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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 2011-29185
Issue No.: 2009, 4031
Case No.: [redacted]
Hearing Date: June 29, 2011
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 held in Detroit, Michigan on Wednesday, June 29, 2011. The Claimant appeared and testified. [redacted] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On December 1, 2011, the SHRT was received which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

## ISSUE

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

## FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitted an application for public assistance seeking MA-P and SDA benefits on October 5, 2010.

2. On March 4, 2011, the Medical Review Team ("MRT") determined the Claimant was not disabled. (Exhibit 1, pp. 3, 4)

3. On March 21, 2011, Department sent an Eligibility Notice to the Claimant informing him of the MRT determination.

4. On April 4, 2011, the Department received the Claimant's timely written Request for Hearing.

5. On April 28th and November 23, 2011, the SHRT determined that the Claimant was not disabled.

6. The Claimant's alleged physical disabling impairment(s) are due to neck, shoulder, back, hip, knee and foot pain and headaches.

7. The Claimant has not alleged any mental disabling impairment(s).

8. At the time of hearing, the Claimant was [redacted] years old with a [redacted] birth date; was 5'9" in height; and weighed 210 pounds.

9. The Claimant is a high school graduate with some college and vocational training with an employment history as a driver, custodian/supervisor, and in grass maintenance at the airport.

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 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, 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 Tables ("RFT").

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 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 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).

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 benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;

4. Use of judgment;

5. Responding appropriately to supervision, co-workers and usual work situations; and

6. Dealing with changes in a routine work setting.

*Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985).

In the present case, the Claimant alleges disability due to neck, shoulder, back, hip, knee and foot pain and headaches after being hit by a motor vehicle while riding his bicycle. In support of his claim, some older records from [redacted] were submitted which document, in part, treatment for low back pain, feet pain, heel spurs, knee pain, shoulder pain, anemia, rash, and eczema.

On [redacted] the Claimant had an abnormal ECG.

On [redacted] an EMG revealed mild carpal tunnel syndrome.

On [redacted] a Medical Needs form was completed on behalf of the Claimant. The Claimant was found unable to work his usual occupation but able to work provided accommodated.

On [redacted] a Medical Examination Report was completed on behalf of the Clamant. The current diagnoses were left shoulder pain, chronic pain, chronic anxiety, and neck pain. The Claimant's condition was deteriorating.

On [redacted] a CT of the cervical spine found severe facet degenerative changes at C2-3 and multilevel disc space narrowing at C5-6, C6-7 with posterior disc osteophyte complex leading to mild to moderate central canal stenosis and mild bilateral neural foramen narrowing.

On [redacted] the Claimant was diagnosed with cervical and lumbar radiculopathy, thoracic pain, and extremity pain.

On [redacted] an MRI of the thoracic spine revealed multi-level Schmorl's nodes and disc bulges at the T1-2, T2-3, T3-4, and T10-11, impinging the thecal sac.

On this same date, an MRI of the cervical spine revealed musculoligamentous sprain/spasm, disc bulges with bilateral uncovertebral joint arthrosis at C3-4, C4-5, C5-6, C6-7, and C7-T1, impinging on the thecal sac causing mild spinal canal stenosis with moderate bilateral neuroforaminal narrowing.

An MRI ([redacted] of the lumbar spine was also performed. The results were disc bulges at the L1-2, L2-3, L3-4, L5-S1, impinging on the thecal sac; broad based posterior disc protrusion at the L4-5 level impinging on the thecal sac, and moderate bilateral neuroforaminal narrowing at the L3-4 and L4-5 levels.

On [redacted] the Claimant was diagnosed with first metatarsophalangeal joint synovitis/sprain without evidence of a fracture. An intraarticular injection was performed without complication.

On [redacted] a consultative exam ination was performed resulting in the diagnoses of shoulder bruises and fractured knee.

On [redacted] an MRI of the right knee found gr ade 2 chondromalacia with subarticular erosion at the pos terior medial femoral condyle and m ild synovial effusions with small Baker's cyst.

On [redacted] the Claimant attended a follow-up appointment where the December MRIs were reviewed noting no cord compression. The diagnoses were cervical and lumbar radiculopathy and thoracic pain.

On [redacted] the Claim ant attended a follow-up appointment for his left foot. The diagnosis was first metatarsophalangeal joint synovitis versus osteochondral lesion.

On [redacted] the Claimant was ref erred to physical therapy due to a contusive injury to the right knee. An injection into the bursal surface was also performed.

On [redacted] the Claimant attended a cons ultative examination. The diagnoses were lumbar radiculopathy, disc ogenic syndrom e of the lumbar and cervic al spine; and low back pain.

On [redacted] the Claimant's continued shoulder and knee pain were noted and an MRI of the left hip was ordered.

On [redacted] the Claimant attended a follow-up appoint ment for his neck and back where he was diagnosed with cervical and lumbar radiculopathy and thoracic pain.

On [redacted] an MRI of th e right shoul der revealed rim-rent tears, complex tears of the superior and inferior glenoid labrum with inv olvement of the biceps anchor, moderate fibro-osseous capsular hypertrophy of the acromioclav icular joint with marrow edema at the contiguous ar ticular marg ins and subacromial spac e, causing impingement syndrome, mild subacromial bursitis, and some marrow edema at the humeral tuberosity.

On this same date, a n MRI of the left shoulder revealed a small rim-rent tear, incidental Buford complex, moderate fibro-osseous capsular hypertrophy, mild subacromial bursitis, and minimal marrow edema at the humeral tuberosity with small cortical erosion.

An MRI [redacted] of the left hip revealed mild bilateral hip joint effusions.

An MRI ([redacted] of the left knee showed a small focus of advanced chondromalacia at the lateral tibial condyle; arthrosis, complex tears of the posterior horn of medial meniscus with edema of the fascial planes behind it; partial tear of the anteri or cruciate ligament; grade 2 sprain of the medial collateral ligament at its femoral attachment site; and small Baker's popliteal cyst.

The MRI of the right knee (same date) revealed small focus of advanced chondromalocia at the lateral aspect of the medial femoral condyle.

The left foot MRI documented marrow edema/contusions on the medial aspect of the first metatarsal head/neck, mild marrow edema in the medial aspect of the medial hallux sesamoid, and mild effusions within the first and fourth metatarsophalangeal joints.

On [redacted] the Claimant attended a follow-up appointment for his knees and shoulders. Continued physical therapy and pain medication was recommended and cortisone injections were considered.

On [redacted] the Claimant attended a follow-up appointment for his back and knees where he was diagnosed with cervical and lumbar radiculopathy with continued left knee pain.

On [redacted] the Claimant attended a follow-up appointment for his foot. The diagnosis was bone bruise to the first metatarsophalangeal joint.

On [redacted] the Claimant attended an appointment where his pain was documented and MRIs were prescribed.

On [redacted] the Claimant underwent an intra-articular knee injection without complication.

On [redacted] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were glenoid-labrum tear, bilateral bursitis of the shoulders, disc prolapse of the thoracic spine, cervical/lumbar radiculopathy, and meniscus tear of the left knee.

On [redacted] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were spinal disc herniation and meniscal tears. The physical examination noted cervical and lumbar pain and the Claimant was found unable to lift/carry any weight requiring a back brace and cane for ambulation. The Claimant was able to perform simple grasping and fine manipulation with his upper extremities but unable to reach, push, pull, or operate foot/leg controls. The Claimant was unable to meet his needs in the home requiring assistance with shopping, cleaning, and meal preparation.

On [redacted] 2011, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were spinal disc herniation and knee meniscal tears. The physical examination documented chronic pain requiring a knee and back brace as well as the use of a cane and decreased range of motion of the cervical and lumbar spine. The Claimant was in stable condition; however, his pain was uncontrolled. The Claimant was found unable to lift/carry any weight; unable to reach, push, pull, or operate foot/leg controls. The Claimant was able to perform simple grasping and fine manipulation.

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 physical and mental 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 minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, 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 disabling impairments due to neck, shoulder, back, hip, knee and foot pain and headaches after being hit by a motor vehicle while riding his bicycle.

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

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe

burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In this case, the objective evidence (as discussed above) reveals multiple diagnoses involving the cervical, thoracic, and lumbar spine with radiculopathy, shoulder tears, knee tears/fracture, and bone contusions. The Claimant requires a cane for ambulation and wears a neck and back brace. The Claimant has undergone conservative treatment (pain medication, anti-inflammatory medication, physical therapy, and steroid injections); however, the chronic pain continues and the treating physicians have found his condition as deteriorating, finding him unable to meet his needs in the home. Based on the medical evidence alone, the Claimant's impairment(s) meet, or are the medical equivalent thereof, a listing impairment within Listing 1.00 as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program purusant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. 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 benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

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

## DECISION AND ORDER

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

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the October 5, 2010 application to determine if all other non-medical criteria are met and inform the Claimant 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 January 2013 in accordance with Department policy.

Colleen M. Mamelka

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

Date Signed: December 6, 2011
Date Mailed: December 6, 2011

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc: [redacted]