

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.: 2010-32995
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
June 14, 2010
Wayne County DHS (17)

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 Detroit, Michigan on Monday, June 14, 2010. The Claimant appeared, along with [REDACTED] and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [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") benefit program?

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 benefits on July 21, 2009 and October 6, 2010.

2. On September 16, 2009 and February 23, 2010, the Medical Review Team (“MRT”) determined the Claimant was not disabled for purposes of the MA-P benefit program. (Exhibit 1, pp. 8, 410)
3. The Department sent an Eligibility Notice to the Claimant informing him that he was found not disabled.
4. On April 21, 2010, the Department received the Claimant’s written Request for Hearing. (Exhibit 1, p. 2)
5. On May 12, 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 chronic back/leg/arm/hip pain, asthma, high blood pressure, and headaches.
7. The Claimant has not alleged any mental impairment(s).
8. At the time of hearing, the Claimant was 42 years old with an [REDACTED] birth date; was 5’8” in height; and weighed 205 pounds.
9. The Claimant completed through the 10th grade and has a work history in home improvement and maintenance.
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 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 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 (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 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 chronic back/leg/arm/hip pain, asthma, high blood pressure, and headaches.

On [REDACTED], the Claimant presented to the hospital with acute partial-thickness burns to the upper extremities, face, and back (approximately 10-12% total body surface) due to an explosion of a water heater. The Claimant was also treated for inhalation injury and collapsed lung amongst other things. The Claimant was treated in the Intensive Care Unit for the majority of his hospitalization and on [REDACTED], the Claimant was transferred to rehabilitation noting the status at discharge as "alive." At this time, the discharge summary lists the Claimant as temporarily disabled. The Claimant was discharged on [REDACTED] and instructed to follow up as an outpatient for both physical and occupational therapy.

On [REDACTED], while the Claimant was hospitalized, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were bilateral burns of the upper extremities (healed) and aspiration pneumonia (ongoing). The physical limitations could not be determined.

On [REDACTED], a MRI of the lumbar spine revealed central disc protrusion at L3-4 indenting the thecal sac and central disc protrusion on top of disc bulge at L4-5 indenting the thecal sac. Further, the MRI showed facet hypertrophic arthropathy in the mid and lower lumbar spine causing neural foraminal stenosis at L4-5 and L5-S1.

On [REDACTED], the Claimant attended a consultative examination. The physical examination revealed a slow gait and limp noting the Claimant's difficulty in getting on/off the

examination table. The Claimant was able to raise both arms without any problems but had moderate restriction of range of motion of the lumbar spine. The Claimant's grip on the left side was poor. The Internist opined that the Claimant has moderate to severe functional impairment of occupational activity with second and third degree burns on his hands, back, and elbows, low back pain, and shortness of breath. The Claimant was limited in his ability to stand, climb stairs/ladders, and lift items. The diagnoses were second and third degree burns on the hands, elbows and back (██████████), chronic lumbar radiculopathy on the right side, chronic pain syndrome, bilateral hand pain after burns, hypertension, and chronic bronchitis, mild to moderate. Range of motion testing found the Claimant unable to bend, stoop, carry, push, pull, tie shoes, pick up coin or pencil, squat and arise from squatting, or climb stairs. The Claimant was unable to walk on heels and toes with an unpredictable gait, noting that a cane would be useful to reduce pain and prevent falling.

On ██████████, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were lumbar stenosis, asthma, and hypertension. The physical examination documented wheezing and decreased range of motion of the lumbar spine. The Claimant's condition was deteriorating and he was restricted to occasionally lift/carry less than 10 pounds; stand and/or walk less than 2 hours during an 8 hour workday; and able to perform simple grasping and reaching with his upper extremities. The Claimant was not able to push/pull or perform fine manipulation with either upper extremity nor was he able to operate foot/leg controls.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that he does have some physical

limitations on his 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 disability based on to chronic back/leg/arm/hip pain, asthma, high blood pressure, and headaches.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general

definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living.

1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented.

1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

* * *

- 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, 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)

In this case, the MRI of the lumbar spine revealed central disc protrusion at L3-4 indenting the thecal sac, central disc protrusion on top of disc bulge at L4-5 indenting the thecal sac, and hypertrophic arthropathy in the mid and lower lumbar spine causing neural foraminal stenosis at L4-5 and L5-S1. As a result, the Claimant is unable to bend, stoop, carry, push, pull, tie shoes, pick up coin or pencil, squat and arise from squatting, or climb stairs. The medical findings indicate moderate to severe functional impairment of occupational activity with second and third degree burns on his hands, back, and elbows, low back pain, and shortness of breath. Further, the Claimant was unable to walk on heels and toes with an unpredictable gait, noting that a cane would be useful to reduce pain and prevent falling. The left grip strength was poor. The total impact caused by the combination of medical problems suffered by the Claimant must be considered to include subjective complaints of severe 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 condition (lumbar stenosis, disc protrusion with indentation of the thecal sac) that can reasonably be expected to produce the alleged disabling pain. *Id.* at 853. Here, the Claimant's suffers from severe pain and tenderness which negatively impacts his ability to engage in any employment. Ultimately, in light of the foregoing, it is found that the Claimant's impairment(s) meets, or is the medical equivalent thereof, Listing 12.04A as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

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

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the October 6, 2009 application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination in accordance with department policy.
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 July 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: 6/29/2010

Date Mailed: 6/29/2010

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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