

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-1086
Issue No.: 2009/4031
Case No.: [REDACTED]
Hearing Date: January 6, 2011
St. Clair 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 Port Huron, Michigan on Thursday, January 6, 2011. The Claimant appeared, along with [REDACTED], and testified. [REDACTED] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based upon 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 and SDA benefits on August 4, 2008.
2. On or about August 21, 2008, the Medical Review Team ("MRT") found the Claimant disabled with a medical review date of December 2009. (Exhibit 1, pp. 36, 37)
3. The Claimant submitted his redetermination and the information was forwarded to the MRT for consideration.

4. On September 8, 2010, the MRT found the Claimant no longer disabled. (Exhibit 1, pp. 79, 80)
5. On September 21, 2010, the Department notified the Claimant of the MRT decision. (Exhibit 1, p. 81)
6. On September 28, 2010, the Department received the Claimant's timely written request for hearing.
7. On October 20, 2010, the State Hearing Review Team ("SHRT") found that the Claimant's medical condition had improved and he was no longer disabled for purposes of the MA-P and SDA benefit programs.
8. The Claimant's alleged physical disabling impairments are due to back, neck, and shoulder pain, shortness of breath, emphysema, brain lesion, and bone metastases in the right scapula and the left sacrum noting possible cancer.
9. The Claimant alleged mental disabling impairment(s) due to anxiety and depression.
10. At the time of hearing, the Claimant was 53 years old with a [REDACTED] birth date; and 154 in weight.
11. The Claimant has a limited education with an employment history as a yard laborer, press operator, and as a mechanic.
12. 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 ("MA") 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 ("DHS"), formally 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 Manual ("BRM").

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 416.929(a)

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)

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994 In evaluating a claim for ongoing MA benefits, federal regulation require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5) The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b) The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c)

The first step in the analysis in determining whether an individual's disability has ended requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i) If a Listing is met, an individual's disability is found to continue with no further analysis required.

If the impairment(s) does not meet or equal a Listing, then Step 2 requires a determination of whether there has been medical improvement as defined in 20 CFR 416.994(b)(1); 20 CFR 416.994(b)(5)(ii) Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be

disabled. 20 CFR 416.994(b)(1)(i) If no medical improvement found, and no exception applies (see listed exceptions below), then an individual's disability is found to continue. Conversely, if medical improvement is found, Step 3 calls for a determination of whether there has been an increase in the residual functional capacity ("RFC") based on the impairment(s) that were present at the time of the most favorable medical determination. 20 CFR 416.994(b)(5)(iii)

If medical improvement is not related to the ability to work, Step 4 evaluates whether any listed exception applies. 20 CFR 416.994(b)(5)(iv) If no exception is applicable, disability is found to continue. *Id.* If the medical improvement *is* related to an individual's ability to do work, then a determination of whether an individual's impairment(s) are severe is made. 20 CFR 416.994(b)(5)(iii), (v) If severe, an assessment of an individual's residual functional capacity to perform past work is made. 20 CFR 416.994(b)(5)(vi) If an individual can perform past relevant work, disability does not continue. *Id.* Similarly, when evidence establishes that the impairment(s) do (does) not significantly limit an individual's physical or mental abilities to do basic work activities, continuing disability will not be found. 20 CFR 416.994(b)(5)(v) Finally, if an individual is unable to perform past relevant work, vocational factors such as the individual's age, education, and past work experience are considered in determining whether despite the limitations an individual is able to perform other work. 20 CFR 416.994(b)(5)(vii) Disability ends if an individual is able to perform other work. *Id.*

The first group of exceptions (as mentioned above) to medical improvement (i.e., when disability can be found to have ended even though medical improvement has not occurred) found in 20 CFR 416.994(b)(3) are as follows:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.

The second group of exceptions [20 CFR 416.994(b)(4)] to medical improvement are as follows:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;

- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.

If an exception from the second group listed above is applicable, a determination that the individual's disability has ended is made. 20 CFR 416.994(b)(5)(iv) The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

As discussed above, the first step in the sequential evaluation process to determine whether the Claimant's disability continues looks at the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1.

The Claimant alleges continued disability due to back, neck, and shoulder pain, shortness of breath, emphysema, brain lesion, bone metastases in the right scapula and the left sacrum noting possible cancer, anxiety and depression.

On [REDACTED], a MRI of the cervical spine revealed mild degenerative changes, disc bulge at C4-5 with a thin broad-based disc herniation posterolaterally on the left noting mild impingement on the left neural foramen, osteophytes at C5-6 with mild impingement on the left neural foramen, and osteophytes at C6-7 with mild impingement on both neural foramina.

