

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-31538

Issue No: 2009

[REDACTED]

Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received on May 2, 2011. After due notice, a telephone hearing was held on August 4, 2011. Claimant personally appeared and testified.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On February 18, 2011, Claimant applied for MA-P.
- (2) On April 19, 2011, the Medical Review Team (MRT) denied Claimant's MA application stating Claimant's non-severe impairment lacks the duration of 12 months, pursuant to 20 CFR 416.909. (Department Exhibit A, pages 3-4).
- (3) On April 20, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On May 2, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On May 17, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P benefits stating Claimant retains the residual functional

capacity to perform light work per 20 CFR 416.967(b). (Department Exhibit B, pages 1-2).

- (6) Claimant has a history of herniated discs and high blood pressure.
- (7) On October 28, 2009, an Independent Medical Evaluation reviewed Claimant's medical records. Claimant's medical records showed he was diagnosed with acute lumbar sprain and sciatica on July 18, 2009. The lumbosacral x-ray from July 18, 2009 showed mild degenerative changes and mild narrowing of the L5-S1 consistent with disc degeneration. Claimant's MRI on July 29, 2009, showed a broad central protrusion at L4-L5 of moderate size that appeared to compress both L5 nerve roots on axial view. He has a central right L5-S1 disc herniation with right S1 nerve root compression identified on axial view. On August 25, 2009, Claimant's doctor indicated Claimant was noncompliant with physical therapy and was complaining vividly of back, hip and leg pain. A lumbar myelogram and post myelogram CT scan were attempted on October 15, 2009. The myelogram was unsuccessful. The evaluation also noted that Claimant's doctor recommended complete out of work status on September 15, 2009. On October 28, 2009, the IME completed a physical examination of Claimant and noted he moderately limits lumbar flexion with associated low back and right buttock pain, but markedly limits extension with low back and right buttock pain. He moderately limits right and left side bending with associated right buttock pain. He complains of low back pain and right leg pain with straight leg raise on the right and low back pain with left straight raise. Motor functions are grade 3.5 in right EHL versus 5 on the left. He has a grade 4 right ankle dorsiflexion versus 5 on the left. He has grade 5/5 knee extension bilaterally and grade 5/5 hip flexion and abduction bilaterally. He reports decreased sensation to light touch in the right dorsal foot and right anterolateral lower leg area. The IME's assessment was L4-L5 and L5-S1 disc herniations. There is more significant nerve root compression at L4-L5 and this is likely the most symptomatic level. However, there is a right L5-S1 disc herniation with S1 nerve root compression identified. (Claimant's Exhibit A, pages 1-4).
- (8) On February 18, 2011, during Claimant's Social Summary interview, the eligibility specialist noted Claimant seemed to be frustrated and on edge. He was impatient and wanted everything expedited because he was in so much pain. The specialist observed Claimant walked with a limp. (Department Exhibit A, pages 5-6).
- (9) On March 3, 2011, the department received Claimant's Medical-Social Questionnaire and Activities of Daily Living form. Claimant indicated he last saw a doctor on December 12, 2009 for herniated disks L1, L2-L5. Claimant explained he had trouble sleeping at night due to the pain in his leg bones. He stated he cannot sleep because of the pain in his legs and

butt cheeks. Claimant indicated he needs help getting up from a chair or couch and at least 2 to 3 times a month when he cannot walk. Claimant does not fix his own meals, does not do housework or shop. His Aunt makes his meals and does the shopping. Claimant explained that he has severe pain daily and nightly, and that he is in so much pain he cannot concentrate and needs immediate help. (Department Exhibit A, pages 7-12).

- (10) On March 3, 2011, a medical examination of Claimant showed he had disc herniation at L5-S1 and S1 nerve root encroachment. A physical examination of his musculoskeletal system showed positive straight leg raises. Claimant's gait was stable and his needs are able to be met in the home. (Department Exhibit A, pages 15-16).
- (11) On March 16, 2011, an MRI lumbar spine without contrast showed there are minimal generalized hypertrophic osseous degenerative changes somewhat more prominently involving the posterior apophyseal joints and particularly at the L4-L5 and L5-S1 levels. There is mild to moderate L4-L5 and moderate L5-S1 disc narrowing. At the L3-L4 level, there is a tiny intraforaminal disc herniation on the right side superimposed on an otherwise minimally bulging annulus without any discernible encroachment. At the L4-L5 level, there is a small to moderate midline subligamentous disc herniation with annular tear superimposed on an otherwise mildly bulging annulus without any definitive root encroachment. At the L5-S1 level, there is a small midline subligamentous disc herniation eccentric to the right superimposed on a mildly bulging annulus mildly compressing the right S1 root. No other intrinsic or extrinsic abnormalities noted involving the lumbosacral thecal sacral contents. Impression: Tiny intraforaminal disc herniation L3-L4 on the right superimposed on a minimally bulging annulus without discernible encroachment. Small to moderate midline subligamentous disc herniation superimposed on a mildly bulging annulus L4-L5 without any discernible root encroachment. Small midline partially subligamentous disc herniation eccentric to the right superimposed on a mildly bulging annulus L5-S1 producing mild right S1 root encroachment. (Department Exhibit A, page 17).
- (12) On April 12, 2011, a medical examination showed Claimant was diagnosed with disk herniation at L5-S1 and S1 nerve root encroachment. A physical examination of his musculoskeletal system showed positive straight leg raises at 45 degrees, which caused significant pain in low back and decreased motor strength of plantarflexion on right (4/5) versus the left (5/5). Claimant's gait was stable but antalgic, and he walks with a limp on the right. The doctor noted Claimant's needs could not be met at home because he requires assistance with meal preparation, laundry, house cleaning and dressing. (Department Exhibit A, pages 1-2).

