STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM ADMINISTRATIVE HEARINGS FOR THE

ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Reg No.: 2011-39560

Issue No.: 2009

Case No.:

Hearing Date: August 29, 2011

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 Monday, August 29, 2011. The Claimant appeared and testified. The Claimant was represented by

appeared on behalf of the Department of Observed the proceedings.

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the subm ission of additional medical records. The evidence was received, reviewed, and forwar ded to the State Hearing Review Team ("SHRT") for consideration. On March 29, 2011, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final determination.

<u>ISSUE</u>

Whether the Department proper ly 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 t he competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant submitt ed an application for public assistance seeking MA-P benefits on December 22, 2010.

- 2. On April 11, 2011, the Medical Revi ew Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 10, 11)
- 3. On April 15, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 1, pp. 4 9)
- 4. On June 6, 2011, the Department rece ived the Claimant's written request for hearing. (Exhibit 1, p. 2)
- 5. On July 25, 2011, the SHRT found the Claimant not disabled. (Exhibit 4)
- 6. The Claimant alleged physical disabling impairments due to joint pain, back pain with disc herniation, extremity numbness, chronic obstructive pulmonary disease ("COPD"), high blood pressure, arthritis, and history of Hodgkin's lymphoma.
- 7. The Claimant alleged mental disabling impairment due to anxiety.
- 8. At the time of hearing, the Claimant was years old with an date; was 5'8 in height; and weighed 210 pounds.
- 9. The Claim ant is a high school gradu ate with vocational training and an employment history of work in landscape, gardens, and in a kitchen.
- 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'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 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 ac tivities or ability to reason and make

appropriate mental adjustments, if a mental disab ility is alleged. 20 CRF 416 .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, 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 has 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 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 can 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 disable ed, or not disabled, at 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 d espite the limitations based on all rele vant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity ass essment is eval uated at both steps four and five. 20 CFR 41 6.920(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. general, the individual has the responsibility to prove 20 CFR 416.994(b)(1)(iv). In disability. 20 CFR 4 16.912(a). An impair ment or combi nation of impairments is not severe if it does not signific antly limit an individual's physical or mental 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 Cla imant is not involved in substantial gainful activity therefore is not ineligible for disability benefits under Step 1.

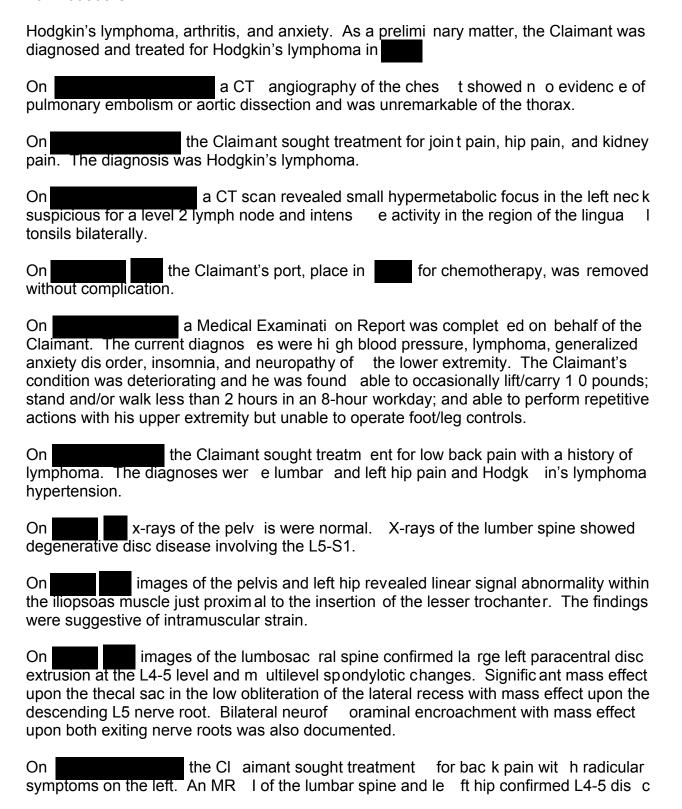
The severity of the Claimant's alleged impa irment(s) is considered under St ep 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purpos es, the impairment must be seevere. 20 CFR 416. 920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

