

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.: 2010-17642  
Issue No.: 2009/4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
May 5, 2010  
Oakland County DHS (2)

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 Detroit, Michigan on Wednesday, May 5, 2010. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department.

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 an application for public assistance seeking MA-P and SDA benefits on October 12, 2009.

2. On November 17, 2009, the Medical Review Team (“MRT”) found the Claimant not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, pp. 1, 2)
3. On January 23, 2010, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 2)
4. On January 29, 2010, the Department received the Claimant’s timely written Request for Hearing. (Exhibit 2)
5. On February 23, 2010, the State Hearing Review Team (“SHRT”) determined that the Claimant was not disabled. (Exhibit 3)
6. The Claimant’s alleged physical disabling impairment(s) are due to back pain, cervical stenosis, arthritis, and severe fibromyalgia.
7. The Claimant’s alleged mental impairment(s) are due to anxiety and depression.
8. At the time of hearing, the Claimant was 55 years old with a [REDACTED] birth date; was 5’4” in height; and weighed 190 pounds.
9. The Claimant is a high school graduate with some college and has work history in customer service and as a school lunchroom attendant.
10. The Claimant’s alleged impairment(s) have lasted, or 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) 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 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 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, cervical stenosis, arthritis, and fibromyalgia, depression, and anxiety.

Radiographic evidence of the cervical spine documented mild mid-cervical kyphosis and multi-level spondylosis (most overt at the C5-6 where there is moderate disc space narrowing and endplate remodeling).

On [REDACTED], the Claimant attended a consultative examination for pain. Further tests were ordered as well as medication for pain and to help her sleep.

On [REDACTED], a MRI of the cervical spine revealed moderate dextroscoliosis with degenerative disc changes most pronounced at the C5-6 level resulting in mild flattening of the spinal cord and moderate spinal canal stenosis. There was no overt cord compression although there was mild spinal canal stenosis at C6-7 and neural foraminal narrowing at multiple levels.

On this same date, [REDACTED], a whole body bone scan revealed mild degenerative changes in the cervical spine at the C3-4 level. Hand x-rays established bilateral arthritic changes. Bilateral shoulder x-rays found mild arthritic changes.

On [REDACTED], the Claimant attended a follow-up appointment regarding her pain. The MRI of the cervical spine showed moderate stenosis at C5-6 level with significant foraminal narrowing due to disc osteophyte complex. Hand x-rays revealed moderate to severe arthritic changes with indications of erosions present. Mild arthritic changes in the shoulders were also noted. The Claimant was diffusely tender across the neck, upper back, periscapular region, and

lumbosacral spine. The Claimant was diagnosed with neck, upper back, and shoulder pain, possibly due to cervical stenosis/cervical radiculopathy and possible fibromyalgia. Inflammatory arthritis was not ruled out. The Claimant was found unable to work.

On [REDACTED], the Claimant was examined by an orthopedic physician who diagnosed the Claimant with cervical stenosis/neck pain and diffused joint pain. An epidural steroid injection at the C6-7 level was given.

On [REDACTED], the Claimant attended a surgical consultative evaluation. During the examination, the Claimant was anxious and tearful. Tenderness throughout the cervical and lumbar spine was noted. An MRI was recommended as well as a psychiatric referral. The diagnoses were cervical stenosis with neck and arm pain, with possible lumbar disc herniation and fibromyalgia. The Claimant's medication was increased and she was provided a lumbar corset.

On [REDACTED], the Claimant attended a psychiatric evaluation. The Claimant was diagnosed with pain disorder and depressive disorder (not otherwise specified). The Global Assessment Functioning was 50 and her prognosis was poor.

On [REDACTED], the Claimant attended a follow-up appointment for her pain. The cervical range of motion was reduced by 30 – 40 percent and there was tenderness in the upper trapezius bilaterally. Bilateral cervical paraspinal tenderness was documented as well as numerous tender points across the arms, hips, and upper back. The lumbosacral range of motion was reduced by 40 – 50 percent and strength was reduced by pain. Ultimately, the Claimant was found to the cervical stenosis with neck/arm pain, probable fibromyalgia, depression, and anxiety. Inflammatory arthritis was not ruled out.



On October 16, 2009, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were cervical stenosis, fibromyalgia, and osteoarthritis. The physical examination documented decreased cervical/lumbar range of motion, cervical spasm, joint tenderness, and overall weakness. The Claimant's mental status was depressed. The Claimant's condition was deteriorating and she was found able to occasionally lift/carry less than 10 pounds; sit less than 6 hours during an 8-hour workday; and able to perform simple grasping and fine manipulation with her upper extremities.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were arthritis and cervical stenosis. The physical examination revealed hypersensitivity and decreased range of motion in the neck, back and hip.

On [REDACTED], the Claimant attended a consultative evaluation. The physical examination revealed several tender spots on the upper arms, groin area, around the knees, neck, paraspinal area, and buttocks. The straight leg raising documented pain in the buttocks, thighs, and both sides. "Squatting was basically impossible because of pain." Tender spots were also found on the ankles, carpal phalangan, proximal interphalangan, distal interphalangan joints, and on both sides of the Claimant's hands. The Claimant was severely depressed and cried throughout the examination due to pain. The Claimant was diagnosed with severe fibromyalgia, chronic fatigue syndrome (severe), anxiety, depression, and chronic pain syndrome.

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 impairment that effect 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 impairment(s) due to back pain, cervical stenosis, arthritis, severe fibromyalgia, depression, and anxiety.

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 a defined in 1.00B2c

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- 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 the record presented, the evidence documents (in part) multi-level spondylosis, mid-cervical kyphosis, mild flattening of the spinal cord, moderate spinal canal stenosis, degenerative changes, arthritic changes in the hands and shoulders, significant foraminal narrowing, joint tenderness, fibromyalgia, decreased range of motion, and pain. Pain is a non-exertional impairment. *Cline v Sullivan*, 939 F2d 560, 565 (CA 8, 1991) In applying the two-prong inquiry announced in *Duncan v Secretary of Health & Human Services*, 801 F2d 847 (CA6, 1986) it is found that the objective medical evidence establishes an underlying medical conditions can reasonably be expected to produce the alleged disabling pain. *Id.* at 853. Ultimately, it is found that the combination of the Claimant's multiple musculoskeletal impairments meet, or are the equivalent thereof, a listed impairment within 1.00 as detailed above. 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 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 (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.

Accordingly, it is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the October 12, 2009 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with policy.
3. The Department shall supplement for any lost benefits 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 June 2011 in accordance with department policy.

*Colleen M. Mamelka*

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

Date Signed: 5/26/2010

Date Mailed: 5/26/2010

**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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