

**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.: 2010-15387
Issue No.: 2009/4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: March 18, 2010
Wayne County DHS (57)

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 conducted from Detroit, Michigan on Thursday, March 18, 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 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 June 30, 2009.
2. On October 13, 2009, the Medical Review Team ("MRT") deferred the disability determination requesting the Department schedule a consultative examination. (Exhibit 1, pp. 15, 16)
3. On October 22, 2009, the Claimant attended the consultative examination. (Exhibit 1, pp. 6 – 14)

4. On November 13, 2009, the MRT found the Claimant not disabled. (Exhibit 1, pp. 3, 4)
5. On November 19, 2009, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 1, p. 1, 2)
6. On December 18, 2009, the Department received the Claimant's timely written Request for Hearing. (Exhibit 2)
7. On January 26, 2010, the State Hearing Review Team ("SHRT") determined that the Claimant was not disabled. (Exhibit 3)
8. The Claimant's alleged physical disabling impairment(s) due to back/neck/shoulder pain, degenerative disc disease, incontinence, cataracts, asthma, high blood pressure, obesity, and headaches.
9. The Claimant's alleged mental impairment(s) are due to depression and anxiety.
10. At the time of hearing, the Claimant was 48 years old with a [REDACTED] birth date; was 5'4" in height; and weighed 265 pounds.
11. The Claimant is a high school graduate with some college and an employment history as a general laborer, mail processor, assistant manager, and cashier.
12. 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 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-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 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/neck/shoulder pain, degenerative disc disease, incontinence, cataracts, asthma, high blood pressure, obesity, headaches, depression, and anxiety.

On [REDACTED], the Claimant was presented to the hospital with shortness of breath. The Claimant was admitted and treated for an upper respiratory infection and low back pain. The Claimant was discharged on September 30th.

On [REDACTED], the uroflow noninvasive study was performed which showed urinary incontinence.

On [REDACTED], an MRI of the cervical spine was performed which revealed right paracentral/right foraminal disc herniation with right foraminal encroachment at C5-C6.

On [REDACTED], an MRI of the lumbar spine revealed multiple disc herniations with right foraminal encroachment of the disc herniation which depressed the thecal sac and right nerve root at L5-S1. At L4-L5 there was a central/right pericentral/right foraminal/right lateral disc herniation with bifrontal encroachment. At L3-L4 there was prominent disc material versus right foraminal/right lateral disc herniation with right foraminal encroachment. Finally, at L2-L3 there was prominent disc material versus

right paracentral/right foraminal/right lateral disc distribution with right foraminal encroachment.

On [REDACTED], the Claimant attended a follow-up appointment regarding the [REDACTED] MRI. The study revealed an increased disc herniation on the right side of L5-S1 which impinges on the right S1 nerve root. The cervical spine MRI showed foraminal impingement over the right C5-C6 nerve roots from at least a mild-to-moderate impingement in their respective foramen.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were chronic back pain with herniation and chronic cough. The Claimant was found able 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 repetitive actions with her upper extremities with the exception of pushing/pulling; and unable to operate foot/leg controls with either low extremity.

On this same date, a Medical Needs form was completed on behalf of the Claimant. The Claimant was found able to work at any occupation and needed assistance with meal preparation, shopping, laundry, and housework.

On [REDACTED], the Claimant attended a consultative evaluation. An x-ray of the lumbar spine showed mild narrowing of disc space at L4-L5 and L5-S1. An MRI of the cervical spine (2004) showed mild right foraminal encroachment related to the left side at C3-C4 and at C5-C6 there was a right paracentral disc herniation. At C6-C7 right foraminal encroachment was not excluded. Ultimately, the Claimant was diagnosed with low back and neck pain, carpal tunnel syndrome, bronchial asthma, hernia, and GERD. The Internist opined that the Claimant should be able to work an 8 hour workday with no limitations in walking, carrying, pushing, pulling, climbing stairs, ropes, ladders, or scaffolding.

On [REDACTED] the Claimant began physical therapy for the diagnosis of lumbar radiculopathy. The Claimant's limited range of motion was documented.

On [REDACTED], the Claimant attended a consultative psychiatric evaluation. An MRI report of the lumbar spine revealed mild dextro curvature at the L5-S1 with small right paracentral disc herniation. At L2-L3, L3-L4, L4-L5, and L5-S1 revealed disc herniation. A 2004 MRI of the cervical spine revealed right paracentral/right foraminal disc herniation with right foraminal encroachment at C5-C6 and right foraminal encroachment at C6-C7 and small lateral disc herniation at T3-T4. Disc herniation at C5-C6 and C6-C7 was also found. The Claimant's gait was slow. The Claimant was ultimately diagnosed with mood disorder due to medical condition (chronic pain) and dysthymic disorder. Major depressive disorder was not ruled out. The Global Assessment Functioning ("GAF") was 49 and her prognosis was fair to guarded. The

Mental Residual Functional Capacity Assessment found the Claimant moderately limited in 11 of the 20 factors and markedly limited in 5 factors.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant by her primary care physician. The current diagnoses were chronic low back pain, chronic neck pain due to cervical radiculopathy, morbid obesity, GERD, urinary incontinence, asthma, and glaucoma. The physical examination documented severe low back pain with impingement. The Claimant's condition was deteriorating and she was found unable to lift/carry any weight with standing, sitting, walking limitations. The Claimant was unable to perform repetitive actions with any extremity.

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/neck/shoulder pain, degenerative disc disease, incontinence, cataracts, asthma, high blood pressure, obesity, headaches, 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:

* * *

- 1.04 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 medical evidence establishes the Claimant suffers from degenerative disc disease with multiple disc herniations with foraminal encroachment and nerve root impingement as well as urinary incontinence. Based on the foregoing, the Claimant's impairment(s) meets, or is the equivalent thereof, Listing 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 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 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 above 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 June 30, 2009 application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement for any 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 August 2011 in accordance with department policy

Colleen M. Mamelka

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

Date Signed: 07/22/2010

Date Mailed: 07/22/2010

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 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/jlg

cc:

A large black rectangular redaction box covers the names and email addresses of the recipients listed under the 'cc:' field.