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.: 2009-18423
Issue No.: 2009
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
June 18, 2009
Wayne County DHS (82)

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 Redford, Michigan on Thursday, June 18, 2009. The Claimant appeared, along with [redacted] and testified. The Claimant was represented by [redacted] of [redacted]. [redacted] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical records.

The additional records were received, reviewed, and entered in to the record as Exhibit record as Exhibit 6. This matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of 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. The Claimant submitted an application for public assistance seeking MA-P benefits on November 26, 2008. (Exhibit 1, p. 4)
2. On December 5, 2008, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 2, 3)
3. On December 10, 2008, the Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled.
4. On March 2, 2009, the Department received the Claimant's written Request for Hearing.
5. On April 24, 2009, the State Hearing Review Team ("SHRT") determined the Claimant was not disabled. (Exhibit 4)
6. The Claimant's alleged physical disabling impairment(s) are due to back pain, numbness, and radiculopathy.
7. The Claimant's alleged mental disabling impairments are due to a closed-head injury.
8. At the time of hearing, the Claimant was 48 years old with a [redacted] birth date; was 6'1" in height; and weighed 180 pounds.
9. The Claimant completed through the 11th grade and has a work history as a general laborer to include carpet installation.
10. The Claimant's impairment(s) 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 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 416.927

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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.;* 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the

severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. 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 thus is not ineligible for disability 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 non-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 back pain, numbness, high blood pressure and closed head injury. In support of his claim, medical records from as early as 2000 were submitted which document treatment for cellulitis of the right foot and deep vein thrombosis.

On [redacted], the Claimant was admitted to the hospital after striking a tree while intoxicated riding his bicycle with an approximate 10 minute period of unconsciousness. The CT scan of the brain showed slight increased cortical atrophy. The CT of the cervical spine demonstrated degenerative changes without fracture or mal-alignment. The thoracic spin x-ray revealed multitude of degenerative changes without mal-alignment or obvious fracture. Ultimately, the Claimant was found to have a closed-head injury without neurologic deficit.

On [redacted] an MRI of the cervical spine revealed multi-level degenerative change, most significant at C5-6 and C4-5. At C5-6 there was moderate degenerative change with mild/moderate left and mild right uncinate osteophyte and mild/moderate bilateral facet degenerative change. There was also severe canal stenosis with spinal cord impingement and flattening. The cord signal remained normal and there was moderate to severe left more than right foraminal stenosis. At the C4-5 level, there was mild central bulge with small uncinate

osteophyte and mild/moderate facet degenerative change. There was also moderate to severe canal stenosis with patent subarachnoid space. Minor left foraminal stenosis with patent right foramen was also documented.

On this same date, [redacted], an MRI of the lumbar spine revealed scoliosis with multi-level degenerative changes with findings resulting predominately in the lateral recess and foraminal stenosis.

On [redacted], a Medical Examination Report was completed by the Claimant's treating chiropractor. The Claimant's condition was deteriorating and he was limited to lift/carry of less than 10 pounds with standing and/or walk at about 2 hours during an 8 hour workday. The Claimant's decreased range of motion and increased muscle spasms were noted as well as mental limitations relating to comprehension, memory, sustained concentration, following simple directions, and social interaction.

On [redacted], the Claimant attended an initial psychological evaluation. The diagnostic impression was brain injuries, chronic pain syndrome, and adjustment disorder with mixed emotional features.

On [redacted], the Claimant's treating chiropractor completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were listed as chronic muscle spasms, multiple disc herniation, and radiculopathy. The Claimant's condition was deteriorating and he was limited to occasionally lifting/carrying of 10 pounds; standing and/or walking less than 2 hours during an 8 hour workday; and unable to perform reaching, pushing, or pulling with either upper extremity. The Claimant was able to perform simple grasping and fine manipulation but was unable to operate foot/leg controls. A psychiatric evaluation was recommended.

On [redacted], the Claimant was treated for his neck and back pain. Significant right-side weakness and numbness was documented as well as decreased sensation. Sensory changes related to alcohol neuropathy were noted as well as memory problems and cognition which were attributed to the closed-head injury versus dementia secondary to alcohol.

On [redacted], the Claimant was treated for a possible insect bite.

On [redacted] an MRI of the brain revealed scattered foci of increased T2 and FLAIR signal within the subcortical and deep white matter of both cerebral hemispheres likely representing some underlying small vessel disease; diffuse, mild, cortico-medullary brain volume loss slightly greater than expected for the Claimant's age; and probable sebaceous cyst involving the subcutaneous tissues of the right cheek.

On [redacted], the Claimant had an abnormal EEG which revealed a mild amount of slowing into the theta and delta range. The waveforms were considered non-epileptic. The findings indicated a mild degree of cerebral dysfunction consistent with metabolic/toxic or hypoxic encephalopathy also seen with neurodegenerative disorder and closed-head injury.

On this same date the Claimant underwent an EMG and nerve conduction velocity testing. The study revealed evidence of radiculopathy involving the right upper extremity; S1 radiculopathy involving the right lower extremity; and evidence of large sensory fiber neuropathy involving bilateral lower extremities.

On [redacted], the Claimant was examined for neck/back pain. The Claimant's memory problems and cognition were partly attributed to his closed-head injury noting that the MRI showed evidence of atrophy and chronic ischemic changes. The Claimant constant supervision with his activities of daily living was also noted.

On [redacted], a Disability Certificate was completed on behalf of the Claimant finding the Claimant disabled due to the motor vehicle accident until [redacted].

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 some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that 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 disabling impairments due to back pain/numbness, radiculopathy, and cognitive deficits as a result of a closed-head injury.

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:

1.04 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)

In this case, the objective medical evidence (MRI) documents multiple level degenerative changes with severe canal stenosis with spinal cord impingement and flattening, muscle spasms, decreased range of motion, and radiculopathy. In light of the foregoing, it is found that the Claimant's impairment(s) meets, or is the equivalent thereof, the intent and severity requirement of a listed impairment within 1.00, specifically, 1.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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 program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the November 26, 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 for any lost benefits the Claimant 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 February 2011 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 2/02/2010

Date Mailed: 2/02/2010

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]