STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [redacted],

Claimant

Reg. No.: 2008-25292
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
May 20, 2009
Washtenaw County DHS (20)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Ypsilanti, Michigan on May 20, 2009. The Claimant appeared and testified. The Claimant was represented by [redacted] of [redacted], Inc. [redacted] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") 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. The Claimant submitted public assistance applications seeking MA-P benefits (and State Disability Assistance "SDA" benefits) on May 13, 2008, October 17, 2008, and April 13, 2009.

2. On May 28, 2008, the Claimant's request for SDA benefits was approved effective June 2008. (Exhibits 5, 10)

3. On this same date, May 28th, the Medical Review Team ("MRT") determined the Claimant not disabled finding the Claimant's impairment(s) lacked duration of 12 months. (Exhibit 5)

4. On June 5, 2008, the Department sent the Claimant an eligibility notice regarding the May 13, 2008 application, informing the Claimant that his MA-P benefits were denied. (Exhibit 12)

5. On July 2, 2008, the Department received the Claimant's Request for Hearing protesting the determination that he was not disabled. (Exhibit 11)

6. On July 25, 2008, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)

7. On December 12, 2008 (in response to the Claimant's October 17, 2008 application) the MRT determined the Claimant was not disabled finding the Claimant's capable of performing other work. (Exhibit 6)

8. On May 12, 2009 (in response to the Claimant's April 28, 2009 application) the MRT determined the Claimant was not disabled finding the impairment(s) did not prevent employment for 90 days or more for SDA purposes and finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 7)

9. The Claimant's SDA benefits have not been interrupted.

10. The Claimant's alleged physical disabling impairments are due to sarcoidosis disease with nerve compression, incontinence, and numbness/tingling in both hands.

11. At the time of hearing, the Claimant was 35 years old with a [redacted] birth date; was 6' 1" and weighed 230 pounds.

12. The Claimant graduated from high school with some college and a work history working as a care provider and supervisor.

13. The Claimant's impairment(s) has lasted, or is expected to last, continuously for a period of 12 months.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

Disability is defined as the 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(a) The person claiming a physical or mental disability has the burden to establish it 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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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) Similarly, conclusory statements by a

physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four.

20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6) An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in February 2008. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR

916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;

4. Use of judgment;

5. Responding appropriately to supervision, co-workers and usual work situations; and

6. Dealing with changes in a routine work setting.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to sarcoidosis disease with nerve compression, numbness/tingling in both hands, and incontinence.

On [redacted], the Claimant was admitted to the hospital after complaints of back pain. The MRI documented diffused cord signal abnormality form the cranial cervical junction to T2 consistent with cord contusion. Further, there was a "1 cm focal enhancing lesion at T2." As a result of the MRI, the Claimant was diagnosed with spinal cord contusion and spinal canal stenosis. The following day, the Claimant underwent a cervical laminectomy at C3, C4, and C5,

with a partial laminectomy at C6 without complication. The Claimant was discharged on [redacted] with a discharge diagnoses of severe spinal stenosis and central cord syndrome.

On [redacted], the Claimant was examined after complaints of increased pain. The neurosurgery resident believed the Claimant sustained damage to his central nervous system and that pain management would be beneficial.

On [redacted], the Claimant attended a follow-up appointment at a neurosurgery clinic. An MRI was performed and the Claimant was found to have central spinal cord dysfunction syndrome with a differential diagnosis of inflammatory process such as MS plaque or sarcoidosis versus spinal cord tumor.

On [redacted], the Claimant was evaluated at a pulmonary clinic. The physical examination documented significant weakness in the Claimant's upper and lower extremities bilaterally. A chest CT revealed multiple mediastinal and bilateral hilar lymphadenopathy with numerous tiny lung nodules and ground-glass opacities in the upper lobe bilaterally. Ultimately, the Claimant was diagnosed with spinal cord injury with likely neurologic sarcoidosis. Further tests were ordered.

On [redacted], the Claimant attended an evaluation at a neuroimmunology center. A brain MRI from [redacted], was reviewed which showed several punctate T2 signal abnormalties in the subcortical white matter without enhancement. The MRI scan of the spine documented a possible T9 lesion. The CT scan showed lymphadenopathy in the chest and abdomen likely due to sarcoidosis.

On [redacted], the Claimant was evaluated at a neuroimmunology center where the results of the [redacted] biopsies were reviewed which showed non-necrotizing granulomas in

multiple sections, consistent with sarcoidosis. The Claimant's extremities weakness/numbness was documented and he was diagnosed with neurosarcoidosis causing myelitis.

