regularly performs home stretching exercises for her back. Petitioner testified she also takes medication for her pain (e.g. Norco and Motrin 800).

Petitioner testified CTS causes her left hand to go numb after use. Petitioner testified she has a cyst on right hand that prevents use of some of her fingers.

Petitioner testified her knees are "shot." Petitioner testimony speculated the cause may be ACL problems. Petitioner testified she last sought knee treatment in 2014. Petitioner testified she previously received some type of injections in her knees which helped to reduce pain. Petitioner also testified she has plantar fasciitis in right foot.

Petitioner testified she develops headaches approximately 3 times per week. Petitioner could not provide a medical explanation for her headaches. Petitioner testified she cannot afford her headache prescription without health insurance. Petitioner testified over-the-counter Excedrin does little to relieve her headache pain.

Petitioner testified she has recurring problems with urinary incontinence. Petitioner testified she performs Kegel exercises in lieu of medical treatment; Petitioner testified the exercises do little to reduce incontinence. Petitioner testified the planned

Macroplastique injection was never performed because it was not covered by her insurance.

Petitioner testimony estimated she can walk a mile before her knees would prevent further walking. Petitioner testimony estimated she could stand for 60 minutes before her knees and back would prevent further standing. Petitioner testified she could sit 30-45 minutes before needing an hour of standing before sitting another 30-45 minutes.

Petitioner testified she has no problems with bathing or showering. Petitioner testified she has to sit down to put on shoes or pants. Petitioner testified she can do laundry but she cannot carry it. Petitioner testified she can go shopping but she is unable to carry groceries.

Petitioner testified she spends most of her days taking care of her spouse who has Parkinson's syndrome. Petitioner expressed worry about the time when her husband will have to be lifted, because she is physically unable to do so.

A listing for joint dysfunction (Listing 1.02) was considered based on Petitioner's complaints of knee pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively. It was also not established that Petitioner had joint problems in each upper extremity causing an inability to perform fine and gross movements.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

It is found Petitioner failed to meet any SSA listings. Accordingly, the analysis may proceed to the second step.

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 original finding of disability was based on an MRT approval (see Exhibit 1, pp. 184-186) dated [redacted]. An administrative decision (Exhibit 1, 297-303) dated [redacted]4, reversing an attempted termination of MA eligibility, effective May 2014) was also presented. Medical records used in both decisions were presented.

An MRI report of Petitioner's lumbar (Exhibit 1, p. 195) dated [redacted], was presented. Mild bilateral foraminal narrowing was noted at L4-L5 and L5-S1. Mild facet hypertrophic changes were also noted.

A Medical Examination Report (Exhibit 1, pp. 192-194, 240-243) dated [redacted], was presented. The form was completed by a neurologist with an approximate 14 month history of treating Petitioner. Petitioner's physician listed diagnoses of L5 radiculopathy, herniated lumbar disc, and a hip contusion. An impression was given that Petitioner's condition was deteriorating. It was noted that Petitioner needed an assistive device for ambulation. Various restrictions were stated which were expected to last longer than 90 days. Petitioner's neurologist restricted Petitioner to less than 2 hours of walking and/or standing, per 8 hour workday. Petitioner was restricted to less than 6 hours of sitting per 8 hour workday. Petitioner was restricted to occasional lifting/carrying of 10 pounds, never 20 pounds or more. Petitioner's physician opined that Petitioner was restricted from performing the following repetitive actions: bilateral reaching, bilateral pushing/pulling, and bilateral operation of foot/leg controls. Petitioner's physician cited severe pain, back stiffness, and back spasms

A Medical Examination Report (Exhibit 1, pp. 106-108) dated [redacted], was presented. The form was completed by a neurologist with an approximate 2 year history of treating Petitioner. Petitioner's physician listed diagnoses of CTS and L5 radiculopathy. Physical examination findings included paraspinal tenderness and spasms. It was noted an MRI of Petitioner's lumbar from May 2013 was abnormal. An impression was given that Petitioner's condition was stable. It was noted that Petitioner can meet household needs. It was noted Petitioner did not require a walking assistance device. Various restrictions were stated, which were expected to last longer than 90 days. Petitioner's neurologist restricted Petitioner to less than 2 hours of walking and/or standing, per 8 hour workday. Petitioner was restricted to occasional lifting/carrying of 10 pounds, never 20 pounds or more. Petitioner's physician opined that Petitioner was restricted from performing the following repetitive actions: bilateral simple grasping, bilateral pushing/pulling, bilateral fine manipulation, and bilateral operation of foot/leg controls. Petitioner's physician cited pain, numbness, and weakness to justify stated restrictions. In response to a question asking for the stated basis for restrictions, Petitioner's physician did not respond.

