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.: 2009-12828
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
April 16, 2009
Macomb County DHS (12)

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 conducted from Clinton Township, Michigan on April 16, 2009. The Claimant appeared and testified. [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 forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found the Claimant not disabled and capable of performing light, unskilled work. This matter is now before the undersigned for a final decision.

ISSUES

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") and State Disability Assistance ("SDA") programs?

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 a public assistance application seeking MA-P and SDA benefits on November 6, 2008.
2. On November 25, 2008, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant's impairment(s) did not prevent employment of 90 days or more for SDA purposes, and finding the impairment(s) lacked duration of 12 months or more. (Exhibit 1, pp. 12, 13)
3. On December 10, 2008, the Department sent an eligiblity notice to the Claimant informing him that his MA-P and SDA benefits were denied. (Exhibit 1, p. 14)
4. On December 30, 2008, the Department received the Claimant's Request for Hearing protesting the denial of benefits. (Exhibit 3)
5. On March 3, 2009 and May 4, 2009, the SHRT found the Claimant not disabled. (Exhibit 4)
6. The Claimant's alleged disabling impairments are due to HIV, Bell's Palsy, left-side neuropathy, and neck pain.
7. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period of 12 months or longer.
8. At the time of hearing, the Claimant was 42 years old with a [redacted] birth date; was 6' 1" and weighed 195 pounds.
9. The Claimant is a high school graduate with some vocational training with a work history of commercial sign installation and graphic design.

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) 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) 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 this case, the Claimant is not involved in substantial, gainful activity and last worked in April of 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 based upon being HIV, Bell's Palsy, left-side neuropathy, and neck pain. On [redacted], the Claimant was treated at [redacted] for an onset of left-sided facial weakness and numbness. The physical examination revealed the Claimant's muscle strength of upper and lower extremities, bilaterally at 5/5. The Claimant's left-sided facial nerve paralysis with decreased ability to close his left eyelid was documented. The Claimant was diagnosed with acute facial nerve paralysis secondary to Bell's Palsy.

On [redacted], the Claimant returned to [redacted] after following up with an ears, nose, and throat physician. The Claimant wanted more testing to make sure he did not have a stroke as well as treatment or myalgias in the shoulders and legs. An x-ray, CT scan, and urinalysis were negative and his CBC, electrolytes, BUN and creatine, and cardiac markers were all normal. The Claimant's predisone was increased and he was prescribed Lortab. The Claimant was diagnosed with Bell's palsy and myalgias.

On [redacted], the Claimant presented to [redacted] emergency room with complaints of left arm tingling and numbness. Although the Claimant was on Acyclovir and steroids, his symptoms persisted. The physical examination was unremarkable and the Claimant was discharged in stable condition with acute peripheral neuropathy and Bell's palsy as the diagnoses.

On [redacted], the Claimant, who is left hand dominant, presented to [redacted] with complaints of weakness to the left upper and lower extremities. The Claimant asserted that his Bell's palsy symptoms had become worse. After examination, a decision was made to admit the Claimant for a CT and neurological evaluation. The emergency room discharge diagnoses were left side peripheral neuropathy and Bell's palsy.

On [redacted], the Claimant was admitted to [redacted] for treatment of left upper and lower extremity weakness and numbness. An MRI of the C spine and brain stem indicated a C4-C5 central disc herniation with right foraminal encroachment and possible small old infarct of the brain stem. The MRI of the brain was negative for masses but documented a possible small infarct in the brain stem. The Claimant was discharged on [redacted] with the diagnoses of left side Bell's palsy, left upper and lower extremity weakness and paresthesia.

On [redacted], the Claimant was admitted to [redacted] after complaints of fever, shortness of breath, diarrhea, and nausea. The Claimant was aggressively treated with intravenous fluids and on [redacted], was discharged with the diagnoses of viral gastroenteritis, hypernatremia, pyrexia, and anemia.

On [redacted], the Claimant was admitted to [redacted] after complaints of breathing difficulty, right chest pain, and nonproductive cough. A

CAT scan showed a large, loculated pleural effusion on the right. A cavitary lesion involving the right mid lung field measuring approximately 2.6 cm was found as well as scarring and atelectatic and infiltrative changes in the right lung base. A right lower lobe pneumonia was documented. During this hospitalization, a right thoracoscopy with complete decortications was performed. A PICC catheter was secured for infusion and with plans for removal possibly in [redacted]. Urinary tract infection was also treated. The Claimant was discharged on [redacted].

On [redacted], [redacted] sent the Claimant's blood specimen for testing at the [redacted] which resulted in an abnormal test. On [redacted], the Claimant's blood was tested at the [redacted] which confirmed the Claimant's HIV with a CD4 of 21.

On [redacted], the Claimant's physician completed a Medical Examination Report on behalf of the Claimant. The Claimant current diagnoses were listed as HIV/AIDS, urinary tract infection, MRSA bacteremia, acute renal failure, empyema, and anemia. The musculoskeletal examination noted the Claimant's gait disturbance and need for a cane, empyema, and neuropathy of lower extremities, radicular C4-C5 disc disease, and MRSA infection. The Claimant's CD4 count was 21 but he was listed in stable condition. The Claimant was limited to occasionally lifting 20 pounds; required a cane; stand and/or walk less than 2 hours in an 8-hour workday; and sit less than 6 hours during this same time period. The Claimant was on 1250 mg. Vancomycin IV.

