STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES



Reg No.: 2012-33932

Issue No.: 2009

Case No.:

Hearing Date: April 30, 2012 Oakland County DHS (04)

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 Pontiac, Michig an on Monday, April 30, 2012. The Claimant appeared and testified. The Claimant was represented by

Participating on behalf Department of Human Se rvices ("Department") was observed the proceedings.

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the subm ission of additional m edical records. The evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On August 10, 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 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 September 19, 2011, retroactive to July 2011.

- 2. On December 20, 2011, the Medical Re view Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 1, 2)
- 3. The Department notified the Claimant of the MRT determination.
- 4. On February 23, 2012, the Department received the Claimant's timely written request for hearing.
- 5. On April 2 nd and August 7, 2012, the SHRT f ound the Claimant not disabled. (Exhibit 2)
- 6. The Claim ant alleged physical disabl ing impairments due to fractured back, low back pain, left leg numbness, and incontinence.
- 7. The Claimant has not alleged any mental disabling impairment(s).
- 8. At the time of hearing, the Claimant was years old with a date; was 6' in height; and weighed 210 pounds.
- 9. The Claimant has the equivalent of a high school education with an employment history in construction.
- 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 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 expect ed 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/prescri bed 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 CF R 416.908; 2 0 CFR 4 16.929(a). Similarly, conclusor y 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 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 disabled, 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 d espite 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 t he responsibility to prove 20 CFR 416.994(b)(1)(iv). In disability. 20 CFR 4 16.912(a). An impair ment or combi nation 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; therefore, is not ineligible for disability benefits under Step 1.

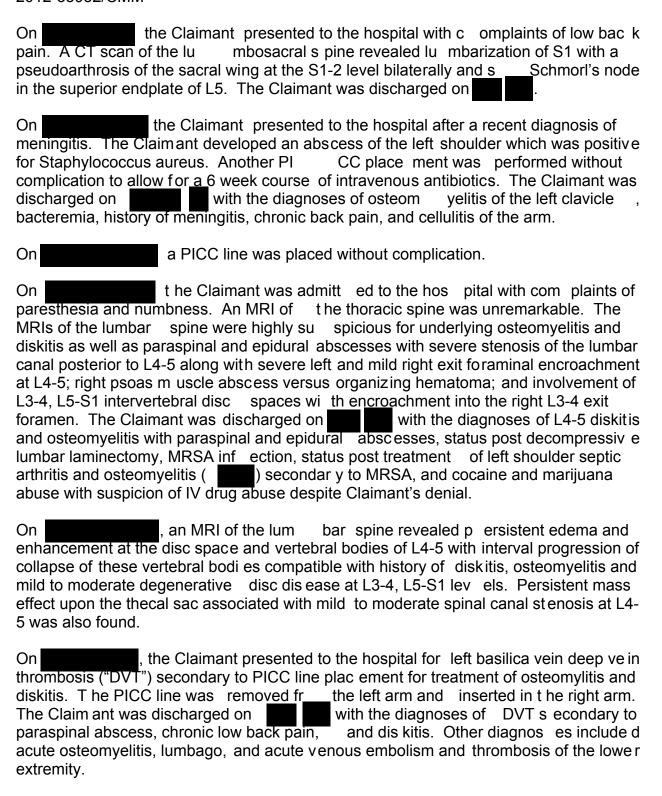
The severity of the Claimant's alleged impa irment(s) is considered under St ep 2. The Claimant bears the burden to present sufficient objective medical evidence et o substantiate the alleged disa bling impairments. In order to be considered disabled for MA purpos es, the impairment must be seevere. 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 in dividual'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 wa lking, 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.