An internal medicine examination report (Exhibit 1, pp. 90-97) dated [redacted], was presented. The report was noted as completed by a consultative physician. Petitioner reported complaints of asthma, CTS, plantar fasciitis, high cholesterol, and arthritis. Notable physical examination findings included the following: slight right-sided limp, reduced lumbar flexion motion, and reduced hip forward flexion motion. It was noted Petitioner wore a left wrist splint. Tandem walk and toe walk were noted as performed. It was noted Petitioner reported she could not heel walk due to plantar fasciitis. It was noted that Petitioner was able to perform all 23 listed work-related activities which included sitting, standing, lifting, carrying, stooping, bending, and reaching, though most were performed with pain. The examiner stated that clinical evidence supported a need for a cane.

Numerous physician office visit notes and medical records (Exhibit 1, pp. 110-138, 140-176, 197-222. 244-285) from 2012-2014 were presented. The records verified ongoing complaints and treatments for foot pain, back pain, asthma, cardiac testing, and cough.

MDHHS did not provide a particularly detailed analysis supporting a determination that Petitioner has medically improved. Their analysis did indicate recent physician encounters documented no loss of muscle strength, a normal gait, and normal neurological physical examination findings. These physical examination findings are not indicative of disability. It is important to note that the same findings occurred in physical examination findings across 2012 and 2013 (see Exhibit 1, pp. 145, 149, 198, 204…). If Petitioner had the same physical examination findings in 2012 and 2013, the same findings cannot justify medical improvement.

Generally, Petitioner's complaints of radiating back pain, CTS, and plantar fasciitis from 2012, 2013, and 2014, are the same complaints Petitioner expressed in 2015. There was no evidence of Petitioner undergoing medical procedures that improved her condition. There was no evidence of physician-stated restrictions which lessened since the time Petitioner was approved for MA benefits.

Based on presented evidence, it is found MDHHS failed to establish medical improvement. Accordingly, the disability analysis proceeds directly to the fourth step.

Step 4 of the analysis considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). If medical improvement related to the ability to work has not occurred and no exception applies, then benefits will continue. CFR 416.994(b). Step 4 of the disability analysis lists two sets of exceptions.

The first group of exceptions allow a finding that a claimant is not disabled even when medical improvement had not occurred. The exceptions are:

(i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work;

(ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;

(iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;

(iv) Substantial evidence demonstrates that any prior disability decision was in error.

20 CFR 416.994(b)(4)

If an exception from the first group of exception applies, then the claimant is deemed not disabled if it is established that the claimant can engage is substantial gainful activity. If no exception applies, then the claimant's disability is established.

The second group of exceptions allow a finding that a claimant is not disabled irrespective of whether medical improvement occurred. The exceptions are:

(i) A prior determination was fraudulently obtained;
(ii) The individual failed to cooperate;
(iii) The individual cannot be located;
(iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.
20 CFR 416.994(b)(4)

Many of Petitioner's allegations appeared to be poorly supported. One example was Petitioner's complaint of headaches; no medical explanation for Petitioner's complaint was apparent. Another example concerned Petitioner's complaint of knee pain; Petitioner testimony conceded she has not sought treatment for her knees since 2014. Petitioner testified she does not seek knee treatment from her primary care physician because she feels a neurologist is better suited to treat the problem.

Stated physician restrictions and Petitioner's complaints of pain appear to be disproportionate to Petitioner's spinal abnormalities indicated by radiology. Mild foraminal narrowing at 2 disk spaces (per an MRI from February 2012) is not particularly indicative of "severe" pain. It should be noted that restrictions from Petitioner's neurologist cited radiology from 2013, which was not presented. Thus, it is plausible that the more recent radiology verified a deterioration of Petitioner's lumbar spine.

Though previous physician stated restrictions and Petitioner's complaints of pain appear to be disproportionate to presented radiology, it cannot be stated that previous findings of disability were performed erroneously. It is found that Petitioner is still a disabled individual. Accordingly, it is found that MDHHS improperly terminated Petitioner's MA eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that MDHHS improperly terminated Petitioner's eligibility for MA benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

(1) reinstate Petitioner's MA eligibility, effective February 2016;
(2) evaluate Petitioner's eligibility subject to the finding that Petitioner is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in no less than twelve months from the date of this administrative decision, if Petitioner is found eligible for future benefits.

The actions taken by MDHHS are **REVERSED**.

CG/hw

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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

Petitioner