

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.: 2009-876
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
January 29, 2009
Ottawa County DHS (70)

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 conducted from [REDACTED] on January 29, 2009. The Claimant appeared and testified, along with [REDACTED]. Dan Boter appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of further medical evidence.

The additional medical information was received, reviewed, and forwarded to the State Hearing Review Team for consideration. On April 22, 2009, the SHRT determined the Claimant not disabled finding the Claimant capable of performing other work. This matter is now before the undersigned for a final decision.

ISSUE

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

FINDINGS OF FACT

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

1. On November 29, 2006, the Medical Review Team (“MRT”) found the Claimant’s impairment(s) met/equaled Listing 1.04 thus found him disabled for MA-P and SDA purposes. (Exhibit 1, pp. 22, 23)
2. On July 25, 2007, the Claimant’s disability was found to continue. (Exhibit 1, pp. 87, 88)
3. In October of 2008, the Claimant was scheduled for a medical review to determined continued eligibility for purposes of the MA-P and SDA programs.
4. On July 22, 2008, the Medical Review Team (“MRT”) deferred a disability determination in order for an internist examination be completed. (Exhibit 1, pp. 104-05)
5. On August 20, 2008, the Claimant was evaluated at [REDACTED] (Exhibit 1, pp. 106 – 109)
6. On September 12, 2008, the Medical Review Team (“MRT”) determined the Claimant no longer met the disability criteria. (Exhibit 1, pp. 110-11)
7. On September 16, 2007, the Department sent the Claimant negative action notices stating that his MA-P and SDA benefits would cancel effective September 30, 2008. (Exhibit 1, p. 1)
8. On September 29, 2008, the Department received the Claimant’s written hearing request protesting the determination that the Claimant was found no longer disabled.
9. On October 20, 2008 and April 22, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled and capable of performing light work. (Exhibit 1, pp. 112-13)

10. The Claimant's alleged physical disabling impairments are due to neck, right arm and left leg pain.
11. The Claimant's alleged mental disabling impairments are due to depression.
12. The Claimant's impairment(s) will last or have lasted for a period of 12 months or longer.
13. At the time of hearing, the Claimant was 50 years old with a [REDACTED] birth date; was 5' 6" and weighed 120 pounds.
14. The Claimant completed through the 9th grade and his work history as a painter and general laborer.
15. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period fo 12-months or more.

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-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 416.929(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 applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c) (3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c) (2)

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual

signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b) (5) (i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

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

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b) (5) (iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b) (5) (iii), (v) If severe, an assessment of an individual's residual functional capacity to

perform past work is made. 20 CFR 416.994(b) (5) (vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

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

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medical or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

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

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

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

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1. In this case, the Claimant asserts physical disabling impairment(s) due to neck, right arm, and left leg pain. 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:

- 1.02 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 as defined in 1.00B2c

* * *

- 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:
- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
 - B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
 - C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and

weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

By way of background, the Claimant was injured in 2005, when a co-worker “threw” him against a wall. On November 7, 2006, an MRI of the Claimant’s cervical spine was performed at [REDACTED]. The MRI revealed a multilevel finding to include several levels of neural foraminal encroachment and focal disc protrusions. As noted in the Findings of Fact, on November 29, 2006, the MRT found the Claimant disabled based on meeting Listing 1.04.

On February 1, 2007, the Claimant was examined at [REDACTED]. The examination found the Claimant’s left upper and lower right extremity with reduced muscle strengths. Movement and extensions were noted as painful with surgery recommended. The Claimant was prescribed [REDACTED] and [REDACTED] for pain.

On March 5, 2007, the Claimant began physical therapy. The Claimant attended six sessions and did not return. As a result, the Claimant was discharged from therapy. On April 7, 2007, the Claimant was examined at the [REDACTED]. The physical examination found the Claimant with some tenderness and spasm into the paravertebral muscles but with full range of motion. Spurlings maneuver was negative for arm pain and positive for neck pain. Ultimately, the Claimant was found to have chronic neck pain with radicular symptoms and epidural injections were discussed.

On May 11, 2007, the Claimant was examined at the [REDACTED]. A physical therapist determined the Claimant’s rehabilitation potential as “fair to poor.”

On May 16, 2007, the Claimant’s treating physician diagnosed the Claimant with spinal stenosis, degenerative disc disease. Tenderness, muscle spasms and weakness, impaired sleep, and reduced grip strength was noted. Additionally, the cervical range of motion was 25% for extension, left rotation, left lateral bending, flexion, right rotation, and right lateral bending. The

Claimant's pain was noted as constant. The Claimant was found to be able to occasionally lift 10 pounds but was rarely able to move his neck (e.g. look down, turn head left or right, etc.) Further, the Claimant was found able to twist, stoop, crouch, and/or climb stairs/ladders. The Claimant's right arm/hand/fingers were unable to grasp, manipulate, and/or reach.

As noted above, the Claimant's disability was found to continue on July 25, 2007. Since that date, no medical records were submitted from the Claimant's treating physician relating to the Claimant's pain. On August 20, 2008, the Claimant attended a department (MRT) ordered consultative examination. The examination did not reveal any evidence of crepitation or radicular symptoms. The Claimant's long-term prognosis was found to be good.

