

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-7335
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 2, 2011
Monroe 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 Monroe, Michigan on Wednesday, March 2, 2011. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time frame for the issuance of this decision in order to allow for the submission of additional medical evidence. The records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On September 16, 2011, the SHRT found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

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

FINDINGS OF FACT

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

1. On March 26, 2010, the Claimant submitted an application for public assistance seeking MA-P and SDA benefit programs.

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2. On May 4, 2010, the Medical Review Team (“MRT”) found the Claimant not disabled for purposes of the MA-P, but disabled under the SDA benefit program. (Exhibit 1, pp. 11, 12)
3. On June 29, 2010, the Department notified the Claimant of the MRT determination. (Exhibit 1, pp. 4 – 9)
4. On August 25, 2010, the Department received the Claimant’s timely written request for hearing. (Exhibit 1, p. 2)
5. On December 11, 2010 and September 16, 2011, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling impairments due to throat and neck pain, shortness of breath, high blood pressure, obesity, and non-Hodgkin’s lymphoma.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was [REDACTED] years old with a [REDACTED] birth date; was 5’10” in height; and weighed 401 pounds.
9. The Claimant is a high school graduate with college and vocational training, and an employment history working as a security officer, steel worker, balancer, and press operator.
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 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).

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In the present case, the Claimant alleges disability due to throat and neck pain, shortness of breath, high blood pressure, obesity, and non-Hodgkin's lymphoma.

On [REDACTED] the Claimant presented to the hospital with two weeks' onset of right-side neck swelling and tenderness. The Claimant was discharged to another hospital for port placement with the diagnoses of malignant lymphoma, non-Hodgkin, diffuse large B-cell involving soft tissue of the right thyroid gland area, morbid obesity, borderline diabetes mellitus, and essential hypertension.

On [REDACTED] the Claimant presented to the hospital for evaluation of a non-Hodgkin's lymphoma. Chemotherapy was commenced and he was discharged on [REDACTED] [REDACTED] with the diagnoses of non-Hodgkin's lymphoma, systemic chemotherapy, diabetes, obesity, and essential hypertension.

In [REDACTED] the Claimant was diagnosed with malignant lymphoma and underwent a right arm PICC line placement.

On [REDACTED] the Claimant underwent removal of right arm PICC line and a successful left side PICC line placement to facilitate his chemotherapy.

On [REDACTED] the Claimant underwent successful right arm PICC line placement to facilitate his chemotherapy.

On [REDACTED] a PET scan revealed dramatic improvement from the [REDACTED] study.

Records from [REDACTED] document the Claimant's radiation treatment.

On [REDACTED] a PET scan was performed and compared with the July study. The results were normal showing no evidence of recurrent lymphoma.

On [REDACTED] the Claimant attended a follow-up appointment. The Claimant had completed 6 rounds of chemotherapy and was in his six weeks of scheduled radiation treatment. The diagnoses were high blood pressure, obesity, and lymphoma status post treatment.

On [REDACTED] a PET scan was performed and compared with the [REDACTED] examination. The results were stable without evidence of active or recurrent lymphoma and mildly increased FDG uptake in bilateral thyroid gland suggestive of normal variance versus thyroiditis.

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 some physical impairment(s) that affect 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 asserts disabling impairments due to throat and neck pain, shortness of breath, high blood pressure, obesity, and non-Hodgkin's lymphoma.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), and Listing 4.00 (cardiovascular system) were considered in light of the objective medical evidence. The evidence does not meet the intent and severity requirement of a listed impairment and, thus, the Claimant cannot be found disabled under these listings.

Listing 13.00 discusses malignant neoplastic diseases. The origin of the malignancy, extent of involvement, duration, frequency and response to antineoplastic therapy such as surgery, irradiation, chemotherapy, hormones, immunotherapy, or bone marrow or stem cell transplantation are considered as well as the effects of any post-therapeutic residuals. 13.00B. The residual effects of treatment are temporary in most instances. 13.00G3. Persistent is described as the failure to achieve a complete remission. 13.00I4. Recurrent means a malignancy that was in complete remission or entirely removed by surgery has returned. 13.00I6.

Listing 13.05 discusses lymphoma and requires:

- A. Non-Hodgkin's lymphoma, as described in 1 or 2:
 1. Aggressive lymphoma (including diffuse large B-cell lymphoma) persistent or recurrent following initial antineoplastic therapy.
 2. Indolent lymphoma (including mycosis fungoides and follicular small cleaved cell) requiring initiation of more than one antineoplastic treatment regimen within a consecutive 12-month period. Consider under a disability from at least the date of initiation of the treatment regimen that failed within 12 months.

OR

- B. Hodgkin's disease with failure to achieve clinically complete remission, or recurrent disease within 12 months of completing initial antineoplastic therapy.

OR

- C. With bone marrow or stem cell transplantation. Consider under a disability until at least 12 months from the date of transplantation. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.

In this case, the Claimant was diagnosed with malignant lymphoma (non-Hodgkin's). As a result, the Claimant underwent chemotherapy and radiation. In [REDACTED] the PET scan did not show evidence of recurrence; however, the record also reflects that the Claimant, as of [REDACTED] was still undergoing radiation treatment. There was no evidence of complete remission. Under these facts, it is found that the Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment within 13.00, specifically, 13.05A. 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 Rule 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 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, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

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

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.

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2. The Department shall initiate processing of the March 26, 2010 application to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for 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 October 2012 in accordance with Department policy.

Colleen M. Mamelka

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

Date Signed: September 26, 2011

Date Mailed: September 26, 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:

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- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative hearings
Re consideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CMM/cl

cc:

