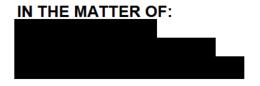
STATE OF MICHIGAN

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



Reg No.: 2012-27552 Issue No.: 2009, 4031 Case No.:

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 appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department proper ly 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 t he competent, material, and substantial evidence on the whole record, finds as material fact:

- The Claimant submitt ed an application for public assistance seeking MA-P benefits on October 20, 2011.
- 2. On January 10, 2012, the Medical Revi ew 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 Claim ant alleged physic al disa bling impairments due to back pain wit h 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 years old with a birth date; was 5'7" in height; and weighed approximately 200 pounds.
- 9. The Claimant is a high school graduat e with some c ollege 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 Independenc e Agency, pursuant to MCL 400.10 et seq. and MCL 400.105. Department policies are found in the Bridge's Administrative Manual ("BAM"), the Bridges Elig ibility 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 im pairment 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 esta blish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescri bed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities o r ability to reason a nd make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 416 .913. An individual's subjective pain com plaints ar e not, in and of themselves, sufficient to establish disab ility. 20 CF R 416.908; 2 0 CFR 4 16.929(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/du ration/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 cons ider an individual's current work activit y; 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 det ermine whether an individual can perform past relev ant work; and residual functional capacity along with vocational factors (i .e. age, education, and work experienc e) 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 disable ed, or not disabled, at 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 indi vidual'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 f unctional capacity is the most an indiv idual can do despite the limitations based on all rele vant evidence. 20 CFR 416.945(a)(1). An individual's residual functional capacity ass essment is ev aluated at both steps four and five. 20 CFR 41 6.920(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. general, the indiv idual has the responsibility to prove 20 CFR 416.994(b)(1)(iv). In disability. 20 CFR 4 16.912(a). An impair ment or combinat ion of impairments is not severe if it does not signific antly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a). The in dividual 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 i ndividual'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 St ep 2. The Claimant bears the burden to pr esent sufficient objective medical evidenc et 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 physical or mental ability to do basic work 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 aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include:

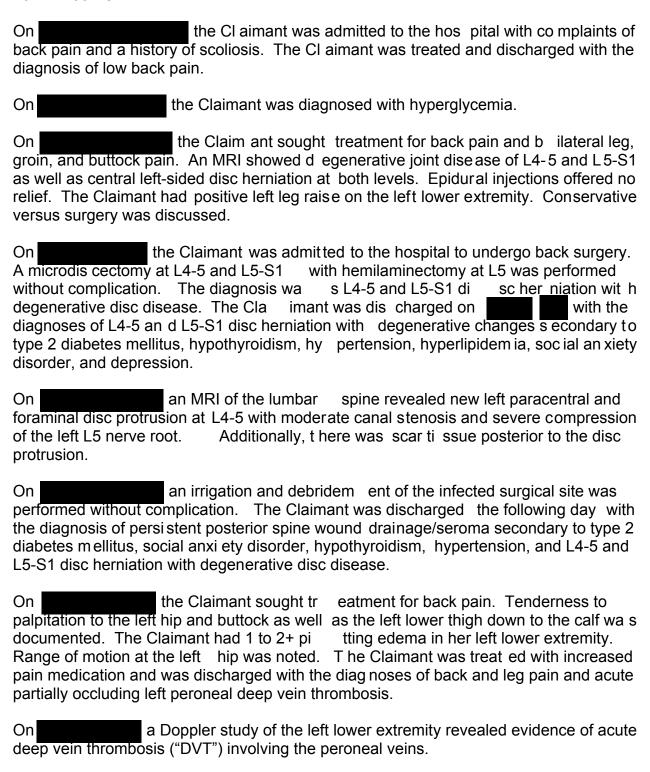
- 1. Physical f unctions s uch as walking, standing, s itting, lifting, pushing, pulling, reaching, carrying, or handling;
- 2. Capacities for seeing, hearing, and speaking;
- 3. Understanding, carrying out, and remembering simple instructions;
- 4. Use of judgment;
- Responding appropriately to s upervision, co-workers and usua I work situations; and
- 6. Dealing with changes in a routine work setting.

