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

IN THE MATTER OF:
[redacted]

Reg No.: 2011-47887
Issue No.: 2009
Case No.: [redacted]
Hearing Date: November 23, 2011
Macomb County DHS (36)

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 Sterling Heights, Michigan on Wednesday, November 23, 2011. The Claimant appeared and testified. The Claimant was represented by [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, for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On June 28, 2012, this office received the SHRT determination 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") 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 to February 2011, on March 18, 2011.

2. On May 13, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. On May 18, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 2)

4. On August 5, 2011, the Department received the Claimant's timely written request for hearing. (Exhibit 3)

5. On September 23, 2011 and June 22, 2012, the SHRT found the Claimant not disabled. (Exhibit 4)

6. The Claimant alleged physical disabling impairments due to carpal tunnel syndrome, back pain, arthritis, shortness of breath, and heart murmur.

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

8. At the time of hearing, the Claimant was [redacted] years old with an [redacted] birth date; was 6' in height; and weighed 189 pounds.

9. The Claimant is a high school graduate with some college and an employment history as an electrician and robotics designer.

10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

As a preliminary matter, on June 22, 2012, the SHRT found the Claimant not disabled noting that the newly submitted evidence was contained in the original hearing packet. This is incorrect. The newly submitted evidence was from an October 2011 hospitalization which was not in the original packet. The original packet contained records from 2010 through February 2011. In addition, the first page of the DHS 49 was in the original packet; however, the second page was not. That is why the second page of the DHS 49 was submitted along with the new evidence. As a result of this oversight, the SHRT did not consider the new evidence.

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 CFR 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 41 6.920(a)(4). In determinin g disa bility, an in dividual's functiona l c apacity to perform basic work ac tivities 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 indiv idual has t he responsibility to prove disability. 20 CFR 4 16.912(a). An impair ment or combi nation of impairments is n ot severe if it does not signific antly limit an i ndividual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The in dividual ha s the resp onsibility t o provide evidence of prior work experience; e fforts 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 severit y 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 e t 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 416. 920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or co mbination of impairments, is severe if it signific antly limits an in dividual's p hysical or mental ability to do basic wo rk activities re gardless of age, education and work exper ience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitude s necessar y 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.

Id.

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 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 carpal tunnel syndrome, back pain, arthritis, shortness of breath, and heart murmur.

On [redacted] an EKG showed evidence of L5-S1 radiculopathy and mild bilateral carpal tunnel syndrome. Nerve injury proximal to the sensory root ganglion was not excluded.

From [redacted] the Claimant attended follow-up appointments where he was treated in part for low back pain with radiculopathy, neck pain, heart murmur, and degenerative disc disease.

On [redacted] the Claimant presented to the hospital with chest pain and complaints of coughing up blood. An echocardiogram revealed an ejection fraction of greater than 60 per cent; mild concentric left ventricular hypertrophy; and sigmoid-shaped septum. The discharge summary was not submitted so it is not known the date of discharge or the discharge diagnoses.

On [redacted] a Medical Examination Report was completed on behalf of the Claimant by his treating provider since [redacted]. The current diagnoses were degenerative disc disease with radiculopathy. The physical examination documented edema, wheezing, and lumbar spine deformity with positive tender paraspinals and reduced range of motion. The Claimant's condition was deteriorating and he was found able to meet his needs in the home.

On [redacted] the Claimant presented to the hospital with complaints of chest pain, racing heart, and difficulty breathing. An echocardiogram revealed an ejection fraction of 45 percent; mild left atrial enlargement and mild left ventricular hypertrophy; mild mitral regurgitation; and mild tricuspid regurgitation. On [redacted] a transesophageal echogram without contrast, an echo Doppler limited study, and an echo color flow Doppler revealed atrial flutter with the left ventricular rate noting an ejection fraction of 45 to 50 percent.

On [redacted] the Claimant presented to the hospital with complaints of severe shortness of breath. X-rays confirmed cardiomyopathy. An echocardiogram revealed depressed left ventricular systolic function with an ejection fraction of 35 to 40 percent and dilated left atrium, mild concentric left ventricular hypertrophy with a restrictive filling

pattern. The Claimant left against medical advice the following day with the diagnoses of atrial flutter.

On [redacted] the Claimant presented to the hospital with complaints of heart palpitations. The Claimant's estimated ejection fraction was 43%. The Claimant was discharged on [redacted] with the diagnosis of atrial fibrillation.

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 some medical evidence establishing that he does have some physical 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 carpal tunnel syndrome, back pain, arthritis, shortness of breath, and heart murmur.

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. 1.00 B2c. 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 anat omical deformity (e.g. subluxation, contracture, bony or fibrous ank ylosis, instability) and chronic joint pain and stiffne ss with s igns of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriat e medically acceptable imaging of joint space nar rowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peri pheral weight-bearing joint (i.e., hip, knee, or ank le), resulting in inab ility to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wr ist, 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 dis ease, facet arthritis, vertebral fracture), resulting in compromise of a ner ve root (inc luding 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 sens ory or refl ex 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 accept able imaging, manifested by chronic nonradic ular pain and weak ness, and resulting in inability to ambul ate effectively, as defined in 1.00B2b. (see above definition)

Listing 4.00 defines cardiovascular impairment in part, as follows:

> . . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular impairment results from one or more of four consequences of heart disease:
> (i) Chronic heart failure or ventricular dysfunction.
> (ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
> (iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
> (iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f. In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a. If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.*

In this case, the objective evidence confirms L5-S1 radiculopathy, bilateral carpal tunnel syndrome, degenerative disc disease, lumbar spine deformity with positive paraspinals and reduced range of motion, major joint dysfunction, and possible nerve injury proximal to the sensory root ganglion. Further, the evidence reveals left ventricular hypertrophy, cardiomyopathy, and mitral regurgitation. The Claimant's ejection fraction has continually decreased from 60 percent (02/27/2011), 45 percent (10/5/2011) to 35 to 40 percent (10/22/2011). The medical records show treatment for back pain, neck pain, shortness of breath, edema, and chest pain. The treating source found the Claimant's condition was deteriorating. Ultimately, in consideration of the Claimant's musculoskeletal impairments combined with the cardiovascular impairments, it is found that the Claimant's impairments meet, or are the equivalent thereof, listing impairments as detailed above. 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 March 18, 2011 MA-P application, retroactive to February 2011, 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 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 accordance with Department policy in August 2013.

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

Date Signed: July 17, 2012

Date Mailed: July 17, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (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 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]