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

IN THE MATTER OF:

[redacted]

Reg No.: 2012-27552
Issue No.: 2009, 4031
Case No.: [redacted]
Hearing Date: March 28, 2012
Wayne County DHS (18)

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 telephone hearing was conducted from Detroit, Michigan on Wednesday, March 28, 2012. The Claimant appeared, along with [redacted], and testified. [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") benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on 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 benefits on October 20, 2011.

2. On January 10, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. On January 12, 2012, the Department notified the Claimant of the MRT determination. (Exhibit 2)

4. On January 23, 2012, the Department received the Claimant's timely written request for hearing. (Exhibit 2)

5. On March 7, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)

6. The Claimant alleged physical disabling impairments due to back pain with radiculopathy, leg pain, neck pain, scoliosis, high blood pressure, and diabetes.

7. The Claimant alleged mental disabling impairment(s) due to depression.

8. At the time of hearing, the Claimant was [redacted] years old with a [redacted] birth date; was 5'7" in height; and weighed approximately 200 pounds.

9. The Claimant is a high school graduate with some college and an employment history of work as Human Resource Manager.

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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 416.913. 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 applicants 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 416.945(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 and, 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 o

substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be se vere. 20 CFR 416. 920(a)(4)(ii); 20 CFR 416.920(b). An impairment, or combination of impairments, is severe if it signific antly limits an in dividual's p hysical or mental ability to do basic wo rk activities regardless of age, education and work exper ience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitude s necessar y to do most jobs. 20 CFR 416.921(b). Examples include:

1. Physical f unctions s uch as walking, standing, s itting, 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 s upervision, co-workers and usua l work situations; and

6. Dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a di sability claim obviously lacking in medical merit. *Higgs v Bowe n,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an admin istrative convenience to screen o ut claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Se rvices,* 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualif ies as non-severe only if, regardless of a claimant's age, education, or wo rk 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 Claiman t alleges disability due to back pain with radiculopathy, leg pain, neck pain, scoliosis, high blood pressure, diabetes, and depression.

On [redacted] the Claimant's treating physici an completed a Medical Examination Report on behalf of the Claimant. The cu rrent diagnosis was L4-5 dis c herniation with chronic back pain syndrome. The physica l examination documented obesity not ing the need for a wheelchair due to musculoskeletal pai n. Th e Claimant was found unable to meet the needs in her home.

On [redacted] the Claimant was admitted to the hospital with complaints of back pain and a history of scoliosis. The Claimant was treated and discharged with the diagnosis of low back pain.

On [redacted] the Claimant was diagnosed with hyperglycemia.

On [redacted] the Claimant sought treatment for back pain and bilateral leg, groin, and buttock pain. An MRI showed degenerative joint disease of L4-5 and L5-S1 as well as central left-sided disc herniation at both levels. Epidural injections offered no relief. The Claimant had positive left leg raise on the left lower extremity. Conservative versus surgery was discussed.

On [redacted] the Claimant was admitted to the hospital to undergo back surgery. A microdiscectomy at L4-5 and L5-S1 with hemilaminectomy at L5 was performed without complication. The diagnosis was L4-5 and L5-S1 discherniation with degenerative disc disease. The Claimant was discharged on [redacted] with the diagnoses of L4-5 and L5-S1 disc herniation with degenerative changes secondary to type 2 diabetes mellitus, hypothyroidism, hypertension, hyperlipidemia, social anxiety disorder, and depression.

On [redacted] an MRI of the lumbar spine revealed new left paracentral and foraminal disc protrusion at L4-5 with moderate canal stenosis and severe compression of the left L5 nerve root. Additionally, there was scar tissue posterior to the disc protrusion.

On [redacted] an irrigation and debridement of the infected surgical site was performed without complication. The Claimant was discharged the following day with the diagnosis of persistent posterior spine wound drainage/seroma secondary to type 2 diabetes mellitus, social anxiety disorder, hypothyroidism, hypertension, and L4-5 and L5-S1 disc herniation with degenerative disc disease.

On [redacted] the Claimant sought treatment for back pain. Tenderness to palpitation to the left hip and buttock as well as the left lower thigh down to the calf was documented. The Claimant had 1 to 2+ pitting edema in her left lower extremity. Range of motion at the left hip was noted. The Claimant was treated with increased pain medication and was discharged with the diagnoses of back and leg pain and acute partially occluding left peroneal deep vein thrombosis.

On [redacted] a Doppler study of the left lower extremity revealed evidence of acute deep vein thrombosis ("DVT") involving the peroneal veins.

On [redacted] the Claimant attended a follow-up appointment for her chronically draining wound. The sutures were removed and the incision was dry. The Claimant was referred to the pain clinic for evaluation for a spinal cord stimulator.

On [redacted] the Claimant, who was in a wheelchair, was diagnosed with diabetes mellitus, hypertension, and chronic back pain.