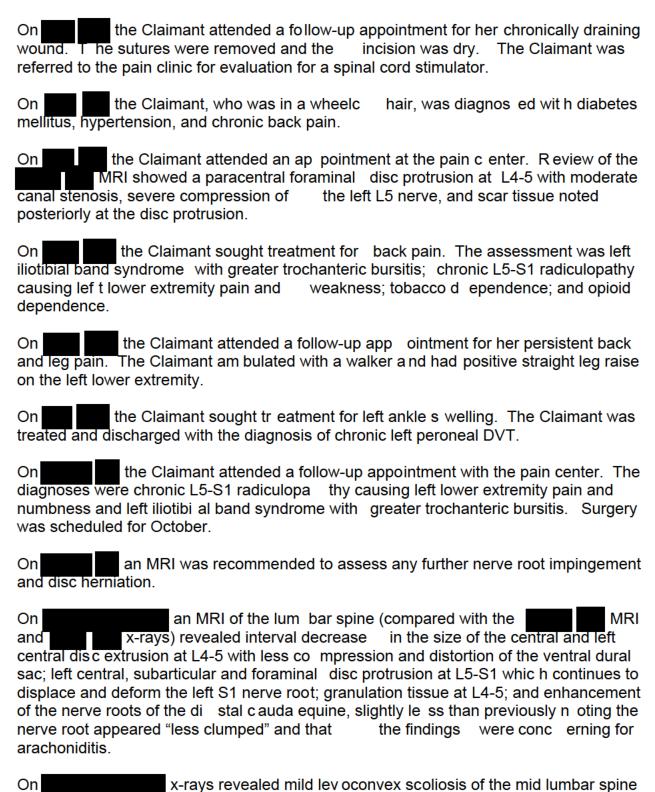
ld.

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 admin istrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing Farris v Sec of Health and Human Services, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. Salmi v Sec of Health and Human Services, 774 F2d 685, 692 (CA 6, 1985).

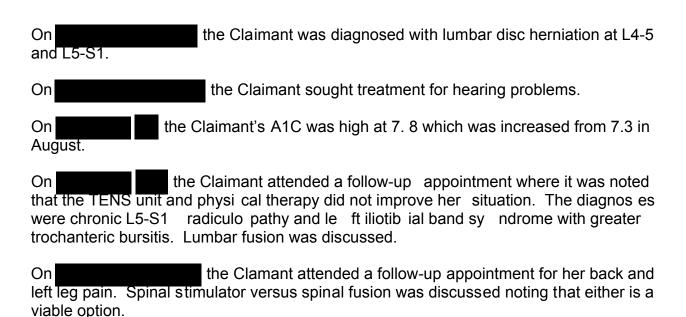
In the present case, the Claiman t alleges disability due to back pain with radiculopathy, leg pain, neck pain, scoliosis, high blood pressure, diabetes, and depression.

On the Claimant's treating physici an completed a Medical Examination Report on behalf of the Claimant. The current diagnosis was L4-5 dis cherniation with chronic back pain syndrome. The physica I examination documented obesity noting the need for a wheelchair due to musculoskeletal pain. The Claimant was found unable to meet the needs in her home.





and moderate degenerative changes in the thoracic and lumbar spine.



As previously noted, the Claim ant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some objective medical evidence establishing that she does have physical and mental limitations on her 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 work activities. Further, the impairments have last ed 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 seque ntial an alysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physic al disabling impairments due to back pain with 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 It from infectious , inflammatory , or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic dis eases. 1.00A. Regardle ss of the cause(s) of a musculoskeleta I impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the i nability to perform fine and gross movements effectively on a sus tained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means

an extreme limitation of the ab ility to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, su stain, or complete activities. 1.00B2b(1). Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independ ent ambulation without the use of a handheld 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 us e of the device should be docum ented. 1.00J4. The r equirement 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 ner ve root (including the cauda

equine) or spinal cord. With:

- A. Evidence of nerve root compression charact erized 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 ba ck, positive straight-leg raising test (sitting and supine); or
- B. Spinal arachnoiditis, confirmed by an oper ative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dys esthesia, resulting in the need for changes in position or post ure more than once every 2 hours; or
- C. Lumbar spinal stenosis res ulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradic ular pain and weak ness, and

resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

In this case, the objective evidence s ince the surgery shows, in part, new left paracentral and foraminal disc protrusion at L4-5 w ith 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 treat ments to include phy sical 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/num bness is well doc umented. 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 Assist ance program, which pr ovides 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 policie s are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a phys ical or menta I impairment which m eets federal SSI dis ability standards for at least ninety days. Receipt of SSI or RSDI benefit s based on disability or blindness, or the receipt of MA benefits b ased on disability or blindness, aut omatically qualifies an in dividual as disabled for purposes of the SDA program.

In this case, the Claimant is found disa bled 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 conclusion sof 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 fo r any lost benefits (if any) that the Claimant was entitle d to receive if otherwise eligible and qualifie d in accordance with department policy.
- 4. The Department shall review the Cla imant's continued eligibility in May 2013 in accordance with department policy.

Colleen M. Mamelka
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 Syst em (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a par ty within 30 days of the mailing date of this Dec ision and Order. MAHS will not order a rehearing or reconsideration on the Department's mo tion where the final decis ion 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 ti mely 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 <u>MAY</u> 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

