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

IN THE MATTER OF:

[redacted]

Reg No.: 2011-39560
Issue No.: 2009
Case No.: [redacted]
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 [redacted] appeared on behalf of the Department of Human Services ("Department"). [redacted] observed the proceedings.

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 records. The evidence was received, reviewed, and forwarded 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.

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 on December 22, 2010.

2. On April 11, 2011, the Medical Review 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 received 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 [redacted] years old with an [redacted] birth date; was 5'8 in height; and weighed 210 pounds.

9. The Claimant is a high school graduate 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 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 416.913. 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 416.945(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 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 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 joint pain, back pain with disc herniation, extremity numbness, COPD, high blood pressure, kidney disease, history of

Hodgkin's lymphoma, arthritis, and anxiety. As a prelimi nary matter, the Claimant was diagnosed and treated for Hodgkin's lymphoma in [redacted]

On [redacted] a CT angiography of the ches t showed n o evidenc e of pulmonary embolism or aortic dissection and was unremarkable of the thorax.

On [redacted] the Claimant sought treatment for join t pain, hip pain, and kidney pain. The diagnosis was Hodgkin's lymphoma.

On [redacted] a CT scan revealed small hypermetabolic focus in the left nec k suspicious for a level 2 lymph node and intens e activity in the region of the lingua l tonsils bilaterally.

On [redacted] the Claimant's port, place in [redacted] for chemotherapy, was removed without complication.

On [redacted] a Medical Examinati on Report was complet ed on behalf of the Claimant. The current diagnos es were hi gh blood pressure, lymphoma, generalized anxiety dis order, insomnia, and neuropathy of the lower extremity. The Claimant's condition was deteriorating and he was found able to occasionally lift/carry 1 0 pounds; stand and/or walk less than 2 hours in an 8-hour workday; and able to perform repetitive actions with his upper extremity but unable to operate foot/leg controls.

On [redacted] the Claimant sought treatm ent for low back pain with a history of lymphoma. The diagnoses wer e lumbar and left hip pain and Hodgk in's lymphoma hypertension.

On [redacted] x-rays of the pelv is were normal. X-rays of the lumber spine showed degenerative disc disease involving the L5-S1.

On [redacted] images of the pelvis and left hip revealed linear signal abnormality within the iliopsoas muscle just proxim al to the insertion of the lesser trochanter. The findings were suggestive of intramuscular strain.

On [redacted] images of the lumbosac ral spine confirmed la rge left paracentral disc extrusion at the L4-5 level and m ultilevel sp ondylotic c hanges. Signific ant mass effect upon the thecal sac in the low obliteration of the lateral recess with mass effect upon the descending L5 nerve root. Bilateral neurof oraminal encroachment with mass effect upon both exiting nerve roots was also documented.

On [redacted] the Cl aimant sought treatment for bac k pain wit h radicular symptoms on the left. An MR I of the lumbar spine and le ft hip confirmed L4-5 dis c

extrusion. Tenderness to palpation of the lumbar spine was noted as well as a guarded gait. The Claimant was referred to pain management and for surgical evaluation.

On [redacted] the Claimant sought treatment for weight loss, night sweats, and fevers. The diagnoses were questionable flare up of the Hodgkin's lymphoma and dermatitis.

On [redacted] the Claimant was diagnosed with low back pain with disc herniation and radiculopathy, and lymphoma. Epidural injections were planned.

On [redacted] the Claimant was diagnosed with low back pain due to disc herniation, Hodgkin's lymphoma, enlarged lymph node, left cervical supraclavicular, and dermatitis.

On [redacted] the Claimant attended a consultative evaluation. The physical examination revealed tenderness to palpitation of the lumbar area noting some mild non-pitting edema of both hands. The diagnoses were Hodgkin's lymphoma, COPD, joint pain, swelling of the hands/feet, trouble adapting to outside world (noting previous incarceration), and hypertension. The Claimant required ongoing care for investigation of his Hodgkin's lymphoma.

On this same date, a psychiatric evaluation was performed. The diagnosis was mood disorder. Major depressive disorder and polysubstance/alcohol abuse was not ruled out. The Global Assessment Functioning ("GAF") was 50 with a guarded prognosis. The Claimant was found able to understand, retain, and follow simple instructions and was restricted to performing simple routine, repetitive tasks with brief, superficial interactions with coworkers, supervisors, and the public.

On [redacted] a CT of the chest showed slightly enlarged nodes in the left axilla, both hila, and in the mediastinum. No metastatic lung lesions were seen. A CT of the neck found no evidence of cervical adenopathy; however, fatty tissue was noted at the area of concern (lump at the left clavicular area). CT of the abdomen and pelvis revealed scattered hypodense lesions in the liver.

On [redacted] the Claimant attended a follow-up appointment. Chest x-rays showed mildly prominent left hilum. The diagnoses were disc herniation, low back pain, Hodgkin's lymphoma, cough, wheeze, and hypertension.

On [redacted] the Claimant attended a pain management appointment for evaluation of his low back pain with left lower extremity radiculitis. The diagnoses were lumbar disc displacement, lumbar radiculitis, and mild facet hyperarthropathy.

On [redacted] the Claimant's treating physician wrote a letter confirming a history of Hodgkin's lymphoma noting a new lump in his neck. In review of the imaging studies (see above) the Claimant needed a tissue diagnosis as well as an appointment with a surgeon for possible biopsy.

On [redacted] the Claimant sought treatment for back pain.

On [redacted] lymph nodes dissections showed no evidence of Hodgkin's lymphoma.

On [redacted] the Claimant sought treatment for joint pain to include hands and feet swelling. The diagnoses were low back pain with disc herniation, cat scratch disease, joint pain, and history of lymphoma.

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 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 knee/fee/back/ hand pain, arthritis, and high blood pressure.

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 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 sign ificant mass effect in the lo w obliteration of the lateral recess wit h mass effect upon t he 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 phys ician placed him at the equivalent of sedentary/less than sedent ary activity noting his condition was deteriorating. Based on t he medical evidence alone, the Claimant's impairment(s) meet, or are t he medical equival ent thereof, a listing impair ment within Listing 1.00, specific ally 1.04. Accordin gly, 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 retroactiv e benefits to September 2010, to determine if all other non-medical criter ia 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 Dec ision and Order or, if a ti mely request for rehea ring 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, math ematical error, or other obvious errors in the h earing 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]