

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-39492
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 10, 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 Monday, October 10, 2011. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

ISSUE

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

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits, retroactive from October 2010, on January 31, 2011. (Exhibit 1, pp. 69 – 92)
2. On April 18, 2010, the Medical Review Team ("MRT") determined that the Claimant was not disabled. (Exhibit 1, pp. 3, 4)
3. On April 26, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 1, p. 2)

4. On June 14, 2011, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On July 20, 2011, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant alleged physical disabling impairments due to back, hip, and knee pain, carpal tunnel syndrome ("CTS"), shortness of breath, asthma, chest pain, high blood pressure, cardiomyopathy, sleep apnea, and headaches.
7. The Claimant alleged mental disabling impairments due to major depression, anxiety, and schizoaffective disorder.
8. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 6'4" in height; and weighed 311 pounds.
9. The Claimant has a limited education and employment history as a phlebotomist and general laborer.
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 Independence Agency, pursuant to MCL 400.10 *et seq.* and MCL 400.105. Department policies are found in the Bridge 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 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 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 back, hip, and knee pain, CTS, shortness of breath, asthma, chest pain, high blood pressure, cardiomyopathy, sleep apnea, headaches, major depression, anxiety, and schizoaffective disorder.

On [REDACTED] a consultative evaluation was performed. The diagnoses were history of hypertension (controlled with medication), mild COPD, chronic lower back pain, bilateral knee pain, left hip pain, and history of CTS on the left hand. The Internist opined that the Claimant was able to work the equivalent of a sedentary position.

On [REDACTED] the Claimant presented to the hospital with complaints of severe headache. The MRI and MRA were negative. A CT of the spine revealed evidence of central stenosis at multiple levels as well as neural foraminal encroachment at C7-T1 and to a lesser extent C6-7, C5-6. The Claimant was discharged on [REDACTED] [REDACTED] with the diagnoses of headache secondary to migraines and uncontrolled blood pressure.

On [REDACTED] x-rays of the lumbar spine revealed degenerative disc disease at L5-S1.

On [REDACTED] x-rays of the knees found moderate tricompartmental degenerative osteoarthritis.

On [REDACTED] the Claimant presented to the hospital with complaints of chest pain and nausea and intermittent epigastric pain. The Claimant was discharged on [REDACTED] with the diagnoses of acute enteritis viral, hypertensive cardiovascular disease, hyperlipidemia, sleep apnea syndrome, celiac allergy, and chronic constipation.

On [REDACTED] x-rays of the left hip and knees revealed moderate osteoarthritis.

On [REDACTED] an evaluation of the cervical internal carotid artery was performed showing on the right and left, a 1-39 percent reduction range.

On [REDACTED] a Medical Needs form was completed on behalf of the Claimant. The current diagnoses were high blood pressure, bilateral knees and left hip arthritis, and thyroid disease. The Claimant required assistance with meal preparation, shopping, laundry, and housework. The Physician opined that the Claimant was unable to work at any job.

On this same date, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were GERD, left hip and bilateral knee arthritis, renal insufficiency, hypertension, chronic pain, and chronic vomiting. The Claimant's condition was deteriorating, noting the need for assistance with heavy chores.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were moderate left knee pain, severe left hip pain, moderate osteoarthritis of the left hip/knee. The Claimant's condition was deteriorating and he was limited to the occasional lifting/carrying of 10 pounds; standing and/or walking less than 2 hours during an 8 hour workday; sitting at less than 6 hours during this same time frame; and able to perform repetitive actions with his upper extremities and his right lower extremity. The Claimant requires a cane for ambulation. The x-ray report revealed pain so severe that a left hip/knee replacement is needed.

On [REDACTED] a Mental Residual Functional Capacity Assessment was completed on behalf of the Claimant. The Claimant was found markedly limited in 14 of 20 factors and moderately limited in the remaining 6 factors. The Claimant had severe memory impairment and limited cognitive processing with short attention span not inductive to a

routine situation. The diagnosis was schizoaffective disorder with anti-social personality characteristics. The Global Assessment Functioning (“GAF”) 45.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that he does have some physical 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 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 impairments due to back, hip, and knee pain, CTS, shortness of breath, asthma, chest pain, high blood pressure, cardiomyopathy, sleep apnea, headaches, depression, anxiety, and schizoaffective 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. 1.00B2a. The inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities. 1.00B2c. In other words, an impairment(s) that interferes very seriously with the individual’s ability to independently initiate, sustain, or complete activities. 1.00B2c. To use the upper extremities effectively, an individual must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. 1.00B2c. Examples include the inability to prepare a simple meal, feed oneself, take care of personal hygiene, sort/handle papers/files, or place items in a cabinet at or about the waist level. 1.00B2c. Pain or other symptoms are also considered. 1.00B2d.

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 as defined in 1.00B2c

In this case, the objective findings show that the Claimant had central stenosis at multiple levels with neural foraminal encroachment at C7-T1, C6-7, and C5-6; degenerative disc disease at L5-S1, bilateral tricompartmental degenerative osteoarthritis/arthritis; and left hip arthritis/arthritis. The Claimant requires a cane for ambulation noting that his left hip/knee pain are so severe that a hip/knee replacement surgery is needed. The objective evidence demonstrates that the Claimant's condition is deteriorating and places him at a less than sedentary activity level. In light of the foregoing, it is found that the Claimant's impairments meet, or are the medical equivalent of, a listing impairment within 1.00, specifically, 1.02. 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 benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall process the January 31, 2011 application, with retroactive benefits for October 2010, to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.

3. The Department shall supplement for any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review the Claimant's continued eligibility in November 2012 in accordance with Department policy.


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

Date Signed: October 26, 2011

Date Mailed: October 26, 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
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

2011-39492/CMM

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cc:

