

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: 2009-21911  
Issue No: 4031, 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
July 8, 2009  
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon Claimant's request for a hearing filed on April 9, 2009. After due notice, a telephone hearing was held on April 2, 2009. The Claimant was present and testified. Erwa Said was present as an interpreter. Ajsa Bozhzraj, ES appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") 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. Claimant filed for SDA and MA on January 14, 2009.
2. Claimant is 5'6" tall and weighs 129 pounds.
3. Claimant is right handed.

4. Claimant is 47 years of age.
5. Claimant's impairments have been medically diagnosed as acute cervical radiculopathy and small central protrusion at C4-5.
6. Claimant's physical symptoms are neck pain (every day 8/10), low back pain (4/10), pain in left shoulder, past numbness in upper extremity and pain in left leg from the ankle to the knee, especially when cold.
7. Claimant's mental symptoms are some memory issues, crying spells, anxiety, confusion, sleep disturbances and fatigue.
8. Claimant takes the following prescriptions:
  - a) Loracet
  - b) Xanax
  - c) Diclosenac
  - d) Hydroclodam
  - e) Alttavolan
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a 9<sup>th</sup> grade education in [REDACTED].
11. Claimant is able to read and write English and perform basic math skills. Claimant's ability to converse fluently in English is limited.
12. Claimant last worked in September of 2007 doing home care service for a family. No lifting was required. Claimant prepared food, helped escort the patient to the bathroom and brought the patient her water and medication.
13. Claimant has prior employment experience as a home care worker, grocery store stocker & cleaner, Bell Hop, Delivery driver, and working in the produce department in supermarket. Claimant worked one month at the deli lifting up to 20 lbs. He was required to stand or walk all day. He also worked at a warehouse for one week in [REDACTED]. Claimant quit this job b/c he was unable to lift as required. Claimant also worked for six years as a Bell Hop driving people from and to airport, as well as lifting luggage and equipment for the band weighing up to 40-60 lbs.
14. Claimant testified to the following physical restrictions:
  - Sitting: pain after 45 min.
  - Standing: ?
  - Walking: 1-2 miles
  - Bend/stoop: Difficulty b/c of neck.
  - Lifting: can lift a gallon of milk with both arms, but not w/ one arm
  - Grip/grasp: Gets tired w/in one minute.

15. Claimant testified that he does not perform any household chores.
16. The Department found that Claimant was not disabled and denied Claimant's application on March 17, 2009.
17. Medical records examined are as follows:

██████████ MRI Report (Exhibit 2)

Degenerative disc changes and spondylosis seen at C4-C5 through C6-C7 resulting in mild degrees of stenosis through these levels. At C4-C5 there is probably also a relatively small central protrusion present which is best seen on the axial sequences. No abnormal signal character is seen within the cord at this time.

██████████ Internal Medicine Medical Exam Report (Exhibit 1, pp. 29-30)

HX of IMPAIRMENTS: Neck pain with radiculopathy, lower back pain, anxiety

PHYSICAL EXAM: Muscle spasm @ neck & lower back pain w/ tenderness @ L-S spine.

PHYSICAL LIMITATIONS: Lifting – 20 lbs. occasionally  
Standing/walk – less than 2 hrs/day  
Sitting – less than 6 hours/day  
No pushing or pulling with arms

MENTAL LIMITATIONS: Patient has depression and anxiety. Needs follow up with psychiatrist, but cannot afford the visit.

██████████ – Neurologist Exam (Exhibit 1, pp. 1-2)

HX: He had an MRI which showed spondylosis with spurring or disc at C5-C6 and C6-C7 with possible compromise of the left more than right nerve root. He had symptoms down the left arm.

PHYSICAL EXAMINATION: There is tenderness of the neck and pain in the shoulders, left more than right. There is give-way weakness of the proximal left shoulder and arm. He is moderate pain with muscle spasms appreciated. Reflexes are normal.

IMPRESSION: Acute cervical radiculopathy with weakness in the left shoulder. This may be proximal C4-C5 radiculopathy along with C6 radicular pain or left shoulder trauma.

██████████ MRI Cervical (Exhibit 1, p. 3)

C4-5: Mild spondylosis producing ventral cord abutment

C5-6: Spondylosis with superimposed lateral recess disc herniation producing ventral cord abutment and possible compromise of C6 nerve root, left greater than right.

C6-7: Spondylosis producing ventral cord abutment.

█ – ER visit (Exhibit 1, pp. 17-19)  
GERD (Gastroesophageal Reflux Disease)

#### 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). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *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).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

### **1. Current Substantial Gainful Activity**

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant last worked in [REDACTED]. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

### **2. Medically Determinable Impairment – 12 Months**

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 20 CFR 416.921(b)

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F2d 685 (6<sup>th</sup> Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence showing a diagnosis of acute cervical radiculopathy and small central protrusion at C4-5. Claimant testified to physical limitations in terms of sitting, and lifting. Claimant’s physicians have also placed him on physical limitations for lifting, standing and sitting. In addition, Claimant’s physician indicates that Claimant has depression and anxiety.

The medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

### 3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record supports findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant is found to be disabled.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 1.04 *Disorders of the Spine* was reviewed:

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

In this case, the Claimant had a MRI in [REDACTED] that showed spondylosis producing ventral cord abutment at C4-5 and a disc herniation at C5-6 producing ventral cord abutment and possible compromise of the C6 nerve root. A recent MRI performed on [REDACTED] also showed a C5-C6 disc, but this time without protrusion. There was some compromise to the left exit foramen due to spondylosis and a small central protrusion remains at C4-5. Claimant exhibits tenderness and muscle spasm in his neck and in [REDACTED] there was give-way weakness of the left shoulder and arm. In [REDACTED], Claimant was diagnosed by a neurologist with acute cervical radiculopathy and weakness in the left shoulder. Claimant's internist has also recently diagnosed radiculopathy. Claimant testified that his neck pain has worsened since [REDACTED]. Claimant is no

longer able to read or play cards because sitting and looking down causes excessive pain in his neck.

In this case, this Administrative Law Judge finds the Claimant presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed shows that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is not necessary. 20 CFR 416.905.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). A person is considered disabled for purposes of SDA if the person has a physical or mental impairment 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. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is sufficient evidence to support a finding that Claimant's impairment is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA program.

#### DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance program and the State Disability Program.



It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the 1/14/09 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in July 2010.

/s/

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Jeanne M. VanderHeide  
Administrative Law Judge  
for Jacqueline Hall-Keith

Date Signed: 08/29/09

Date Mailed: 09/01/09

**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 Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JV/dj

cc:

[REDACTED]