On November 17, 2008, an MRI of the Claimant's cervical spine was performed and compared to a MRI from November of 2006. The test revealed disc osteophyte complex with uncovertebral spurring on the left at C3-4 which causes left neural foraminal encroachment and left lateral recess stenosis. This condition had progressed from the prior study. No areas of central canal stenosis were noted and previous disc protrusions at C6-7 and C7-T1 were resolved.

On January 7, 2009, the Claimant presented to [REDACTED] with complaints of neck, hip, and leg pain. The physical examination documented pain flexion with no restrictions in flexion and extension. Tenderness over the lumbar vertebra, sacral vertebra and sacroiliac region and left buttock was noted. [REDACTED] was prescribed and physical therapy was discussed.

On January 30, 2009, the Claimant was examined at the [REDACTED] facility. The physical examination documented no decrease range of motion but noted the movements were painful. The sitting straight leg on the left side was positive and crossed

straight leg raise was negative. The Claimant was diagnosed with back pain, degeneration of cervical intervertebral disc and anxiety.

On February 9, 2009, the Claimant attended a consultative examination regarding his chronic pain and numbness. The Claimant's MRI from February 3rd was reviewed and found to reveal degenerative disc changes at L5-S1 with a small central disc protrusion. There was moderate bilateral facet hypertrophy causing mild to moderate bilateral neural foraminal encroachment with minimal broad based disc bulging and facet hypertrophy causing mild bilateral neural foraminal encroachment at L4-5. At L3-4, some mild bilateral facet hypertrophy and some disc bulging and facet hypertrophy at L2-3. The Claimant had full range of motion (albeit with some pain) in his cervical spine and lumbar spine and in his upper and lower extremities bilaterally. Straight leg raise and Patrick's maneuver were negative. Ultimately, the Claimant was found to have chronic neck pain with evidence of degenerative disc disease, facet hypertrophy, and neural foraminal stenosis. In addition, chronic low back pain with evidence of degenerative disc disease and facet hypertrophy with intermittent right upper extremity pain and numbness with no neurological deficits. Myofascial pain through the right upper trapezius with increase pain in the left lower extremity was also documented.

Based upon the submitted medical documentation, the Claimant's impairment(s) may meet Listing 1.04, or the equivalent thereof, however the record is insufficient to support such a finding, therefore, a determination of whether the Claimant's condition has medically improved is necessary.

As detailed above, on May 16, 2007, the Claimant's treating physician diagnosed the Claimant with spinal stenosis and degenerative disc disease. Tenderness, muscle spasms and weakness, impaired sleep, and reduced grip strength was noted. Additionally, the cervical range

of motion was 25% for extension, left rotation, left lateral bending, flexion, right rotation, and right lateral bending. Comparatively, the August 20, 2008 consultative examination (also detailed above) reflects a decrease in the medical severity. Similarly, the November 2006 MRI compared with the November 2008 documents some improvement such as having a full range of motion therefore the Claimant's Residual Functional Capacity is considered pursuant to Step 3.

RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations. To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of

objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

The Claimant's prior RFC is not known therefore federal regulations require a determination of whether an individual can engage in substantial gainful activity. 20 CFR 416.994(b) (2) (iv) (E) In this case, the Claimant previously worked as a painting contractor. The Claimant also worked through a temporary staffing agency as a general laborer whose job responsibilities consisted of lifting of approximately 10 pounds, standing, sitting, bending, stooping, reaching, and squatting. Prior work as a painting contractor, which the Claimant performed for approximately 10 to 12 years, involved lifting between 10 and 20 pounds. The Claimant's prior employment is classified as unskilled light work.

At the time of the hearing, the Claimant was 50 years old with a 9th grade education. For purposes of the MA-P program, the Claimant is considered to be closely approaching advanced age. The medical records and testimony establish that due to the Claimant's injury he was, and remains, unable to perform past relevant work and is currently limited to, at best, unskilled sedentary work. Thus, the Claimant's medical improvement is not related to his ability to work therefore a determination of whether a listed exception applies is considered and found that substantial evidence does not show that the Claimant is a beneficiary of advances in medical or

vocational therapy; has undergone vocation therapy; new or improved diagnostic/evaluative techniques have demonstrated that the impairment(s) is not disability as previously determined; or that the prior decision was in error. In addition, the record does not show that the prior determination was fraudulently obtained or that the Claimant cannot be located or failed to cooperate. There was no indication that the Claimant failed to follow prescribed treatment. Accordingly, the listed exceptions to medical improvement are not met. In light of the finding that the Claimant's medical improvement is not related to the ability to work and no listed exception is applicable, the Claimant's disability if found to have continue at Step 4.

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 continued Medical Assistance ("MA-P") entitlement, therefore the Claimant's is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

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

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the redetermination application to determine if all other non-medical criteria are met and inform the Claimant 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 May of 2010 in accordance with department policy.

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

Date Signed: 04/30/09

Date Mailed: 04/30/09

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

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

CMM/jlg

cc:

[REDACTED]

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