STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER:

Reg. No.: 2010-35558
Issue No.: 2009/4031
Case No.:
Load No.:
Hearing Date: July 28, 2010
Monroe County DHS

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 Monroe, Michigan on Wednesday, July 28, 2010. The Claimant appeared and testified. The Claimant was represented by of 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 upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted a public assistance application seeking MA-P and SDA benefits on January 29, 2010.

2. On February 10, 2010, the Medical Review Team ("MRT") determined the Claimant was not disabled. (Exhibit 1, pp. 9, 10)

3. On February 16, 2010, the Department sent a Notice of Case Action to the Claimant informing her that she was found not disabled. (Exhibit 1, pp. 5 – 8)

4. On February 24, 2010, the Department received the Claimant's timely written request for hearing. (Exhibit 1, p. 2)

5. On May 28, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)

6. The Claimant's alleged physical disabling impairments are due to chronic back pain with radiculopathy, failed laminectomy, discogenic disease, facet syndrome, cervicogenic headaches, chronic obstructive pulmonary disease ("COPD"), coronary vascular disease status post stenting, and Hepatitis C.

7. The Claimant's alleged mental disabling impairment(s) are due to anxiety, depression, and post-traumatic stress disorder.

8. At the time of hearing, the Claimant was 48 years old with a [redacted], [redacted] birth date; was 5' 4" in height; and weighed 111 pounds.

9. The Claimant has her GED and vocational training with an employment history working as a medical assistant and waitress.

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

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations ("CFR"). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program 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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 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 radiculopathy, failed laminectomy, discogenic disease, facet syndrome, cervicogenic headaches, chronic obstructive pulmonary disease ("COPD"), coronary vascular disease status post stenting, Hepatitis C, anxiety, depression, and post-traumatic stress disorder. In support of her claim, some older medical records from 2003 through 2008 were submitted which document treatment in part, for low back pain, radiculopathy, as well as the surgeries performed (anterior lumbar disctemony, anterior lumbar interbody fusion, biomechanical implant, instrumentation at L5-S1 with use of plate and screws, pacemaker, and bone grafts.

On [redacted] [redacted] and [redacted], the Claimant sought treatment for low back pain. The Claimant was diagnosed with lumbosacral radiculitis, traumatic spondylopathy, and muscle spasms.

On [redacted], the Claimant sought treatment for low back pain. Muscle spasms and tenderness was found in the cervical, thoracic, rib cage, lumbar, sacral, pelvis, and lower extremities. The Claimant was diagnosed with traumatic spondylopathy, post-laminectomy syndrome of the lumbar region, SD sacral, muscle spasms, and lumbosacral radiculitis.

On [redacted] [redacted], the Claimant sought treatment for low back pain. Tenderness upon palpation was noted in the cervical, thoracic, rib cage, lumbar, sacral, pelvis, and lower extremities. The Claimant was diagnosed with post-laminectomy syndrome of the lumbar region, lumbosacral radiculitis, SD sacral, muscle spasm, and lumbosacral radiculitis.

On [redacted], the Claimant sought treatment for low back pain. The physical examination documented somatic dysfunction of the cervical, thoracic, rib cage, lumbar, sacral, pelvis, and lower extremities. Tenderness upon palpitations was noted with a range of motion loss in the lumbar, sacral, pelvis, and lower extremities. Muscle spasms were also documented. The Claimant was diagnosed with traumatic spondylopathy, post-laminectomy syndrome of lumbar region, SD sacral, muscle spasm, and patellofemoral.

On [redacted], the Claimant presented to the clinic with complaints of low back pain. The Claimant was diagnosed with traumatic spondylopathy, post-laminectomy syndrome of the lumbar region, SD sacral, and patellofemoral.

On [redacted] [redacted], the Claimant sought treatment for abdominal pain and rectal bleeding. The Claimant was admitted to the hospital and discharged on [redacted] [redacted] with the diagnoses of abdominal pain (likely secondary to adhesions), hiatus hernia, gastritis, external and internal hemorrhoids, and colitis. The prognosis was guarded.

On [redacted], the Claimant was admitted to the hospital after an abnormal CT scan and abdominal pain. The Claimant was discharged on [redacted] [redacted] with the diagnoses of abdominal pain (etiology unknown), redundant colon, hiatus hernia, and gastritis.

On [redacted], the Claimant presented to the emergency room with complaints of low back pain. The Claimant was treated and discharged with the diagnosis of acute exacerbation of chronic back pain.

On [redacted], the Claimant presented to the emergency room with complaints of back and chest pain. An EKG revealed sinus rhythm. The Claimant was discharged with the diagnoses of chest pain, and chronic lumbar back pain with radiculopathy and the instructions to follow-up with her primary care physician.

A Medical Examination Report was completed on behalf of the Claimant on [redacted] [redacted] The current diagnosis was chronic low back pain with failed laminectomy and fusion. The physical examination documented pain level ranging from 5 to 10, ambulation with a cane, fatigue, arthritis, decreased range of motion, and weakness. The Claimant was limited to occasionally lifting/carrying of 20 pounds; able to stand and/or walk at least 2 hours in an 8 hour workday; and able to perform repetitive actions

with her extremities with the exception of pushing/pulling. The Claimant had positive straight leg raising.

