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

IN THE MATTER OF:

[redacted]

Reg No.: 2011-53783
Issue No.: 2009
Case No.: [redacted]
Hearing Date: December 14, 2011
Wayne County DHS (18)

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 telephone hearing was conducted from Detroit, Michigan on Wednesday, December 14, 2011. The Claimant appeared, along with [redacted] and testified. Participating on behalf of the Department of Human Services ("Department") was [redacted].

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 August 8, 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 on March 17, 2011.

2. On June 21, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. On June 25, 2011, the Department notified the Claimant of the MRT determination.

4. On September 19, 2011, the Department received the Claimant's written request for hearing. (Exhibit 2)

5. On November 12, 2011 and August 1, 2012, the SHRT found the Claimant not disabled. (Exhibit 3)

6. The Claimant alleged physical disabling impairments due to neck pain, back pain, cardiomyopathy, chest pain, and hypertension.

7. The Claimant alleged mental disabling impairment(s) due to anxiety and depression.

8. At the time of hearing, the Claimant was [redacted] years old with a [redacted] birth date; was 5'10" in height; and weighed 190 pounds.

9. The Claimant is a high school graduate with some college and an employment history as a janitor, a machine operator, and at a packaging plant.

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 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 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 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 neck pain, back pain, cardiomyopathy, chest pain, hypertension, depression, and anxiety.

On [redacted] the Clamant attended a follow-up appointment for his anxiety, depression, and hypertension. The physical examination noted high blood pressure, joint pain with restricted range of motion, anxiety, and depression. The examination further documented tender cervical, thoracic and lumbar spine, bilateral upper, mid, and lower paraspinal muscle tenderness, moderately reduced extension and flexion, and moderated reduced lateral motion bilaterally. The diagnoses were neurotic disorder, general anxiety, and depression.

On [redacted] the Claimant attended a follow-up appointment resulting in the diagnoses of neurotic disorder, generalized anxiety, depression, and thoracic spine disorder. The Claimant's EKG was abnormal.

On [redacted] the Claimant attended a follow-up appointment resulting in the diagnoses of neurotic disorder, generalized anxiety, depression, hypertension, chronic sinusitis, thoracic disc disorder, lumbago, and fibromyalgia.

On [redacted] the Claimant attended a follow-up appointment. The diagnoses remained the same.

On [redacted] the Claimant attended a follow-up appointment. In addition to the previous diagnoses, cervical disc disorder was added.

On [redacted] the Claimant attended a follow-up appointment where the diagnoses remained the same noting the worsening of the cervical and thoracic disorders.

On [redacted] the Claimant attended a follow-up appointment where the diagnoses remained unchanged.

On [redacted] the Claimant attended a follow-up appointment where his hypertension was worse despite treatment and the fracture of the thoracic vertebra (closed) was also worsened. Fatigue was also added to the diagnoses.

On [redacted] the Claimant attended a follow-up appointment where pharyngitis was added to the diagnoses.

On [redacted] cellulitis was added to the diagnoses.

On [redacted] in addition to the prior diagnoses, the Claimant was treated for abdominal pain.

On [redacted], the Claimant was treated for an elbow injury and ruptured biceps injury. The standing diagnoses remained unchanged.

On [redacted] the Claimant's anxiety was worsened. The other diagnoses were unchanged.

On [redacted], the Claimant remained unchanged.

On [redacted] the Claimant attended a follow-up appointment with complaints of lumbar/thoracic pain and increased anxiety. The physical examination documented burning/constant thoracic pain and deep, latent nerve root pain in the lumbosacral spine. On the [redacted] moderate cervical pain was also noted.

On [redacted] a MRI of the cervical spine revealed moderate to severe degenerative changes at C5-6, C6-7 and mild degenerative changes at C2-3, C3-4, and C4-5. Multilevel facet arthrosis, most pronounced on the right side at C3-4 and on the left at C4-5 and C5-6 was documented as well as minimal disc bulges and mild spurring at C3-4, C4-5, C5-6, and C6-7. Mild to moderate right neural foraminal narrowing at C3-4 and moderate left neural foraminal narrowing at C4-5 was revealed along with mild to moderate left neural foraminal narrowing at C5-6.

On this same date, an MRI of the thoracic spine revealed chronic anterior wedge compression fractures of T6 and T11 vertebral bodies along with mild mid-thoracic spondylosis and mild to moderate mid-thoracic facet arthrosis. Disc bulge at T8-9 and mild right foraminal narrowing at T5-6 was documented.

On [redacted] the Claimant attended a consultative evaluation. The physical examination noted Raynaud's phenomenon in both palms with elevation and decreased range of motion of the cervical spine. The impressions were residual neck pain radiating to the shoulders and arms with decreased range of motion of the shoulders and cervical spine with positive radicular symptoms; bilateral carpal tunnel; thoracic outlet syndrome; residual Raynaud's phenomenon; and obesity. The Claimant was found able to sit, stand, bend, stoop, open a door, make a fist, squat, climb stairs, and able to get on/off the examination table.

On this same date, a consultative psychiatric evaluation was performed. The diagnosis was bipolar disorder, mixed type with a GAF of 45-50 and a guarded prognosis. The Mental Residual Functional Capacity Assessment was completed finding the Claimant marked limited in 5 of the 20 factors and moderately limited in 10 factors.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were lumbago, depression, thoracic disc disorder, and hypertension. The examination revealed memory loss, dyslexia, depression, anxiety, panic attacks, and poor judgment. The Claimant's condition was deteriorating.

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 degree of functional limitation on the Claimant's activities, social function, concentration, persistence, or pace is moderate. The degree of functional limitation in the fourth area (episodes of decompensation) is 2. Ultimately, the medical evidence has established that the Claimant has a severe impairment and, in consideration of the *de minimus* standard, the Claimant's eligibility at Step 3 will be addressed.

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 evidence reflects diagnoses of cervical, thoracic, and lumbar pain; neurotic disorder, anxiety, depression, hypertension, fibromyalgia, cellulitis, sore throat, abdominal pain; elbow/arm injury, disc bulge/herniations, bilateral carpal tunnel; Raynaud's syndrome; memory loss; panic attacks; and obesity.

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 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 a defined in 1.00B2c

* * *

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 evidence shows diagnoses of moderate to severe degenerative changes throughout the cervical spine; chronic anterior wedge compression fractures of T6 and T11; mid-thoracic spondylosis and facet arthrosis; disc bulges; and bilateral carpal tunnel syndrome. The evidence further reveals decreased range of motion of the shoulders, arms, and cervical spine noting positive radicular symptoms and Raynaud's syndrome. Pain, to include nerve root pain in the lumbosacral spine along with weakness and sensory loss, is also documented. The Claimant's condition was listed as deteriorating. After review of the entire record, the Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment within 1.00 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 and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the March 17, 2011 application, to include any applicable retroactive months, 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 September 2013 in accordance with Department policy.

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

Date Signed: August 22, 2012

Date Mailed: August 22, 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]