On [redacted] the Claimant attended an appointment at the pain center. Review of the [redacted] MRI showed a paracentral foraminal disc protrusion at L4-5 with moderate canal stenosis, severe compression of the left L5 nerve, and scar tissue noted posteriorly at the disc protrusion.

On [redacted] the Claimant sought treatment for back pain. The assessment was left iliotibial band syndrome with greater trochanteric bursitis; chronic L5-S1 radiculopathy causing left lower extremity pain and weakness; tobacco dependence; and opioid dependence.

On [redacted] the Claimant attended a follow-up appointment for her persistent back and leg pain. The Claimant ambulated with a walker and had positive straight leg raise on the left lower extremity.

On [redacted] the Claimant sought treatment for left ankle swelling. The Claimant was treated and discharged with the diagnosis of chronic left peroneal DVT.

On [redacted] the Claimant attended a follow-up appointment with the pain center. The diagnoses were chronic L5-S1 radiculopathy causing left lower extremity pain and numbness and left iliotibial band syndrome with greater trochanteric bursitis. Surgery was scheduled for October.

On [redacted] an MRI was recommended to assess any further nerve root impingement and disc herniation.

On [redacted] an MRI of the lumbar spine (compared with the [redacted] MRI and [redacted] x-rays) revealed interval decrease in the size of the central and left central disc extrusion at L4-5 with less compression and distortion of the ventral dural sac; left central, subarticular and foraminal disc protrusion at L5-S1 which continues to displace and deform the left S1 nerve root; granulation tissue at L4-5; and enhancement of the nerve roots of the distal cauda equine, slightly less than previously noting the nerve root appeared “less clumped” and that the findings were concerning for arachoniditis.

On [redacted] x-rays revealed mild levoconvex scoliosis of the mid lumbar spine and moderate degenerative changes in the thoracic and lumbar spine.

On [redacted] the Claimant was diagnosed with lumbar disc herniation at L4-5 and L5-S1.

On [redacted] the Claimant sought treatment for hearing problems.

On [redacted] the Claimant's A1C was high at 7. 8 which was increased from 7.3 in August.

On [redacted] the Claimant attended a follow-up appointment where it was noted that the TENS unit and physi cal therapy did not improve her situation. The diagnos es were chronic L5-S1 radiculo pathy and le ft iliotib ial band sy ndrome with greater trochanteric bursitis. Lumbar fusion was discussed.

On [redacted] the Clamant attended a follow-up appointment for her back and left leg pain. Spinal stimulator versus spinal fusion was discussed noting that either is a viable option.

As previously noted, the Claim ant bears t he burden to present sufficient objective medical evidence to s ubstantiate the alleged disabling im pairment(s). As summarized above, the Claimant has presen ted some objective medical evidence establishing that she does have physical and ment al limita tions on h er ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimus* effect on the Claimant's basic wo rk activities. Further, the impairments have last ed continuously for t welve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the seque ntial an alysis of a d isability c laim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physic al disabling impairments due to back pain wit h radiculopathy, leg pain, neck pain, scoliosis, high blood pressure, diabetes, and depression.

Listing 1.00 defines musculoskeletal syst em impairments. Disor ders of the musculoskeletal system may re sult from her editary, congenital, or acquired pathologic processes. 1.00A. Impairments may resu lt from infectious , inflammatory , or degenerative processes, traumatic or developmental events, or neoplastic, v ascular, or toxic/metabolic dis eases. 1.00A. Regardle ss of the cause(s) of a musculoskeleta l impairment, functional loss for purposes of thes e listings is defined as the inability to ambulate effectively on a sustai ned basis for any reason, in cluding pain associated with the underlying musculoskeletal impairment, or the i nability to perform fine and gross movements effectively on a sus tained basis fo r any r eason, includi ng pain associated with the un derlying musculoskeletal impairment. Inability to ambulate effectively mean s

an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2b(1). Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 1.00B2b(2). They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual whose impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4. The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

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 evidence since the surgery shows, in part, new left paracentral and foraminal disc protrusion at L4-5 with moderate canal stenosis and severe compression of the left L5 nerve root; radiculopathy; positive straight leg raise; and left central, subarticular and foraminal disc protrusion at L5-S1 which continues to displace and deform the left S1 nerve root. In addition to surgery, the Claimant has participated in several conservative treatments to include physical therapy, epidural injections, and use of a TENS unit with limited, if any, success. A spinal cord stimulator or spinal fusion are the current options being considered. The Claimant ambulates with a walker, and her continued severe pain/numbness is well documented. Ultimately, based on the evidence, the Claimant's impairments meet, or are the medical equivalent thereof, a listed impairment within 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 Mich Admin Code, Rules 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 October 20, 2011 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 May 2013 in accordance with department policy.

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

Date Signed: April 9, 2012

Date Mailed: April 9, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

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:
  - 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: [redacted]