

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-31335
Issue No.: 2009/4031
Case No.: [REDACTED]
Hearing Date: August 22, 2011
Wayne County DHS (76)

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 Detroit, Michigan on Monday, August 22, 2011. The Claimant appeared, along with [REDACTED] and testified. The Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED] appeared on behalf of the Department of Human Services ("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 December 14, 2010.
2. On March 18, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 36, 37)
3. On March 23, 2011, the Department notified the Claimant of the MRT determination. (Exhibit 1, p. 4)
4. On April 29, 2011, the Department received the Claimant's timely written request for hearing. (Exhibit 1, p. 1)

5. On May 16, 2011, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairment(s) due to back, neck, shoulder, arm, and leg pain, neuropathy, shortness of breath, high blood pressure, chest pain, migraines, and rheumatoid arthritis.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] with a [REDACTED] birth date; was 5’7” in height; and weighed 276 pounds.
9. The Claimant is a high school graduate with an employment history as a branch manager for a mortgage company.
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 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 416.927.

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 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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 back, neck, shoulder, arm and leg pain, neuropathy, shortness of breath, high blood pressure, chest pain, migraines, and rheumatoid arthritis.

On [REDACTED], the Claimant attended a consultative evaluation. X-rays of the cervical spine showed advanced degenerative changes with foraminal encroachment. The diagnoses were cervical spondylosis with probable myelopathy, osteoarthritis of the left knee with crepitus and limited range of motion, and accelerated hypertension as a result of medication non-compliance.

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On [REDACTED] the Claimant presented to the hospital with complaints of severe headache and pain with swelling of the left leg. The Claimant was not compliant with his blood pressure medication due to insurance/affordability issues. The Claimant was discharged on [REDACTED] with the diagnoses of malignant hypertension, coronary artery disease, and obstructive sleep apnea.

On [REDACTED] a MRI revealed central and right paracentral disc protrusion at the C4-5 disc space which is effacing anterior cord surface and flattening of the spinal cord. The MRI of the lumbar spine found no evidence of a herniated disc pulposus or spinal stenosis.

On [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were uncontrolled hypertension, intractable headache, and right paracentral disc protrusion at C4-5. The Claimant was physically limited due to severe pain in the upper and lower extremities.

On [REDACTED], a medical source statement regarding residual functional capacity was completed on behalf of the Claimant. The Claimant was restricted to the equivalent of less than sedentary activity and he was found unable to work.

On [REDACTED] the Claimant's treating physician wrote a letter on behalf of the Claimant confirming the diagnoses of cervical spondylosis, cervical stenosis, and stenosis compression- severe.

On [REDACTED] the Claimant attended a consultative neurosurgery appointment. MRIs of the cervical and lumbar spine showed cervical kyphosis with some spondylosis superimposed upon a congenitally small canal resulting in stenosis with impingement of the spinal cord. Additional, cervical stenosis at C4-5 was documented as well as mild spondylosis of the lumbar spine. The MRI was suggestive of early myelopathy noting the need for surgical intervention.

On [REDACTED], the Claimant attended a consultative evaluation. The MRI demonstrated severe cervical spondylosis and cervical stenosis with severe compression. The Claimant was restricted from lifting, pushing, or pulling excess of 10 pounds and advised not to engage in excessive strenuous activities.

On [REDACTED] the Claimant was diagnosed with cervical stenosis causing myelopathy noting that without surgery, neurological loss would develop.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were cervical spondylosis with stenosis and myelopathy and lumbar spondylosis. The Claimant was in stable condition.

On this same date, a medical source statement regarding residual functional capacity was completed on behalf of the Claimant. The diagnosis was cervical spondylosis with stenosis. The Claimant was restricted to the equivalent of less than a sedentary employment and his impairment was considered severe. The Claimant was found unable to engage in employment.

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 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 disabling impairments due to back pain and arthritis.

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.

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 medical evidence documents advanced degenerative changes with foraminal encroachment, cervical spondylosis, spinal stenosis, and disc protrusion with nerve root impingement. The evidence reveals that the Claimant's impairment(s) is severe with pain, weakness, and restricted range of motion. In addition, the Claimant's treating physicians have limited the Claimant to less than sedentary activity. Based on the foregoing, it is found that the Claimant's impairment(s) meet, or is the medical equivalent thereof, a listed impairment within Listing 1.00, specifically 1.04. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

The State Disability Assistance program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department 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 RFT. 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 automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, the Claimant is found disabled for purposes of the MA-P program; therefore, the Claimant is found disabled for purposes of SDA benefit program.

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 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 December 14, 2010 application, to include any applicable retroactive months, to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.
3. The Department shall supplement for any lost benefits that the Claimant was entitled to receive with respect to the December 14, 2010 application 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 September 2012.

Colleen M. Mamelka

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

Date Signed: August 23, 2011

Date Mailed: August 23, 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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