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.: 2009-1858
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
April 13, 2009
Wayne County DHS (58)

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 from Detroit, Michigan on April 13, 2009. The Claimant appeared and testified. The Claimant was represented by attorney [redacted] from the [redacted]. [redacted] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of further medical evidence.

The additional medical information was received and reviewed. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes continued entitlement to Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefits.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. On November 9, 2006, the Claimant filed an application for public assistance seeking MA-P and SDA benefits.
2. On December 22, 2008, the Medical Review Team ("MRT") deferred the disability determination in order for the Claimant to attend a physiatrist examination. (Exhibit 1, p. 22)
3. On January 18, 2007, the Claimant was evaluated by a Physiatrist. (Exhibit 1, pp. 27 – 31)
4. On February 22, 2007, the MRT found the Claimant disabled finding him not capable of performing other work for MA-P purposes, thus automatically eligible for SDA benefits. (Exhibit 1, pp. 22, 23)
5. On January 28, 2008, the Medical Review Team ("MRT") deferred the determination of whether the Claimant's disability continued in order for the Claimant to attend an internist examination. (Exhibit 1, p. 1)
6. On August 14, 2008, the Claimant attended the department ordered evaluation. (Exhibit 1, pp. 3 – 5)
7. On September 24, 2008, the MRT found the Claimant's condition had medically improved thus he no longer entitled to continued MA-P benefits and SDA benefits. (Exhibit 1, pp. 1, 2)
8. On September 30, 2008, the Department sent the Claimant an Eligiblity Notice, informing the Claimant that he was found no longer disabled.

9. On October 8, 2008, the Department received the Claimant's written request for hearing protesting the determination that he was determined no longer disabled.

10. On October 23, 2008, the State Hearing Review Team ("SHRT") determined the Claimant was no longer disabled and was capable of performing light work. (Exhibit 2, pp. 1, 2)

11. The Claimant's alleged physical disabling impairments are due to chronic back pain, reheumatoid arthritis, gout, nerve damage in elbows, carpal tunnel, high blood pressure, and diabetes.

12. The Claimant asserts mental disabling impairment(s) due to depression and anxiety.

13. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.

14. At the time of hearing, the Claimant was 52 years old with an [redacted] birth date; was 5' 8 ½" and weighed 190 pounds.

15. The Claimant completed through the 8th grade with a work history as an automotive mechanic.

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)

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 In evaluating a claim for ongoing MA benefits, federal regulation 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 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 first step in the analysis in determining whether an individual's disability has ended 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 with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 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) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

> (i) Substantial evidence shows that the individual is the beneficiary of advances in medial 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.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

> (i) A prior determination was fraudulently obtained;

(ii) The individual failed to cooperated;
(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.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1. In this case, the Department was not clear regarding the grounds for the prior approval. As noted above, the Claimant asserts disabling impairment(s) due to chronic back pain, arthritis, carpal tunnel, gout, nerve damage, high blood pressure, diabetes, depression and anxiety.

The January 18, 2007 department order evaluation (and presumably the basis for the initial approval) found the Claimant with chronic low back strain, degenerative disc disease and/or herniated lumbar, and gouty arthritis. The Physiatrist opined that the Claimant had reached the maximum benefit from conservative treatment and that his conditions have rendered him incapable of participating in activities requiring repetitive or strenuous use of his back or extremities. "He basically needs light or sedentary activity with a sit/stand option and requiring only minimal walking."

On [redacted], the Claimant was admitted to the hospital and underwent a colonoscopy due to a necrotic liver mass and sigmoid colon mass. A CT guided biopsy of the liver mass was also performed on [redacted]. The final diagnosis was a benign colonic mucosa.

On [redacted], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were listed as diabetes, arthritis, gout, hypertension, and depression. The Claimant's musculoskeletal and mental examinations were abnormal. The Claimant was found able to occasionally lift/carry 10 pounds; stand and/or walk at least 2 hours in an 8-hour workday; sit about 6 hours during this same time frame; and able to perform repetitive reaching, pushing, and pulling with both hand/arms. The Claimant was unable to operative foot/leg controls with either lower extremity. The Claimant was not able to return to his usual occupation but was able to work provided no repetitive motions with hands and/or no continuous grasping.

On [redacted], the Claimant attended a department ordered evaluation. The physical examination found tenderness over the lower lumbar area with movement restricted to 60%. The right knee was swollen, stiff, crepitus, with knee and extension of 0 – 80; left knee flexion and extension was 0 – 90 degrees. The Claimant's gait was normal. The Claimant was found to suffer with hypertension, diabetes mellitus, chronic lumbar pain, right knee arthritis with recurrent effusion, history of recurrent gout, shoulder pain, hyperlipidemia, depression and anxiety.

On [redacted], the Claimant presented to the emergency room with complaints of back pain. The Claimant was diagnosed with sciatica (lumbar radiculopathy) and given Vicodin ES and instructed to follow-up with another physician.

