

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201143730  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: November 8, 2011  
Macomb County DHS

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. Claimant's request for a hearing was received on July 14, 2011. After due notice, a telephone hearing was held on Tuesday, November 8, 2011. The record was held open to obtain additional medical documentation and the Claimant waived the time periods. The Claimant personally appeared and provided testimony.

**ISSUE**

Did the Department of Human Services (Department) properly determine that the Claimant did not meet the disability standard for Medical Assistance based on disability (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 May 3, 2011, the Claimant submitted an application for Medical Assistance (MA) benefits alleging disability.
2. On June 14, 2011, the Medical Review Team (MRT) determined that the Claimant did not meet the disability standard for Medical Assistance (MA-P) because it determined that the Claimant is capable of performing other work.
3. On July 1, 2011, the Department sent the Claimant notice that it had denied the application for assistance.
4. On July 14, 2011, the Department received the Claimant's hearing request, protesting the denial of disability benefits.

5. On August 24, 2011, the State Hearing Review Team (SHRT) upheld the Medical Review Team's (MRT) denial of MA-P.
6. On December 12, 2011, after reviewing the additional medical records, the State Hearing Review Team (SHRT) again upheld the determination of the Medical Review Team (MRT) that the Claimant does not meet the disability standard.
7. The Claimant applied for federal Supplemental Security Income (SSI) benefits at the Social Security Administration (SSA).
8. The Social Security Administration (SSA) denied the Claimant's federal Supplemental Security Income (SSI) application; however, the Claimant reported that a SSI appeal is pending.
9. The Claimant is a 43-year-old man whose birth date is [REDACTED]. Claimant is 5' 6" tall and weighs 150 pounds. The Claimant has a high school equivalent education. The Claimant is able to read and write and does have basic math skills.
10. The Claimant was not engaged in substantial gainful activity at any time relevant to this matter.
11. The Claimant has past relevant work experience working for [REDACTED] where he was required to stand up to 40 minutes and lift objects weighing up to 7 pounds.
12. The Claimant has past relevant work experience as a cook where he was required to stand for up to 5 hours taking orders, and grilling and frying good.
13. The Claimant alleges disability due to back pain and spine issues.
14. The objective medical evidence indicates that the Claimant smokes cigarettes and consumes alcohol.
15. The objective medical evidence does not indicate flattening of the cervical lordosis. Range of motion is within normal limits. Tenderness and muscle spasms were not observed.
16. The objective medical evidence indicates that the Claimant is capable of ambulation with one cane. He is unable the heel walk, toe walk, and tandem walk.
17. The objective medical evidence indicates that the Claimant is capable of sitting and standing without assistance, and that he is capable of bending, stooping, carrying, pushing, and pulling a limited amount.

18. The objective medical evidence indicates that the Claimant has been diagnosed with multiple thoracic disc bulging and right paracervical herniations at T7-8, and L3-4.
19. The objective medical evidence indicates that the Claimant has a reduced range of motion for lumbar spine, left shoulder abduction, and shoulder forward elevation.
20. The objective medical evidence indicates that the Claimant has disc bulge impinging upon the thecal sac at L1-2, and L2-3, mild narrowing of the disc space, and no spinal canal stenosis.
21. The objective medical evidence indicates that the Claimant has broad based herniation at L3-4, there is a prominent tear involving the posterior annulus causing moderate bilateral neuro-foraminal narrowing, mild narrowing of the L3-4 disc space, and no spinal canal stenosis.
22. The objective medical evidence indicates that the Claimant has broad based herniation at L4-5, a 2-3 mm of retrolisthesis, and no spinal stenosis.
23. The objective medical evidence indicates that the Claimant has posterocentral herniation at L5-S1, a 2-3 mm of retrolisthesis, and no spinal canal stenosis. There is a significant tear involving the posterior aspect of the annulus in the midline.
24. The objective medical evidence indicates moderate narrowing of the T12-L1 disc space.
25. The objective medical evidence indicates a discogram procedure was performed on August 24, 2011, and the results were negative at L3-4, L4-5, and L5-S1.
26. The objective medical evidence indicates that the Claimant underwent anterior cervical decompression and fusion at C3-C4.

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance has been denied. MAC R 400.903. Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 (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 Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance and State Disability Assistance (SDA) programs. Under SSI, disability is defined as:

...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. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit the Claimant's physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

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 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).

Medical evidence includes:

- (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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) Symptoms are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) Signs are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) Laboratory findings are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because non-examining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist. 20 CFR 416.927

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

Dealing with changes in a routine work setting. 20 CFR 416.921(b).

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).

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).

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.920(d).

4. Can the client do the former work that he performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

### **STEP 1**

At Step 1, a determination is made on whether the Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity is defined as work activity that is both substantial and gainful; and involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in substantial gainful activity, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience. Whether the Claimant is performing substantial gainful activity will be determined by federal regulations listed in 20 CFR 416.971 through 416.975.

The Claimant is not engaged in substantial gainful activity and is not disqualified from receiving disability at Step 1.

### **STEP 2**

At Step 2, the Claimant has the burden of proof of establishing that he has a severely restrictive physical or mental impairment that has lasted or is expected to last for the duration of at least 12 months.