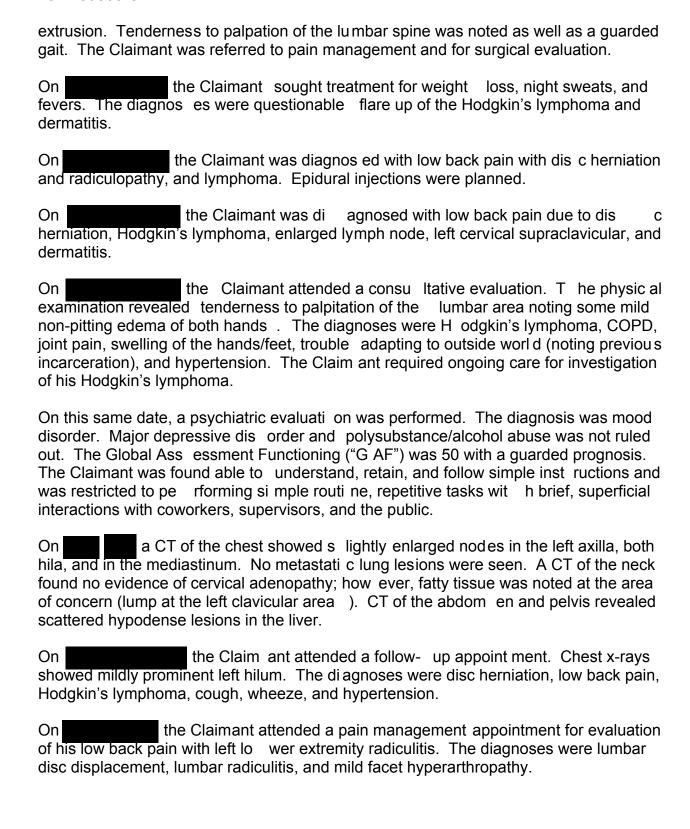
- 1. Physical functions such as wa lking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- 2. Capacities for seeing, hearing, and speaking;
- 3. Understanding, carrying out, and remembering simple instructions;
- 4. Use of judgment;
- 5. Responding appropriately to supervision, co-workers and usual work situations; and
- 6. Dealing with changes in a routine work setting.

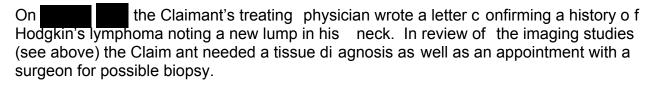
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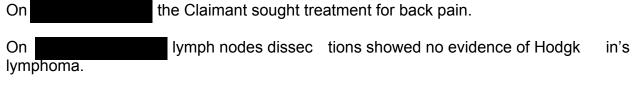
The second step allows for dismissal of a disability claim obviously lacking in medical merit. Higgs v Bowen, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen out claims that are totally groundless solely from a medical standpoint. 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 dis ability due to joint pain, back pain with dis c herniation, extremity numbness, COPD, high blood pressure, kidney disease, history of









On the Claimant sought treatment for joint pain to include hands and feet swelling. The diagnos es were low back pain with dischering, cat scratch disease, joint pain, and history of lymphoma.

As previously noted, the Claim ant 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 deminimus effect on the Claimant's basic work activities. Further, the impairments have lasted continuous ly 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 knee/fee/back/ hand pain, arthritis, and high blo od pressure.

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 individual'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 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:

* * *

- 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 ner ve 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, resulting 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 this case, the objective evidence reveal s continued treatment for low back pain as a result of disc herniation with radiculopathy in the lumbar spine. Imaging studies confirm that the disc extrusion has significant mass effect in the low obliteration of the lateral recess with mass effect upon the descending L5 nerve root. Additionally, bilateral neuroforaminal encroachment with mass effect upon both exiting nerve roots is also confirmed as well as multile vel spondylotic changes. The Claim ant's treating physician placed him at the equivalent of sedentary/less than sedent ary activity noting his condition was deteriorating. Based on the medical evidence alone, the Claimant's impairment(s) meet, or are the medical equivalent thereof, a listing impair ment within Listing 1.00, specific ally 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 benefit program.

Accordingly, it is ORDERED:

- 1. The Department's determination is REVERSED.
- 2. The Department shall initiate processing of the December 22, 2010 application, with retroactive benefits to September 2010, to determine if all other non-medical criter is are met and inform the Claimant of the determination in accordance with department policy.
- 3. The Department shall supplement fo r any lost benefits (if any) that the Claimant was entitled to receive if otherwise eligib le and qualifie d in accordance with department policy.
- 4. The Department shall review the Claimant's cont inued eligibility in May 2013 in accordance with department policy.

Colleen M. Mamelka

Administrative Law Judge
For Maura Corrigan, Director

Department of Human Services

Date Signed: April 10, 2012

Date Mailed: April 10, 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 Michigan Administrative Hearings

Re

consideration/Rehearing Request

P. O. Box 30639

Lansing, Michigan 48909-07322

CMM/cl