- (13) Claimant is a 44 year old man whose birthday is December 28, 1966. Claimant is 6'3" tall and weighs 270 lbs. Claimant completed the eleventh grade and is a journeyman butcher by trade. Claimant last worked in April 2010.
- (14) Claimant has applied for Social Security disability at the time of the hearing.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program 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 Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability, that being a five-step sequential evaluation process for determining whether an individual is disabled. (20 CFR 404.1520(a) and 416.920(a)). The steps are followed in order. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If it is determined that the claimant is or is not disabled at a step of the evaluation process, the evaluation will not go on to the next step.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity. (20 CFR 404.1520(b) and 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. (20 CFR 404.1572(a) and 416.972(a)). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. (20 CFR 404.1572(b) and 416.972(b)). Generally, if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that he/she has demonstrated the ability to engage in SGA. (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he/she is not disabled regardless of how severe his/her physical or mental impairments are and

regardless of his/her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is “severe” or a combination of impairments that is “severe.” (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is “severe” within the meaning of the regulations if it significantly limits an individual’s ability to perform basic work activities. An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1. (20 CFR 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement, (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity. (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered. (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work

performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA. (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his/her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his/her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he/she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he/she is disabled.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

At Step 1, Claimant is not engaged in substantial gainful activity and testified that he has not worked since 2010. Therefore, Claimant is not disqualified from receiving disability at Step 1.

At Step 2, in considering Claimant's symptoms, whether there is an underlying medically determinable physical or mental impairment(s)-i.e., an impairment(s) that can be shown by medically acceptable clinical and laboratory diagnostic techniques-that could reasonably be expected to produce Claimant's pain or other symptoms must be determined. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

At Step 2, the objective medical evidence of record shows Claimant was diagnosed with mild degenerative disc degeneration of the lumbar spine based on an x-ray showing mild narrowing of the L5-S1. MRI's of Claimant's lumbar spine showed a tiny intraforminal disc herniation at L3-L4 on the right and disc herniation at L4-L5 and L5-S1 with a mild right S1 root encroachment. The finding of a severe impairment at Step 2 is a *de minimus* standard. This Administrative Law Judge finds that Claimant established that at all times relevant to this matter Claimant had lower back problems which would affect his ability to do substantial gainful activity. Therefore, the analysis will continue to Step 3.

At Step 3 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. This Administrative Law Judge finds that Claimant's medical record will not support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. Accordingly, Claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d).

At Step 4, Claimant's past relevant employment was working as a journeyman butcher. At Step 4, the objective medical evidence of record is not sufficient to establish that Claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent him from performing the duties required from his past relevant employment for 12 months or more. Accordingly, Claimant is disqualified from receiving disability at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not Claimant has the residual functional capacity to perform other jobs.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the burden of proof shifts to the department to establish that Claimant has the residual functional capacity to do substantial gainful activity. The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. See discussion at Step 2 above. Findings of Fact 7, 9-13.

At Step 5, the objective medical evidence of record is sufficient to establish that Claimant is capable of performing at least light work duties. Claimant alleges he suffers from lower back radiating down both legs. Claimant stated he cannot walk half the time, cannot get out of bed half the time and has bowel issues.

The x-ray from July 18, 2009 showed mild degenerative changes and mild narrowing of the L5-S1 consistent with disc degeneration. The MRI dated July 29, 2009 showed a lumbar disc herniation at L4-L5 and L5-S1. A physical exam completed on October 28, 2009 indicated Claimant has disc herniations at L4-L5 and L5-S1 with a significant nerve root compression at L4-L5 and a S1 nerve root compression was identified. The MRI completed on March 16, 2011, showed a tiny intraforaminal disc herniation at L3-L4 on the right, superimposed on a mildly bulging annulus L4-L5 without any discernible root encroachment. There was a small midline partially subligamentous disc herniation eccentric to the right superimposed on a mildly bulging annulus L5-S1 producing mild right S1 root encroachment.

While Claimant testified that he was in pain 24/7 and could not walk or get out of bed half the time, there is no evidence of Claimant's inability to ambulate. The MRI from 2009 showed a significant nerve root compression at L4-L5, while the MRI from March 2011, shows a mildly bulging annulus at L4-L5 without any discernible root encroachment. The physical examination performed by the IME in October 2009 noted that Claimant complains of low back pain and right leg pain with straight leg raise on the right and low back pain with left straight raise. Motor functions are grade 3.5 in right EHL versus 5 on the left, 5 being normal. Similarly, the straight leg raise on April 12, 2011, showed decreased motor strength on the right 4/5 compared to the left, 5/5. In addition, the medical examination showed Claimant's gain was stable but antalgic and he walked with a limp on his right without the aid of an assistive device. Therefore, according to the MRI's it appears there is no longer a nerve root compression at L4-L5 and Claimant's motor strength on the right has increased.

Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does establish that Claimant has the residual functional capacity to perform other work. As a result, Claimant is disqualified from receiving disability at Step 5 based upon the fact that the objective medical evidence on the record shows he can perform light work. Under the Medical-Vocational guidelines, an individual age 18 - 49 (Claimant is 44 years of age), with a limited education (Claimant completed the eleventh grade) and a skilled or semi-skilled work history is not considered disabled pursuant to Medical-Vocational Rule 202.19. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

Claimant has not presented the required competent, material, and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disabled. Accordingly, Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for State Disability Assistance benefits either

The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it determined that Claimant was not eligible to receive Medical Assistance and/or State Disability Assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied Claimant's application for Medical Assistance, retroactive Medical Assistance and State Disability Assistance benefits.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

_____/s/_____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 8/11/11_____

Date Mailed: 8/12/11_____

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.

VLA/ds

■ [REDACTED]