

**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.: 2010-16762
Issue Nos.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 26, 2010
DHS County: Huron

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 Bad Axe, Michigan, on Wednesday, May 26, 2011. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

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

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 and SDA benefits on October 19, 2009.
2. On November 25, 2009, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
3. On December 1, 2009, the Department sent an Eligibility Notice to the Claimant informing her of the MRT determination.
4. On January 14, 2010, the Department received the Claimant's timely written request for hearing.

5. On February 5, 2010, the State Hearing Review Team (“SHRT”) determined that the Claimant was not disabled. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairment(s) are due to back pain, disc herniation with nerve root impingement.
7. The Claimant’s alleged mental impairments are due to anxiety and depression.
8. At the time of hearing, the Claimant was 47 years old with a [REDACTED], birth date; was 5’2” in height; and weighed 192 pounds.
9. The Claimant has the equivalent of a high school education with some college and an employment history as a general laborer.
10. The Claimant’s impairment(s) 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, 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 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).

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 (e.g., 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 to 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 3 to Step 4. 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 4 and 5. 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). 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 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 are 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 and, 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 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 back pain, disc herniation with nerve root impingement, depression, and anxiety. In support of her claim, some older records from as early as [REDACTED] were submitted which document treatment/diagnoses for back pain, carpal tunnel syndrome (with surgery), hyperlipidemia, asthma, abdominal pain, ovarian tumor, chest pain, hypertension, weakness, diabetes mellitus, spinal stenosis, lumbar disc disease with radiculopathy, pelvic mass (with surgery), osteoarthritis, and migraine headaches.

On [REDACTED], the Claimant sought treatment for her back pain and numbness. The MRI from [REDACTED] revealed minimal disc bulge slightly eccentric to the left at the L4-5 with minimal ventral flattening of the thecal sac and mild inferior left foraminal narrowing. At L5-S1 there was broad based disc bulge which caused minimal ventral flattening of the thecal sac with minimal inferior left foraminal narrowing. The Claimant was found able to work full-time provided there was no pushing, pulling, or lifting over 10 pounds with alternate sit, stand, walk (as necessary) accommodations. The Claimant was to avoid bending, twisting, kneeling, stooping, crouching except on rare occasion as absolutely necessary.

On [REDACTED], the Claimant underwent epidural steroid injections due to low back pain with bilateral leg pain without complication.

On [REDACTED], the Claimant was diagnosed with lumbar radiculopathy, lumbago, limb pain, numbness and tingling, and diabetes neuropathy.

On [REDACTED], a psychiatric evaluation was performed. The diagnosis was major depression, recurrent, severe with psychosis. The Global Assessment Functioning ("GAF") was 49. The Claimant was referred to treatment.

On [REDACTED] the Claimant entered into a treatment plan and participated in individual therapy.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were chronic low back pain with acute exacerbation-lumbar spinal disc disease with spinal stenosis, cervical disc disease, left-side weakness, hypertension, and diabetes mellitus. The physical examination revealed unsteady gait due to back pain with radiculopathy which required a cane for ambulation and extremity weakness/numbness in the lower extremities. The Claimant was noted as disabled for an undetermined time period. The Claimant was restricted to the occasional lifting/carrying of 10 pounds and was able to perform simple grasping and fine manipulation with her upper extremities. The Claimant was unable to reach, push, or pull with her upper extremities and was unable to operate leg/foot controls. The Claimant needed assistance in her home.

On [REDACTED] psychological evaluation was performed which revealed abnormalities in concentration and calculation tasks. The Claimant struggled with social isolation, anhedonia, diminished libido, decreased motivation, and sleep disturbance. Her ability to understand, recall, and complete tasks and expectations were not significantly impaired and there were no major limitations with her ability to perform simple and complex tasks. As a result of her emotional state, the Claimant may often be distracted and her effectiveness and performance would likely be limited and slow. The diagnosis was adjustment disorder with depressed mood. The GAF was 68 and her prognosis was fair.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were central disc herniation at L5-S1 with considerable compression and significant disc collapse and low back pain. The physical examination noted low back pain with radiculopathy, antalgic gait, slow pace requiring an assistive device, and muscle weakness with diminished sensory. The Claimant's condition was deteriorating and she was unable to lift/carry any weight; stand and/or walk less than two hours during an 8-hour workday; and was unable to perform repetitive actions with any extremity. The Claimant required an assistive device for ambulation and was unable to meet her needs in the home.

On [REDACTED], a neurological evaluation was performed. The [REDACTED], MRI revealed a disc herniation at the L5-S1 with downward migration with considerable compression of the L5-S1 as well as significant disc space collapse at L5-S1. Surgical decompression was recommended to relieve her pain.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were lumbar disc herniation. The physical examination documented low back pain with numbness in the lower extremity. The MRI of the lumbar spine revealed disc herniation at L5-S1 with an impact on the left S1 nerve root. Lumbar surgery was suggested.

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 medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. 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 physical and mental disabling impairments due to back pain, disc herniation with nerve root impingement.

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.*

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 objective medical evidence establishes that the Claimant suffers with spinal stenosis, pain, radiculopathy, and disc herniation at the L5-S1 level with downward migration and significant compression and disc space collapse. The MRI of the lumbar spine revealed disc herniation at L5-S1 with an impact on the left S1 nerve root. The Claimant's condition is deteriorating and she is restricted to less than sedentary activity. In addition, the Claimant requires a cane for ambulation. As detailed above, the Claimant's condition has worsened over time. Based on the foregoing, it is found that the Claimant's impairment(s) meets, or is the medical equivalent thereof, Listing 1.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department 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 BAM, BEM, and BRM. 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 automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, the Claimant is found disabled for purposes of the SDA benefit program.

DECISION AND ORDER

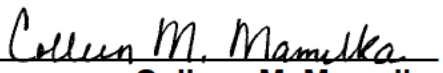
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the May 26, 2010, application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.

2010-16762/CMM

3. The Department shall supplement for any lost benefits (if any) 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 2012 in accordance with Department policy.


Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: March 22, 2011

Date Mailed: March 24, 2011

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.

CMM/pf

cc:

