# STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES



Reg No.: 2011-39463 Issue No.: 2009, 4031 Case No.: Hearing Date: October 20, 2011 Oakland County DHS (04)

# 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 Pontiac, Michigan on Thursday, October 20, 2011. The Claimant appeared and testified. The Claimant was represented by

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 s ubmission of additiona I medical records. The evidence was received, reviewed, and forwarded to the State Hearing Rev iew Team ("S HRT") for consideration. On January 12, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now befor e the undersigned for a final decision.

### **ISSUE**

Whether the Department proper ly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and St ate Disability Assistance ("SDA") benefit programs?

# FINDINGS OF FACT

The Administrative Law Judge, based on t he 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 29, 2010.

- 2. On March 16, 2011, the Medical Revi ew Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
- 3. The Department notified the Claimant of the MRT determination.
- 4. On June 15, 2011, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
- 5. On July 19, 2011 and January 9, 2012, the SHRT found the Claimant not disabled. (Exhibit 3)
- 6. The Claimant alleged physical di sabling impairments due to back pain, degenerative disc disease, and nerve impingement
- 7. The Claimant has not alleged any mental disabling impairment(s),
- 8. At the time of hearing, the Claimant was years old with a date; was 6' in height; and weighed 145 pounds.
- 9. The Claimant has the equivalent of a high school education with an employment history in roof installation and as a clerk.
- 10. The Claimant's impairments 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 Independenc e Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge s Administrative Manual ("BAM"), the Bridges Elig ibility 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 im pairment which can be expected to result in death or which has lasted or can be expect ed to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). The person claimi ng a physical or mental disability has the burden to esta blish it through the use of competent medical evidenc e from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-related ac tivities or ability to reason and make

appropriate mental adjustments, if a mental disab ility is alleged. 20 CRF 413 .913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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, t he federal regulations require several factors to be considered including: (1) the location/du ration/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 determi ne the ext ent of his or her functi onal 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 fivestep analysis requires the trier of fact to cons ider an individual's current work activit y; 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 det ermine whether an individual c an perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) 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 а 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 indi vidual'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 f unctional capacity is the most an indiv idual can do despite the limitations based on all relevant evidence. 20 CF R 945(a)(1). An individual's residua l functional capacity assessment is evaluat ed at both steps four and five. 20 CF R 416.920(a)(4). In determining disability, an i ndividual's functional capacity to perform basic work activities is evaluated and if found that the individ ual h as the ability to perform basic work activities without significant limitation, disability will not be found. 20 vidual has the responsibility to prove CFR 416.994(b)(1)(iv). In general, the indi disability. 20 CFR 4 16.912(a). An impair ment or combination of impairments is n ot severe if it does not signific antly limit an i ndividual's physical or m ental ability to do basic work activities. 20 CFR 416.921(a). The in dividual 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 i ndividual'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 impa irment(s) is considered under St ep 2. The Claimant bears the burden to pr esent sufficient objective medical evidenc et o substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 916. 920(a)(4)(ii); 20 CFR 916.920(b). An impairment, or combination of impairments, is severe if it signific antly limits an in dividual'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 wa lking, 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.
- ld.

The second step allows for dismissal of a di sability claim obviously lacking in medical merit. *Higgs v Bowe n*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen o ut 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 qu alifies as non-severe only if, regardless of a claimant's age, education, or wo rk 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 di sability due to back pain, degenerative dis c disease, and nerve impingement.

On **Constitution** the Claimant presented to the emergency room with complaints of back pain. The MRI revealed dif fuse disc bulge and right paracentral disc herniation at L4-5 which indents the ventral th ecal sac and extends to the neural foraminal region on the right, abutting and impressing the exitin g nerve root in the neural foramen on the right as well as multi-level degenerative changes and moderate central canal stenosis. Multiple s mall renal cysts were also do cumented. The Claimant was treated a nd discharged the following day with the diagnoses of lumbar radiculopathy with herniated nucleus, tobacco abuse, and history of lumbar fracture.

On the Claimant presented to emergency room with severe back pain. The Claim ant under went decompressive lum bar laminectomy L4-5 with discectomy. The Claimant tolerated the proc edure well and he was dischar ged on with the diagnosis of lumbar stenosis.

On the Claimant underwent revision of the decompressive lumbar laminectomy L4-5 with partial discectomy without complication. The Claimant was discharged

On **the Claimant present** ed for a consultative evaluation. The diagnoses were lumbar spine herniated di scs at L3-4, L4-5 status post two spinal surgeries; failed bac k syndrome even af ter surgery, physical therapy, and pain management; third s urgery needed for L2 di sc herniation; depr ession; lumbago; and bilateral radiculopathy greater on the right.

On **Construction** the Claimant present ed to the hospita I with low back pain. Straight leg raise was positive on the left side. The Claimant was disc harged the following day with the diagnoses of low back pain with radiculopathy and intervertebral disc bulge between L4-5 with radiculopathy on the nerve root causing pain, chronic low back pain syndrome, opioid to lerance, status post lum bar laminectomy (September 2010), depression, and tobacco abuse.

On **a second an MRI** of the lum bosacral spine revealed central/left paracentral disc protrusion with minimal cr anial migration superimposed on diffuse dis c bulge at L4-5 with narrowing of the latera I recess, greater on the left, abutting the intracanalicular portion of t he left L5 nerve roots and proximal inferi or neural foramina narrowing, greater on the left.

As previously noted, the Claim ant bears t he burden to present sufficient objective medical evidence to s ubstantiate the alleged disabling im pairment(s). As summarized above, the Claimant has pres ented medical evidence establishing that he does h ave some mental limitations on his ability to per form basic work activities. The medical evidence has established that the Claimant has an im pairment, or combination thereof,

that has more than a *de minimus* effect on the Claimant's basic work activities. Further, the impairments have lasted cont inuously for twelve months; therefore the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physic al disabling impairments due to back pain, degenerative disc diseas e, and nerve impingement.

Listing 1.00 defines musculoskeletal syst em impairments. Disor ders of the musculoskeletal system may re sult from her editary, congenital, or acquired pathologic processes. 1.00A. Impairments may resu It from infectious , inflammatory , or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic dis eases. 1.00A. Regardle ss of the cause(s) of a musculoskeleta 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 sus tained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ab ility to walk ; i.e., an impairment(s) that interferes very seriously with the indi vidual's ability to independently initiate, su stain, or complete activities. 1.00B2b(1). Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independ ent ambulation without the use of a handheld assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because t he 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 wallking 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.

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 charact erized 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 ba ck, positive straight-leg raising test (sitting and supine); or

- B. Spinal arachnoiditis, confirmed by an oper ative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dys esthesia, r esulting in the need for changes in position or post ure more than onc e every 2 hours; or
- C. Lumbar spinal stenosis res ulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradic ular pain and weak ness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (See above definition.)

In order to meet a musculos keletal list ing, the impairment must present a major dysfunction resulting in the inab ility to am bulate effectively. The objective medical documentation (x-rays, MRIs) est ablish that the Claimant cont inues to suffer, in part, with intervertebral dis c bulge between L4-5 wit h bilateral radiculopat hy and nerve root impingement, despite two prior surgeries, physic al t herapy, and pain management. Additionally, the Claimant needs at least one more surgery at L2 (disc herniation). As a result, the Claimant has severe pain and weakness. Based on the foregoing, it is found that the Claimant's impairment (s) meets, or is the m edical equivalent ther eof, a listed impairment within List ing 1.00, specifically 1.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

### **DECISION AND ORDER**

The Administrative Law Judge, based on 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 ORDERD:

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

- 3. The Department shall supplement for lo st benefits (if any) that the Claimant was entitled to receiv e if otherwise elig ible and qualified in acc ordance with department policy.
- 4. The Department shall review the Claimant's continued eligibility in February 2013 in accordance with department policy.

Collin M. Mamilka

Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: January 23, 2012

Date Mailed: January 23, 2012

**NOTICE:** Michigan Administrative Hearing Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order . MAHS will not or der a rehearing or reconsideration on the Department's mo tion where the final decis ion cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a ti mely 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 <u>MAY</u> 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

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

## CMM/cl