On [redacted], the Claimant presented to the clinic primarily for back pain. The upper and lower extremities showed good tone and strength. Examination of the back revealed tenderness throughout with a positive straight leg raising test bilaterally. The diagnoses were lumbar radiculopathy L5-S1, chronic back pain, hypertension, and sick sinus syndrome. The Claimant's pacemaker was also documented.

On this same date, [redacted], the Claimant sought treatment for her back pain via the emergency room.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The current diagnosis was lumbar fusion. The Claimant was found able to occasionally lift/carry 20 pounds; stand and/or walk about 6 hours in an 8 hour workday; sit about 6 hours during this same time frame; and able to perform repetitive actions with her extremities.

On [redacted], the Claimant attended a psychiatric evaluation. The Claimant was diagnosed with major depression, recurrent, with psychotic features, and post-traumatic stress disorder. The GAF was 50.

On [redacted], the Claimant presented to a clinic for a follow-up appointment. The diagnoses were lumbar radiculopathy, post-menopausal changes, and depression.

On [redacted], the Claimant attended a follow-up psychiatric appointment. The diagnoses remained the same; major depression, recurrent, with psychotic features, and post-traumatic stress disorder. The GAF was 50.

On [redacted], the Claimant attended a follow-up psychiatric appointment. The diagnoses and GAF remained the same as on [redacted].

On [redacted], the Claimant presented to the emergency room with complaints of back pain, febrile illness, and chest pain. She was discharged on [redacted] with the primary diagnoses of back pain (non-fusion of previous interbody fusion), possible spinal osteomyelitis, systemic inflammatory response syndrome, bilateral pulmonary nodule, atypical chest pain, and hypomagnesaemia, secondary to pacemaker placement, lumbosacral chronic back pain, chronic obstructive pulmonary disease ("COPD"), peripheral vascular disease, colitis, depression and Hepatitis C.

On [redacted], the Claimant attended a follow-up psychiatric appointment. The diagnoses remained the same but her GAF increased to 52.

On [redacted], the Claimant attended a mental status examination. The diagnoses were major depressive disorder, recurrent, moderate and panic disorder. The Global Assessment Functioning ("GAF") was 49 and her prognosis was guarded. The Claimant seemed "poor for competitive employment at this time."

On [redacted], a Medical Needs form was completed on behalf of the Claimant. The current diagnosis was back pain. The Claimant was found unable to work pending surgery for the failed laminectomy. The Claimant's range of motion was restricted and she required a cane for ambulation.

On [redacted], the Claimant attended a follow-up appointment for her back pain. The diagnoses were L5-S1 anterior lumbar interbody fusion with non-union and hardware fracture anteriorly from a plate and screw construct and grade 1 anterior spondylolisthesis.

On [redacted], the Claimant presented to the hospital via ambulance with complaints of weakness, dizziness, and lightheadedness. On [redacted], a Medical Examination Report and a Medical Needs form were completed on behalf of the Claimant. The current diagnoses were discogenic disease, failed laminectomy, lumbar discogenic disease, facet syndrome. The physical limitations were not known at this time. The Claimant participated in a pain management program. A CT scan revealed abnormal activity of L5-S1 level with incomplete fusion and continued pseudoarticulation, right L5 spondylolysis, mild spondylolisthesis, and post surgical and degenerative changes. An EMG found right L5 radiculopathy. Ultimately, the Claimant was diagnosed with exacerbation of L4-5, L5-S1 discogenic disease, exacerbation of L3-4, L4-5, L5-S1 facets syndrome, exacerbation of cerviogenic headaches, C6-7 discogenic disease, non-fusion lumbar interbody fusion, Hepatitis C, right S1 radiculopathy, coronary artery disease, peripheral vascular disease, anxiety, and failed laminectomy syndrome with epidural fibrosis. The Claimant's associated pain was also documented.

On [redacted], a Medical Needs from was completed on behalf of the Claimant. The current diagnoses were L5-S1 failed laminectomy requiring surgery. The Claimant was found able to work with accommodations.

On [redacted], the Claimant presented to the emergency room with complaints of shortness of breath. The Claimant was admitted and treated for pneumonia. The Claimant was discharged on or about [redacted].

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 chronic back pain with radiculopathy, failed laminectomy, discogenic disease, facet syndrome, cervicogenic headaches, chronic obstructive pulmonary disease ("COPD"), coronary vascular disease status post stenting, Hepatitis C, anxiety, depression, and post-traumatic stress disorder.

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, 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 order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. The objective medical documentation (EMGs, x-rays, MRIs) establish that the Claimant has a failed laminectomy and fusion (2008) with non-union and hardware fracture, continued pseudoarticulation, grade 1 anterior spondylolisthesis, radiculopathy, muscle spasms, pain, facet syndrome, and discogenic disease with positive straight leg raise bilaterally. Further, the Claimant's medical need for an assistive device for ambulation is also documented. Based on the foregoing, it is found that the Claimant's impairment(s) meet, or is the medical equivalent thereof, a listed impairment within Listing 1.00, specifically 1.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program purusant 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 impariment 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 and State Disability Assistance benefit programs.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the January 29, 2010 application to determine if all other non-medical criteria are met and inform the Claimant and her authorized representative of the determination.

3. The Department shall supplement for any lost lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in accordance with department policy in September 2011.

Colleen M. Mamelka

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

Date Signed: 8/3/2010

Date Mailed: 8/3/2010

<u>NOTICE</u>: 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.

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