On [redacted], degenerative changes were documented at the right and left acromioclavicular joints, more on the right with spur formation.

On [redacted], the Claimant underwent a nerve conduction study which showed an abnormal study. Electrodiagnostic evidence revealed marked bilateral sensorimotor median

mono-neuropathies at the wrists (consistent with carpal tunnel syndrome). There was also evidence of bilateral ulnar mono-neuropathies at the elbows.

On [redacted] and [redacted], the Claimant presented to a medical center for treatment. The Claimant's uric acid level was elevated.

On [redacted], the Claimant attended a follow-up appointment after having undergone an intra-articular steroid injection in his left shoulder after an EMG revealed a rotator cuff tendonitis. On examination, the Claimant's left shoulder had decreased and painful range of motion with external rotation about 60 degrees, versus the right shoulder at about 80 degrees. The cervical spine was without pain on range of motion. The Claimant's underwent a steroid injection in his right shoulder.

On [redacted], the Claimant was diagnosed with severe bilateral carpal tunnel syndrome.

On [redacted], the Claimant presented to the emergency room after dropping a screwdriver onto his left eye. The Claimant was found with a subconjunctival hemorrhage and instructed to return should any signs of pain or photophobia arise.

On [redacted], the Claimant was admitted to the hospital for an urethral dilation and urodynamic studies. The Claimant was positive for urinary tract symptoms with a history of benign prostatic hyperplasia and wide-caliber urethral stricture. A cystography was performed which showed a double rounded density along the bladder wall with a mildly elevated bladder base. The possibility of a bladder diverticulum was not excluded; urothelial carcinoma was negative.

On [redacted], an x-rays of the left and right wrists and hand documented degenerative changes and carpal-metacarpal joints with narrowing of the joint spaces.

On [redacted], the Claimant underwent surgery to release the transverse carpal ligament, neurolyse of the median nerve, and decompression of the carpal tunnel on his left wrist/hand. The Claimant tolerated the procedure well.

On [redacted], the Claimant presented to the emergency room after falling and tearing some sutures from his [redacted], surgery. Pain and swelling was documented as well as wound infection. The Claimant was admitted and given an IV vancomycin. The Claimant was discharged on [redacted] with the diagnosis of left hand infection status post carpal tunnel release.

On [redacted], a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in his ability to, carry out simple and/or detailed instructions; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances.

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.*

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)

In this case, the objective medical records document arthritis, gout, lumbar radiculopathy, carpal tunnel with degenerative changes, and right and left should pain with a decreased range of motion. In June of 2008, the Claimant was found able to perform repetitive reaching, pushing/pulling with both upper extremities, however in April of 2009, the Claimant underwent surgery on his left wrist. In addition, the Claimant's degenerative disc disease and lumbar pain is documented however the Claimant is able to ambulate without the need for assistive devices. Ultimately, the Claimant's back, shoulder, and wrist pain may meet a listing within 1.00 however, in consideration of the duration requirement along with the intent and severity requirement, it is found that the Claimant's objective medical records are insufficient to support a finding of disabled or not disabled under this listing.

The Claimant also asserts disability due to hypertension and diabetes. Listing 4.00 defines cardiovascular impairment in part, as follows:

> . . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular impairment results from one or more of four consequences of heart disease:
> (i) Chronic heart failure or ventricular dysfunction.
> (ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
> (iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
> (iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts.

Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

> A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or $pC0_2$ or bicarbonate levels); or

C. *Retinitis proliferans;* evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

In this case, the record is devoid of any end organ damage. Ultimately, the objective medical record is insufficient to meet the intent and severity requirement of a listed impairment within 4.00 and/or 9.00 therefore a determination of whether the Claimant's condition has medically improved is necessary.

In January of 2007, the Claimant was diagnosed with chronic low back strain, degenerative disc disease and/or herniated lumbar disc, and gouty arthritis. In August of 2008, in addition to the January 2007 diagnoses, the Claimant's hypertension and diabetes mellitus was documented. Additionally, the Claimant's range of motion (lumbar) was further restricted as was the Claimant's knee flexion and extension. Further, the Claimant was diagnosed with severe carpal tunnel syndrome which has resulted in at least one surgical intervention. The June 2008 restrictions documented in the Medical Examination Report are the equivalent to sedentary work, whereas in January of 2007, the Claimant was limited to light/sedentary. Based upon the submitted record, it is found that there has not been a medical improvement in the Claimant's condition compared with the prior medical records which resulted in a finding of disability nor is there any evidence that an exception found in 20 CFR 416.994(b)(3) and/or 20 CFR 416.994(b)(4) applies, therefore the Claimant's disability is found to continue for purposes of continued MA-P entitlement.

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 continued Medical Assistance ("MA-P") entitlement, therefore the Claimant's is found disabled for purposes of continued 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 continued 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 redetermination 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 July 2010 in accordance with department policy.

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

Date Signed: _06/30/09_____

Date Mailed: __06/30/09_____

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]