

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.: 2009-8241

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

May 20, 2009

Washtenaw County DHS (20)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Ypsilanti, Michigan on Wednesday, May 20, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] and [REDACTED] appeared on behalf of the Department.

During the hearing, the Claimant waived the time period for the issuance of this decision to allow for the submission of additional medical documentation. The additional records were received, reviewed, and entered as Exhibit 4 and Claimant Exhibit A. 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 Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit 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 State Disability Assistance (“SDA”) benefits on July 24, 2008.
2. On October 17, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 1, 2)
3. On October 21, 2008, the Department sent an eligibility notice informing the Claimant that he was found not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, p. 4)
4. On November 3, 2008, the Department received the Claimant’s timely written Request for Hearing protesting the determination that he was not disabled. (Exhibit 2)
5. On January 12, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 3)
6. The Claimant’s alleged physical disabling impairments are due to degenerative disc disease, back/neck pain, sleep disorder and ulcer.
7. The Claimant’s alleged mental disabling impairment(s) are due to anxiety and depression.
8. At the time of hearing, the Claimant was 48 years old with a [REDACTED] birth date; was 6’ 1” in height; and weighed 205 pounds.
9. The Claimant obtained his General Educational Development (“GED”) and has some college.
10. The Claimant’s employment history as a home health aide (current), service advisor, physical therapy assistant, in car restoration, and as a carpet cleaner.

11. The Claimant's impairment(s) has lasted, or is expected to last continuously for a period of 12 months.

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 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-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 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)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6) 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 the record presented, the Claimant is currently working two to three hours a week caring for a veteran. The job requires the Claimant to assist the individual with his activities of daily living such as shaving and feeding. The Claimant testified that he may be able to make some sort of living if he could find 5 more individuals to care for however his impairment(s) needs to be accommodated. Ultimately, it is found that the Claimant is not currently involved in substantial gainful activity therefore 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 non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to degenerative disc disease, back/neck pain, ulcer, depression, and anxiety. In support of his claim, some older medical records/tests were submitted which document the Claimant's disc herniation with neural foraminal narrowing; mild-to-moderate central canal stenosis and thecal sac compression at L4-5 and L2-L3; mild lower lumbar facet arthropathy; and ulcer.

On [REDACTED], a Mental Residual Functional Capacity Assessment and a Psychiatric/Psychological Examination Report were completed on behalf of the Claimant. The Claimant was found to be markedly limited in his ability to maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; and sustain an ordinary routine without supervision; complete a normal workday/week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The Claimant was moderately limited in 11 of the 20 factors. The Claimant was diagnosed with anxiety disorder and mood disorder (due to his medical condition). The Global Assessment Functioning ("GAF") was 51.

On [REDACTED], a Medical Needs form was completed on behalf of the Claimant. The current diagnosis was chronic low back pain with mild right L4-L5 foraminal stenosis. The Claimant was found unable to work for 2 months. A Medical Examination Report was also completed. The Claimant was found temporarily disabled and restricted to the equivalence of a less than sedentary work.

On [REDACTED], the Claimant sought treatment for chronic low back pain. The Claimant had bilateral L3, L4, and L5 medial branches blocked [REDACTED] which

severely worsened his pain with new symptoms of spasms in the legs with pain on both sides of the back radiating into the legs and groin. As a result of the examination, a MRI was scheduled.

On [REDACTED], an MRI of the lumbar spine was performed on the Claimant. The results were compared with a prior MRI from 2004. The test revealed multi-level disc and facet degenerative disc disease with interval worsening of the degenerative disease at L3-4 and L5-S1 levels.

On [REDACTED], the Claimant attended a follow-up appointment for his lumbar spinal stenosis. The physical examination revealed 4/5 strength in the Claimant's quadriceps, hamstrings, tibialis anterior, and gastrocnemius bilaterally, which were limited by pain. The Claimant does "not tolerate any significant straight leg raise" and was able to ambulate with a cane. The Claimant's methadone prescription was increased to "facilitate full-time employment" which would gradually be tapered down.

On [REDACTED], the Claimant attended a follow-up appointment for a 1-week pill count and serum methadone level. The count/level were appropriate.

On [REDACTED], the Claimant attended a follow-up appointment. The Claimant's medication compliance was documented as well as a note that the Claimant had "made significant progress in finding employment."

On [REDACTED], the Claimant attended a follow-up appointment for treatment of his chronic back pain. The Claimant was found to have lumbar spinal stenosis with chronic pain and a history of rectal bleeding. The Claimant reportedly had a 60% improvement in his back pain due to prescribed treatment and was able to work on average "at least one day a week."

On [REDACTED], the Claimant attended a psychological examination. The Claimant was found to have a mood disorder (due to his medical condition) and anxiety. The

Global Assessment Functioning (“GAF”) was 50. A Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in his ability to remember locations and work-like procedures; understand, remember, and carry out detailed instructions, maintain attention and concentration for extended periods; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; and travel in unfamiliar places or use public transportation. The Claimant was moderately limited in 12 of the 20 factors.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were degenerative arthritis and disc disease. The physical examination found the Claimant’s gait slow and hesitant and his need for a cane for ambulation was noted. The Claimant’s condition was deteriorating and he was found able to occasionally lift/carry 10 pounds, stand and/or walks less than 2 hours in an 8-hour work day; sit less than 6 hours during this same time period; and able to perform repetitive actions with his upper extremities but not his lower extremities.

On [REDACTED], a physician authored a letter regarding the Claimant. The letter provided that in 2008, after a nerve block, the Claimant’s pain progressed therefore he was placed on methadone, lyrica, and flexiril. A MRI (see above) showed worsening of the degenerative disc disease. In addition, the Claimant had a bleeding ulcer and rectal bleeding. The biopsy results were pending.

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 objective medical evidence establishing that he does have physical 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, or are expected to last, 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 physical disabling impairment(s) due degenerative disc disease, back/neck pain, sleep disorder, ulcer, anxiety 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 the 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)

The medical records document the Claimant's chronic low back pain. The Claimant has multi-level disc and facet degenerative disc disease which, based on the MRI reports, has worsened over time, and lumbar spinal stenosis with pain which radiates to the Claimant's legs and groin. The pain/spasms are caused (in part) by the spinal stenosis. The Claimant requires a cane for ambulation. Further, the Claimant's treating physicians have imposed less than sedentary work restrictions. After review of the objective evidence, it is found that the Claimant's impairment(s) meets, or is the equivalent thereof, a listed impairment within Listing 1.00, specifically, 1.04. Accordingly, 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 pursuant 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 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.

In this case, the Claimant is found disabled for purposes of the Medical Assistance ("MA-P") program, therefore the Claimant's is found disabled for purposes of 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 the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the July 24, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.
3. The Department shall supplement for any lost benefits 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 April 2011 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 3/04/2010

Date Mailed: 3/04/2010

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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