On [REDACTED], a CT of the right upper extremity and cervical spine revealed degenerative changes at the right shoulder and a rotator cuff tear. Severe foraminal stenosis secondary to uncovertebral joint hypertrophy at C6-7 and to a lesser degree at C5-6.

In [REDACTED], a Medical Needs form was completed on behalf of the Claimant. The current diagnoses were cervical radiculopathy, pre-diabetes, and dyslipidemia. The Claimant was found unable to work any occupation for 6 months pending test results.

On or about [REDACTED], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were cervical radiculopathy, dyslipidemia, pre-diabetes, rotator cuff tendonitis. The Claimant's condition was deteriorating and he was limited to the occasional lifting/carrying of less than 10 pounds; standing and/or walking less than 2 hours in an 8 hour workday; sitting less than 6 hours during the same time frame; and unable to perform repetitive actions with his extremities with the exception of simple grasping.

On [REDACTED], the Claimant attended a consultative evaluation regarding his abnormal bone scan. The MRI revealed a suspicious area of bone metastases in the right scapula and left sacrum without clinical signs to suggest malignancy. Further testing was recommended.

On [REDACTED], the Claimant attended a medical evaluation for his complaints of neck, left shoulder, and back pain. The physical examination revealed frontal lobe wasting, synovial thickening in the bilateral CMC joints, a reduced range of motion in his spine. The Claimant's grip strength and dexterity were stable and his gait was stable. There was no clinical evidence of malignancy. X-rays of the cervical spine revealed moderate spondylosis at C4-5; foraminal encroachment at C6-7 on the left and between C3 and 6 on the right; and the surgical fusion at C5 and 7 noting satisfactory hardware alignment. X-rays of the lumbar spine revealed advanced spondylosis at L5-S1 with mild changes at L4-5. Facet joint narrowing at mid and lower lumbar levels was also noted. The Claimant was diagnosed with shoulder and neck surgery with possible bone cancer.

On [REDACTED], a CT of the chest, abdomen, and pelvis revealed two sclerotic foci within the skeleton and upper lung abnormalities. Metastatic disease was not excluded.

On [REDACTED], the Claimant attended a mental status evaluation. The WAIS-IV was given. The Claimant obtained a full scale IQ of 87 (low average range) with a verbal comprehension index of 83 (low average), a perceptual reasoning index of 105 (average), a working memory index of 86 (low average), and a processing speed index of 81 (low average). The Claimant was found able to attend, comprehend, and follow basic instructions and was found likely able to participate in a range of activities. The Claimant's hygiene was marginal. Ultimately, the Claimant was diagnosed with bipolar disorder, nicotine dependence, and history of alcohol dependence. Vascular dementia and expressive language were not ruled out. The Claimant also had antisocial features. The Global Assessment Functioning ("GAF") was 61.

On or about [REDACTED], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were rotator cuff tendonitis, nicotine addiction, cervical radiculopathy, bipolar disorder, obstructive sleep apnea, memory loss, and low BMI. The physical examination revealed shoulder and neck pain, wheezing, reduced range of motion in both arms, weakness/tenderness in the back and shoulders, and slow speech noting impaired comprehension. The back side of the Report was not submitted.

On [REDACTED], an arthroscopy of the left and right shoulders was performed which revealed degenerative labral tear and rotator cuff tear (both shoulders).

On [REDACTED], the Claimant's treating physician opined that the Claimant was totally disabled due to cervical/lumbar disc disease, chronic obstructive pulmonary disease ("COPD"), and rotator cuff tear of both shoulders.

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

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- 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 medical findings document the Claimant has two torn rotator cuffs both requiring surgical intervention. As a result, the Claimant suffers with chronic pain, weakness, and stiffness. The tears (rotator cuff and labral) were confirmed via an arthroscopy. Ultimately, the objective evidence, as detailed above, meets, or is the medical equivalent of a listed impairment within 1.00. Accordingly, the Claimant's disability is found disabled. No further analysis is required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in BAM, BEM, and BRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of continued MA-P entitlement, therefore the Claimant's is found disabled for purposes of continued SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant disabled for purposes of continued entitlement to the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the initiate review of the December 1, 2009 redetermination application to determine if all other non-medical criteria are met and inform the Claimant and her Authorized 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 February of 2012 in accordance with department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Duane Berger, Director
Department of Human Services

Date Signed: 1/11/2011

Date Mailed: 1/11/2011

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.

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