

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2009-30632
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: October 14, 2009
Wayne County DHS (18)

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 telephone hearing was held on Wednesday, October 14, 2009. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department.

During the hearing the Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was received, reviewed, and entered as Exhibit 4. 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 of the Medical Assistance ("MA-P") benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based upon 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 February 17, 2009.
2. On May 22, 2009, the Medical Review Team ("MRT") determined that the Claimant was not disabled for purposes of the MA-P benefit program. (Exhibit 1, pp. 3, 4)
3. On May 29, 2009, the Department notified the Claimant of the MRT determination. (Exhibit 1, p. 2)

4. On June 25, 2009, the Department received the Claimant's timely written request for hearing. (Exhibit 1, p. 1)
5. On August 11, 2009, the State Hearing Review Team ("SHRT") determined that the Claimant was not disabled. (Exhibit 3)
6. The Claimant's alleged physical disabling impairments are due to back/neck pain, high blood pressure, and pulmonary emboli.
7. The Claimant's alleged mental disabling impairment is due to bipolar disorder.
8. At the time of hearing, the Claimant was 45 years old with a [REDACTED] birth date; was 5'11" in height; and weighed 186 pounds.
9. The Claimant is a high school graduate with a work history working in the automotive industry.
10. The Claimant's impairments 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"), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

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-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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) 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) Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b) Substantial gainful activity is work

activity that is both substantial and gainful. 20 CFR 416.972 Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a) Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b)

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 is made. 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. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for 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 on due to back/neck pain, high blood pressure, pulmonary emboli, and bipolar disorder. In support of his claim, some older records from 2007 were submitted which document treatment for acute concussion, acute cervical, thoracic, and lumbar muscle strain, and right ankle sprain.

On [REDACTED], an MRI of the cervical spine revealed muscle spasm, C2-3, C3-4 posterior annular disc bulge; left uncovertebral arthrosis with left preforaminal osteophyte formation; left neural foraminal narrowing with probable impingement of the exiting left C3 nerve root at C2-3; questionable impingement of the exiting left C4 nerve root at C3-4; C4-5 posterior non-compressive annual disc bulge; C5-6 posterior broad-based disc protrusion possibly impinging the crossing C6 nerve roots; borderline low normal size of central canal; degenerative disc disease; C6-7 posterior broad-based disc protrusion with possible neural impingement of the exiting nerve roots; and C7-T1 non-compressive neural foraminal narrowing.

On this same date, the MRI of the lumbar spine revealed multiple thoracic and lumbar anterior endplate spondylosis; T12-L1 posterior non-compressive annular disc bulge; L1-2 disc bulge with possible impingement of the left L2 nerve root; degenerative disc disease; L2-3 disc bulge; L3-4 disc protrusion with possible impingement of the left L5 nerve root and questionable impingement of the exiting left L4 nerve root, mild central stenosis and facet arthrosis; L5-S1 non-compressive disc bulge; and chronic minimal anterior wedging at T12.

An x-ray of the lumbar spine on [REDACTED] revealed degenerative changes.

On this same date, [REDACTED], the Claimant's physician stated that the Claimant has a herniated disc at L4-5 producing radiculopathy. The Claimant would likely require surgical intervention.

On [REDACTED], an electromyography revealed L4-5 radiculopathy.

On [REDACTED], the Claimant presented to the hospital with left leg swelling. The Claimant was diagnosed with pulmonary embolism and deep vein thrombosis ("DVT") of the left leg.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were closed head injury, cervical and lumbar sprain, possible disc herniation, and cervical/lumbar radiculopathy. The Claimant was limited to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday; able to perform simple grasping and fine manipulation with his upper extremities but unable to push, pull, or reach; and unable to operate foot/leg controls.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were cervical L5 radiculopathy, C5-6/C6-7 disc protrusion, L3-4/L4-5 disc protrusion, and closed head injury. The Claimant was limited to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday; sit less than 6 hours during this same time frame; able to perform simple grasping and fine manipulation with his upper extremities but unable to reach, push, or pull; and unable to operate foot/leg controls.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed (in part) neck pain that radiates to right shoulder with numbness of the hands and arms, constant back pain that radiates to the legs with numbness bilaterally, cervical/lumbar spine radiculopathy with pain and dysfunction, C5-6, C6-7 disc protrusion, L3-4, L4-5 disc protrusion, and cervical cephalgia. The physical examination revealed increased pain. The Claimant was limited to the occasionally lifting/carrying of less than 10 pounds; standing and/or

walking at least 2 hours during an 8 hour workday; sitting less than 6 hours during this same time frame; able to perform simple grasping and fine manipulation with the upper extremities but unable to reach, push, or pull; and unable to operate foot/leg controls.

On [REDACTED], the Claimant attended a consultative mental status evaluation. The Claimant was not presently evidencing any symptoms of depression, anxiety or other mental illness that would prevent him from appropriately interacting in a social or work environment.

On this same date, the Claimant attended a consultative physical examination. The Internist opined that the Claimant is not able to work an 8 hour workday in either a seated or standing position. The Claimant has limitations in walking and reduced range of motion of the upper extremities to include the ability to lift, carry, and push. The diagnoses were chronic neck and back pain with positive (EMG and MRI) cervical and lumbar radiculopathy, and a history of DVT and subsequent pulmonary emboli. A Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were chronic, persistent back and neck pain and pulmonary emboli. The Claimant's condition was deteriorating and he was found able to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday; sit less than 6 hours; able to perform simple grasping and fine manipulation but unable to reach, push, or pull; and unable to operate foot/leg controls.

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 objective medical evidence establishing that he does have physical and mental limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts disabling impairments due to neck/back/knee pain, blurred vision, chest pain, deep vein thrombosis, chronic venous insufficiency, hernia, migraines, obesity, and depression.

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, 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 medical evidence which include MRIs, x-rays, and an electromyography, document muscle spasms, degenerative disc disease, multiple disc herniations with probable nerve root impingements, radiculopathy, pain, numbness, and dysfunction of the legs. The evidence also shows that the Claimant's condition is deteriorating placing him at a less than sedentary activity level. Ultimately, the Claimant's impairment(s) meet or is the medical equivalent thereof a listed impairment within 1.00, specifically 1.04 as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the February 17, 2009 application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement for any lost benefits that 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 November 2011 in accordance with department policy.

Colleen M. Mamelka

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

2009-30632/CMM

Date Signed: 10/07/2010

Date Mailed: 10/07/2010

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 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.

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