The Claimant is a 43-year-old man that is 5' 6" tall and weighs 150 pounds. The Claimant alleges disability due to back pain and spine issues.

The objective medical evidence does not indicate flattening of the cervical lordosis. The Claimant's range of motion is within normal limits and tenderness and muscle spasms were not observed.

The objective medical evidence indicates that the Claimant has been diagnosed with multiple thoracic disc bulges and right paracervical herniations at T7-8, and L3-4. The objective medical evidence indicates that the Claimant has disc bulge impinging upon the thecal sac at L1-2, and L2-3, mild narrowing of the disc space, and no spinal canal stenosis. The objective medical evidence indicates that the Claimant has broad based herniation at L3-4, there is a prominent tear involving the posterior annulus causing moderate bilateral neuro-foraminal narrowing, mild narrowing of the L3-4 disc space, and no spinal canal stenosis. The objective medical evidence indicates that the Claimant has broad based herniation at L4-5, a 2-3 mm or retrolisthesis, and no spinal stenosis. The objective medical evidence indicates that the Claimant has

posterocentral herniation at L5-S1, a 2-3 mm of retrolisthesis, and no spinal canal stenosis. There is a significant tear involving the annulus in the midline. The objective medical evidence indicates moderate narrowing of the T12-L1 disc space. The objective medical evidence indicates a discogram procedure was performed on August 24, 2011, and the results were negative at L3-4, L4-5, and L5-S1. The objective medical evidence indicates that the Claimant underwent anterior cervical decompression and fusion at C3-C4.

The objective medical evidence indicates that the Claimant is capable of ambulation with one cane. The Claimant is unable to heel walk, toe walk, and tandem walk. The objective medical evidence indicates that the Claimant is capable of sitting and standing without assistance, and that he is capable of bending, stooping, carrying, pushing, and pulling a limited amount. The objective medical evidence indicates that the Claimant has a reduced range of motion for lumbar spine, left shoulder abduction, and shoulder forward elevation.

The objective medical evidence indicates that the Claimant smokes cigarettes and consumes alcohol.

This Administrative Law Judge finds that the Claimant has established a severe physical impairment which meets the severity and duration standard for MA-P and SDA purposes.

### **STEP 3**

At Step 3, the Claimant's impairments are evaluated to determine whether they fit the description of a Social Security Administration disability listing in 20 CFR Part 404, Subpart P, Appendix 1. A claimant that meets one of these listing that meets the duration requirements is considered to be disabled.

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 equina) or the 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.

The objective medical evidence indicates that the Claimant is capable of ambulation with one cane. The objective medical evidence indicates that the Claimant is capable of sitting and standing without assistance, and that he is capable of bending, stooping, carrying, pushing, and pulling a limited amount. The objective medical evidence does not establish spinal arachnoiditis or spinal stenosis.

The medical evidence of the Claimant's condition does not give rise to a finding that he would meet a statutory listing in federal code of regulations 20 CFR Part 404, Subpart P, Appendix 1.

#### **STEP 4**

At Step 4, the Claimant's residual functional capacity (RFC) is examined to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

The Claimant has past relevant work experience working for Federal Express where he was required to stand for up to 40 minutes and lift objects weighing up to 7 pounds. The Claimant has past relevant work experience as a cook where he was required to stand for up to 5 hours taking orders, and grilling and frying food.,

There is no evidence upon which this Administrative Law Judge could base a finding that the Claimant is able to perform work in which he has engaged in, in the past.

#### **STEP 5**

At Step 5, the burden of proof shifts to the Department to establish that the Claimant has the Residual Functional Capacity (RFC) for 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.... 20 CFR 416.945(a).

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).

The objective medical evidence indicates that the Claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior employment and that he is physically able to do light or sedentary tasks if demanded of him. The Claimant's activities of daily living do not appear to be very limited and he should be able to perform light or sedentary work even with his impairments for a period of 12 months. The Claimant's testimony as to his limitations indicates that he should be able to perform light or sedentary work.

The Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file as it relates to the Claimant's ability to perform work.

Claimant is 43 years-old, a younger person, under age 50, with a high school equivalent education, and a history of unskilled work. Based on the objective medical evidence of record Claimant has the residual functional capacity to perform sedentary work, and Medical Assistance (MA) is denied using Vocational Rule 20 CFR 201.27 as a guide.

It should be noted that the Claimant continues to smoke despite the fact that his doctor has told him to quit. Claimant is not in compliance with his treatment program. If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial activity without good cause there will not be a finding of disability.... 20 CFR 416.994(b)(4)(iv).

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 the Claimant was not eligible to receive Medical 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 the Claimant's application for Medical Assistance, and retroactive Medical Assistance. The Claimant should be able to perform a wide range of sedentary work even with his impairments. The Department has established its case by a preponderance of the evidence.

Accordingly, the Department's decision is **AFFIRMED**.

/s/ \_\_\_\_\_  
Kevin Scully  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: January 26, 2012

Date Mailed: January 26, 2012

**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 60 days of the filing of the original request.

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.

KS/tb

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