On [redacted], the Claimant attended a follow-up appointment at the pulmonary clinic after his diagnosis of neurologic sarcoidosis. The Claimant's symptoms were improving as a result of the predisone, although some side effects (weight gain and insomnia) were noted.

On [redacted], the Claimant was examined at a gstrology clinic regarding a cecal mass. It was unclear what the mass was therefore a colonscopy was ordered.

On [redacted], a colonscopy was performed which documented a likely benign tumor in the cecum.

On [redacted], a Medical Examination Report was completed by a neurologist. The current diagnosis was neurosarcoidosis causing myelitis. Although the Claimant was found to be in stable condition, he was physically limited in all areas and required a cane for ambulation.

On [redacted], the Claimant was treated for pain from his neurosarcoidosis.

On [redacted], the Claimant attended a follow-up appointment with the plumonary clinic regarding his neurologic sarcoidosis. The Claimant condition was documented as improved, noting he was able to walk with a cane as opposed to previously being wheelchair bound.

On [redacted], the Claimant was found to have plateaued with current treatment therefore Remicase infusions were begun.

On [redacted], the Claimant was evaluated after complaints of "floaters" in his visual field. After examination, the Claimant was found to have a very low-grade perifpheral uveitis in his right eye, likely related to his sarcoidosis.

On [redacted], the Claimant's was treated for left cheek swelling and mass in the perineum. Augmentin was prescribed to treat a parotitis and a perineal furuncle.

On [redacted], the Claimant presented to the emergency room after decreased functioning/weakness of his left upper extremity. An MRI of the brain and spine were recommended to evaluate for cord compression.

On [redacted], the Claimant attended a follow-up appointment at the pulmonary clinic after his recent emergency room visit. The Claimant's left-side weakness was documented as improved although the Claimant required a cane for ambulation. Continued Remicade infusions were recommended. Ultimately, the Claimant was diagnosed with neurosarcoidosis with left upper extremity weakness.

On [redacted], the Claimant was seen at the neuro-oncology clinic regarding his neurosarcoidosis involving his cervical spine. Mediastinal adenopathy was noted along with continual significant functional deficits.

On [redacted], the Claimant was assessed at the neuro-oncology clinic regarding his neurosarcoidosis involving his cervical spinal cord. The Claimant's condition was listed as fairly stable although complete recovery was "unrealistic" with an overall goal to prevent both clinical and radiological worsening.

On [redacted], a Medical Examination Report was completed by the Claimant's treating pulmonary physician. The current diagnoses were listed as neurosarcoidosis, pulmonary sarcoidosis, chronic back pain, and ocular sarcoidosis. The physical examination noted the Claimant's need for assistance for ambulation as well as in his activities of daily living. The Claimant's muscle spasms/weakness, gait abnormalities, and spinal cord injury/damage were documented. The Claimant's condition was listed as deteriorating and he was restricted

physically in all areas. In addition, the Claimant was found limited in his ability to sustain concentration, comprehend, and remember. In addition, the Claimant's impairments were documented to last his life noting the Claimant would not be able to work at past or other employment.

On [redacted], the Claimant attended a follow-up appointment at the neuro-oncology clinic regarding his cervical myelopathy related to his neurosarcoidosis. The examination found no clinical evidence of disease progression. Pool exercise was recommended.

On [redacted], the Claimant's treating physician (neurology/oncology) completed a Medical Needs Report on the Claimant's behalf. The current diagnoses were listed as cervical myelopathy related to neurosarcoidosis. The Claimant's fatigue, extremity weakness, and gait disturbance were documented and supported by MRI/CT reports. The Claimant was listed in stable condition but with full restrictions.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have physical limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts physical disabling impairment(s) due in part to back pain and arthritis. Listing 1.00 defines musculoskeletal system impairments.

Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (See above definition)

The medical records (as detailed above) document the Claimant's spinal cord contusion/swelling and severe spinal canal stenosis. Although the Claimant underwent a laminectomy at C3, C4, and C5 with a partial laminectomy at C6, continued pain management

treatment was/is required. Damage to the Claimant's central nervous system is documented as well as extremity weakness and the need for an assistive device for ambulation. Ultimately, it is found the Claimant's impairment(s) meet, or is the medical equivalent thereof, Listing 1.04. Accordingly, the Claimant is found disabled at Step 3 thus no further evaluation is required.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program purusant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impariment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the Medical Assistance ("MA-P") program, therefore the Claimant's is found disabled for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance and State Disability programs.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the May 13, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.

3. The Department shall supplement the Claimant any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in accordance department policy in June of 2011.

/s/
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 05/26/09

Date Mailed: 05/26/09

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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to the Circuit 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 recip date of the rehearing decision.

CMM/jlg

cc: [redacted]