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 Claimant alleges disability due to fractured back, low back pain, left leg numbness, and incontinence.



the Claimant attended a consultative evaluation. The Claimant was On unable to walk without a c ane or able to stand for more than 10 minu support. The phy sical examination reveal ed significant muscle spasms in the lumbosacral spine ar ea with significant diffi culty when trying too lie down or change positions from sitting to lying down and ly ing down to standing up. Straight leg raise was pos itive on the left at 10-20 degr ees and r ight side at 30 to 40 degrees. Contralateral straight leg was positive. Le ft hip had painful range of motion as did the ine revealed lev oscoliosis in the lower left knee. X-rays of the lumbosacral sp lumbosacral spine; abnormal shape of L4 vertebra lik ely related to pos itioning artifact and degenerative changes; and degenerative changes in the lumbosacral spine. The diagnoses were lumbar radiculopathy, significant sensory and motor loss on the left lower extremity, history of meningitis, and remote history of IV drug abuse.

On a Medical Examination Report was completed on behalf of the Claimant. The current diagno sis was low back pain. The physical examination revealed positive straight leg raise. The Claimant's condition was stable and he was able to meet his needs in the home.

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 pres ented medical evidence establishing that he does have 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 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 disability claim, the trier of fact must determine if the Claimant's impairment, or co mbination of impairm ents, is listed in Appendix 1 of Sub part P of 20 CF R, Part 404. The evidenc e confirms treatment/diagnoses of meningi tis; osteomyelitis; chronic back pain; cellulitis; severe stenosis at L4-5 with severe left and right exist foraminal encroachment; right psoas abscess; L3-4, L5-S1 inteverteb ral disc spaces with encroac hment into the right L3-4 he thecal sac ass ociated with mild to exit foramen; persistent mass effect upon t moderate spinal canal stenos is at L4-5; DVT; diskitis; degenerative changes; an lumbar radiculopathy.

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, vascular, or toxic/metabolic dis eases. 1.00A. Regardle ss of the cause(s) of a musculoskeleta l 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 sus tained 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 independently initiate, sustain, or complete activities with the individual's ability to 1.00B2c To use the upper ex tremities effectively, an individual must be capable of sustaining such functions as reaching, pus hing, pulling, grasping, and fingering to be able to c arry out activities of daily living. 1.00B2c. Examples in clude the inability to prepare a simple meal, feed oneself, take care of personal hygien e, 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 anat omical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffne ss with s igns of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriat e medically acceptable imaging of joint space nar rowing, bony destruction, or ankylosis of the affected joint(s). With:
 - A. Involvement of one major peri pheral weight-bearing joint (i.e., hip, knee, or ank le), resulting in inab ility to ambulate effectively as defined in 1.00B2b; or
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wr ist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* *

- 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 onc e 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 ev idence shows meningitis; ost eomyelitis; chronic back pain; severe left and right exist foraminal cellulitis; severe stenosis at L4-5 with encroachment; right psoas abs cess; L3-4, L5-S1 intevertebral disc spaces with encroachment into the right L3- 4 exit foram en; persistent mass effect upon the thec al sac associated with mild to m oderate spinal canal stenosis at L4-5; DVT; diskitis; degenerative changes; left knee pain, and lum bar radiculopathy. The evidence confirms significant muscle spasms and positive straight leg raise bilaterally along with painful range of motion of the left hip and k nee. As a result, and despite adherence to prescribed treatment, the Cla imant continues to suffer wit h chronic pain, weakness, reduced range of motion, and requires a cane for ambulation. In light of the foregoing, it is found that the Claimant's combined muscu loskeletal impairments meet, or are the medical equivalent thereo f, a listed im pairment 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.
- 2. The Department shall initiate processing of the September 19, 2011 application, retroactive to July, to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.

- 3. The Department shall supplement for lo st benefits (if any) that the Claimant was entitled to receiv e if otherwise elig ible and qualified in acc ordance with Department policy.
- 4. The Department shall review the Claimant's continued eligibility in September 2013 in accordance with Department policy.

Colleen M. Mamuka

Colleen M. Mamelka

Administrative Law Judge

For Maura Corrigan, Director

Department of Human Services

Date Signed: August 27, 2012

Date Mailed: August 27, 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

