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

IN THE MATTER OF:

[redacted]

Reg No.: 2012-30862
Issue No.: 2009
Case No.: [redacted]
Hearing Date: April 25, 2012
Macomb County DHS (12)

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 Clinton Township, Michigan on Wednesday, April 25, 2012. The Claimant appeared, along with [redacted] and testified. The Claimant was represented by [redacted] appeared on behalf of the Department of Human Services ("Department").

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical evidence. The records were forwarded to the State Hearing Review Team ("SHRT") for consideration. On June 22, 2012, this office received the SHRT determination which 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") 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 July 21, 2011, retroactive to April 2011.

2. On October 13, 2011, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 47, 48)

3. The Department notified the Claimant of the MRT determination on October 18, 2011.

4. On January 9, 2012, the Department received the Claimant's timely written request for hearing.

5. On March 16th and June 15, 2012, the SHRT found the Claimant not disabled. (Exhibit 3)

6. The Claimant alleged physical disabling impairments due to back, neck, and shoulder pain, nerve root impingement, knee pain, chest pain, and hepatitis C.

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 140 pounds.

9. The Claimant has a limited education with an employment history in light maintenance and janitorial, and in sheet metal roofing.

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 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 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 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, 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 substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(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 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 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).

In the present case, the Claimant alleges disability due to back, neck, and shoulder pain, nerve root impingement, knee pain, chest pain, and Hepatitis C. In support of her

claim, some older pic tures from as ear ly as [redacted] were subm itted whic h document treatment/diagnoses of right hand injury, lum bar pain/strain, back pain, sinus itis, benign liver parenchyma, chronic hepat itis C, hyperostotic spurring posteriorly and lateralizing to the right at C5-6, abdominal pain, mild scoliosis, and gallbladder sludge.

On [redacted] the Claim ant attended a consultative ev aluation for his chroni c hepatitis C. The diagnoses were chronic hepatitis C and right quadrant dysfunction.

On [redacted] the Claimant presented to the hospital with complaints of severe headache and neck/back pain. A CT of the brain found some right frontal sinus opacification. The Claim ant was treated and dis charged with the diagnoses of headache, sinusitis, neck pain, and back pain.

On [redacted] the Claimant sought emergency room treatment for back pain. The diagnosis was lumbar strain.

On [redacted] the Claimant was admit ted to the hospita l wit h complaints of cough and breathing difficult y. The Claimant wa s treated and dischar ged the following day with the diagnoses of acute respiratory dist ress, tracheobronc hitis (failed outpatient therapy), new-onset left bundle- branch block, hyperlipidemia, hi story of hepatitis C, and chronic back pain.

On [redacted] the Claimant was treated/diagnosed with Hepatitis C, musculoskeletal pain (neck shoulder, hip, and knees), heart block, and tobacc o addiction.

On [redacted] the Claima nt attended a follow-up appo intment for his neck pain. The Claimant had pain at about 75 degrees of abduction consistent with impingement.

On [redacted] the Claim ant att ended a follow-up appointment where he wa s diagnosed with Hepatitis C, increased weight loss, and muscle aches.

On [redacted] a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were mu ltiple k nee surger y, bilateral shoulder pain, rotator cuff tear, and herniated cervical disc. The Claim ant's condition wa s deteriorating.

On [redacted] the Claim ant presented to the hospit al wit h compla ints of head and chest pain. The Claimant was treat ed and discharged the follo wing day with the diagnoses of atypical ches t pain, Hepatitis C, chronic pain, tobacco abuse, and left bundle branch block.

On [redacted] the Claimant attended a consultative evaluation (from which the Claimant claimed was fast and inaccurate). The physical examination found loss of lumbar lordosis with spasms of the lumbar spine noting pain for all movements of the cervical spine. Movement of the lumbar spine was painful with straight leg raising at 20 degrees. All movements of the right shoulder were painful and knee movement (bilateral) was restricted. The internist opined that the Claimant was capable of working an 8-hour workday, avoiding climbing ladders and scaffolding due to pain in the shoulder joints and osteoarthritis of the lumbar spine and knee joint. The Claimant should also avoid prolonged standing and lifting heavy weight due to osteoarthritis of the lumbar spine and should joint (bilateral) pain.

On [redacted], the Claimant's pain medication was renewed.

On [redacted] x-rays of the left knee found changes of enthesopathy dorsal aspect of the patella. Right knee x-rays revealed degenerative spurring posterior aspect of the patella and post-operative changes of prior anterior cruciate ligament reconstruction and medial tibiofemoral hemi arthroplasty.

On [redacted] the Claimant presented to the emergency room with complaints of right-side flank pain. The Claimant was treated and discharged with the diagnoses of right flank pain, evaluation for nephrolithiasis, and cephalalgia.

On [redacted] the Claimant attended a follow-up appointment for numbness in both arms and legs along with neck and right shoulder pain. The Claimant was prescribed Vicodin.

On [redacted] the Claimant's treating physician wrote a letter on behalf of the Department confirming history of anterior cruciate ligament reconstruction of the right knee; impingement of the left shoulder post surgery with significant problems in the right shoulder and neck; large disc herniation at C5-6 with significant loss of function of the right shoulder. The Claimant also has bilateral carpal tunnel and is status post L5-S1 posterior lumbar decompression fusion and stabilization. As a result, the Claimant has numbness and complaints in both lower extremities. The physician opined that as a result of multiple medical and orthopaedic problems, the Claimant is disabled from work.

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 medical evidence establishing that he does have some physical limitations on 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 has alleged physical disabling impairments due to back, neck, and shoulder pain, nerve root impingement, knee pain, chest pain, and hepatitis C.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal 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 inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. 1.00B2a The inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities. 1.00 B2c In other words, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use the upper extremities effectively, an individual must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. 1.00B2c Examples include the inability to prepare a simple meal, feed oneself, take care of personal hygiene, sort/handle papers/files, or place items in a cabinet at or about the waist level. 1.00B2c Pain or other symptoms are also considered. 1.00B2d

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

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 shows bilateral shoulder dysfunction; neck pain with nerve root impingement; rotator cuff tear; large herniated disc at C5-6; osteoarthritis of the shoulder joints, lumbar spine, and knee joints; degenertive spurring of the knee; bilateral arm and leg numbness; and carple tunnel syndrom, bilaterally. As a result, and despite adherence to prescribed treatment, the Claimant continues to suffer with chronic pain, weakness, reduced range of motion, and requires a cane for ambulation. The Claimant's treating physician opined that as a result of the multiple medical and orthopaedic problems, the Claimant was unable to work. In light of the foregoing, it is found that the Claimant's combined musculoskeletal impairments meet, or are the medical equivalent thereof, a listed impairment within 1.00 as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

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.

1. The Department shall initiate processing of the July 21, 2011 application, retroactive to April 2011, to determine if all other non-medical criteria are met and inform the Claimant of the determination in accordance with Department policy.

2. The Department shall supplement for lost benefits (if any) that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.

3. The Department shall review the Claimant's continued eligibility in July 2013 in accordance with Department policy.

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

Date Signed: June 28, 2012

Date Mailed: June 28, 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]