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

limitations on his ability to perform basic work activities such as carrying, lifting, and squatting. 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 has alleged disabling physical impairments due to HIV, Bell Palsy, left-side neuropathy, and neck pain.

Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment.

The Claimant asserts impairments due to, in part, C4-C5 disc herniation. 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.*

The inability to perform fine and gross movements means an extreme loss of function of both upper extremities; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. *Id.* Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level. *Id.* 1.00B2a

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, 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)

As stated, the Claimant asserts impairments due in C4-C5 disc herniation however the objective medical record does not establish that the Claimant's musculoskeletal impairment meets or equals the intent or severity requirement of a listed impairment within Listing 1.00 thus he cannot be found disabled for purposes of the Medical Assistance program under this listing.

The record also documents the Claimant's treatment for HIV. Listing 14.08 defines human immunodeficiency virus infection. To meet this listing, an individual must provide supporting documentation of the diagnosis and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (for example, caused by *M. avium-intracellulare*, *M. kansasii*, or *M. tuberculosis*) at site other than the lungs, skin, or

cervical or hilar lymph nodes, or pulmonary tuberculosis resistant to treatment; or

2. Nocardiosis; or
3. *Salmonella* bacteremia, recurrent non-typhoid; or
4. Multiple or recurrent bacterial infections, including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment three or more times in a 12-month period.

OR

B. Fungal infections:

1. Aspergillosis; or
2. Candidiasis involving the esophagus, trachea, bronchi, or lungs, or at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or
3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or
4. Cryptococcosis, at a site other than the lungs (for example, cryptococcal meningitis); or
5. Histoplasmosis, at a site other than the lungs or lymph nodes; or
6. Mucormycosis; or
7. *Pneumocystis* pneumonia or extrapulmonary *Pneumocystis* infection.

OR

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or
2. Strongyloidiasis, extra-intestinal; or
3. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

OR

D. Viral infections:

1. *Cytomegalovirus* disease (documented as described in 14.00F3b(ii)) at a site other than the liver, spleen, or lymph nodes; or
2. Herpes simplex virus causing:
   a. Mucocutaneous infection (for example, oral, genital, perianal) lasting for 1 month or longer; or
   b. Infection at a site other than the skin or mucous membranes (for example, bronchitis, pneumonitis, esophagitis, or encephalitis); or
   c. Disseminated infection; or
3. Herpes zoster:
   a. Disseminated; or
   b. With multidermatomal eruptions that are resistant to treatment; or
4. Progressive multifocal leukoencephalopathy.

OR

E. Malignant neoplasms:

1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or
2. Kaposi's sarcoma with:
   a. Extensive oral lesions; or
   b. Involvement of the gastrointestinal tract, lungs, or other visceral organs; or
3. Lymphoma (for example, primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other non-Hodgkin's lymphoma, Hodgkin's disease); or
4. Squamous cell carcinoma of the anal canal or anal margin.

OR

F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3, above), with extensive fungating or ulcerating lesions not responding to treatment (for example, dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal *Candida*, condyloma caused by human *Papillomavirus*, genital ulcerative disease).

OR

G. HIV encephalopathy, characterized by cognitive or motor dysfunction that limits function and progresses.

OR

H. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (computed based on pounds, kilograms, or body mass index (BMI)) or other significant involuntary weight loss as described in 14.00F5, and in the absence of a concurrent illness that could explain the findings. With either:

1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or
2. Chronic weakness and documented fever greater than 38°C (100.4°F) for the majority of 1 month or longer.

OR

I. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.

OR

J. One or more of the following infections (other than described in A-I above). The infection(s) must either be resistant to treatment or require hospitalization or intravenous treatment three of more times in a 12-month period.

1. Sepsis; or
2. Meningitis; or
3. Pneumonia; or
4. Septic arthritis; or
5. Endocarditis; or
6. Sinusitis documented by appropriate medically acceptable imaging.

OR

K. Repeated (as defined in 14.00I3) manifestations of HIV infection, including those listed in 14.08A-J, but without the requisite findings for those listings (for example, carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08I), or other manifestations (for example, oral hairy leukoplakia, myositis, pancreatitis, hepatitis, peripheral neuropathy, glucose intolerance, muscle weakness, cognitive or other mental limitation) resulting in significant, documented symptoms or signs (for example, severe fatigue, fever, malaise, involuntary weight loss, pain, night sweats, nausea, vomiting, headaches, or insomnia) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

In this case, the Claimant's objective medical records confirmed the Claimant has HIV with a CD4 of 21. Over the last 12 months, the Claimant was treated for several opportunistic infections. A CD4 count under 200 is a later stage of HIV infection. The Claimant's impairment will last continuously for a period of 12-months or longer. Ultimately, the Claimant's objective medical documentation meet the intent and severity requirement of Listing 14.08 therefore the Claimant is found disabled at Step 3 with no further analysis 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. PEM 261, p. 1 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. PEM 261, pp 1 – 2

In this case, the Claimant was found disabled under the SSI disability standards therefore is found that the Claimant is disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the November 6, 2008 application to determine if all other non-medical criteria are met and inform the Claimant 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 with department policy in June 2010.

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

Date Signed: 05/11/09

Date Mailed: _05/13/09_____

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]