

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 47248
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 21, 2012
Wayne County DHS (57)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on June 21, 2012. Claimant appeared by telephone and testified. [REDACTED], ES appeared on behalf of the Department of Human Services.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance program (MA-P)?

FINDINGS OF FACT

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

- 1) On September 9, 2011 Claimant applied for MA-P.
- 2) On April 2, 2012 the Medical Review Team (MRT) denied Claimant's application. Exhibit 1, pp. 3 and 4.
- 3) On April 5, 2012 the Department sent Notice of the MRT denial to the Claimant.
- 4) On April 16, 2012 Claimant submitted to the Department a request for hearing.
- 5) The State Hearing and Review Team (SHRT) found the Claimant not disabled on May 30, 2012. Exhibit 2.

- 6) Claimant is 58 years of age the time of the hearing. Her date of birth is [REDACTED], her height is 5 feet 4.5 inches and weight is 236 pounds.
- 7) Claimant completed college and has both a bachelors of science and a paralegal degree. The Claimant has a law degree, but is not licensed to practice law with the State of Michigan.
- 8) Claimant alleged physical disabling impairments as a result of cervical spine nerve damage and cervical herniated discs, congenital and degenerative spinal conditions and chronic pain in her neck due to nerve damage. The Claimant alleges severe pain symptoms which limit her ability to move, walk, and stand.
- 9) The Claimant's has past employment as a customer service representative, a program manager of a homeless shelter, sporadic paralegal work, a petition canvasser obtaining signatures, campaign election work (door to door canvassing) and a voter education worker educating voters about proposals.
- 10)The Claimant is not substantially gainfully employed and is currently not working.
- 11)An Interim Order was issued on June 26, 2012 and new evidence submitted at the hearing by the Claimant was transmitted to the State Hearing Review Team.
- 12)On July 27, 2012 the State Hearing Review Team found the Claimant not disabled.
- 13)Claimant's limitations have lasted or are expected to last for 12 months or more.
- 14)The Claimant has not alleged any mental disabling impairment(s).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program 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 Manual (BRM).

Federal regulations require that the Department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that she is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

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)(c).

A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual’s physical or mental ability to perform basic work activities. The term “basic work activities” means the abilities and aptitudes necessary to do most jobs. Examples of these 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.
20 CFR 416.921(b).

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).

As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case the Claimant presented medical evidence which is summarized below. On [REDACTED] the Claimant was seen by a neurosurgeon. The doctor noted pain and discomfort that goes down her shoulders out into her arms with coughing, sneezing or straining. The physician suggested physical therapy and possible surgery, if physical therapy was unsuccessful. The diagnosis was chronic neck pain with bilateral arm weakness.

A Medical Examination Report was completed [REDACTED] which listed the following diagnosis: neck pain, radicular symptoms, headache, neck pressure, debilitating with difficulty looking up based upon an MRI review. The report notes the Claimant's condition was deteriorating and that she required assistance with activities of daily living including shopping, lifting, meal prep and home chores. Exhibit 1 p. 12.

On [REDACTED] a medical consultation report was prepared which noted weakness in the right arm and that Claimant was unable to raise it beyond level of horizontal without pain exacerbation. Exhibit 1 p, 23.

A consultative examination was conducted on [REDACTED], which noted,

“hand grip was weak bilaterally, gait was slow but normal; the patient had difficulty tandem, tiptoe and heel walking. Patient had difficulty with bending, stooping and squatting. Range of motion of the cervical spine is decreased. Straight leg raising is 30 degrees bilaterally with stretching pain in the neck and back. Seated straight leg raising was not possible due to back pain.” The examining physician concluded that the Claimant has physical and functional limitations. Exhibit 1, p. 13-20.

An MRI was completed on [REDACTED] which found degenerative disk changes in the cervical disk at each level. At C5-C6 level there is a moderate sized left paracentral disk herniation mildly compressing the left side of the cervical spinal cord and exiting left C6 nerve root. Disk herniation at C4-C5 and a broad based disk herniation at C3-C4 level causing mild compression and flattening of the cervical spinal cord at both these levels. Questionable subtle area of myomalacia (softening of spinal cord) at C5-C6 level. Exhibit 1 page 21.

The Claimant's treating physician, on [REDACTED], imposed the following restrictions, “Patient able to do desk/office work for 2 hours sitting limit, no lifting more than 5 pounds, no bending, no repetitive above arm/shoulder movement and no overhead reaching”.

An MRI of the cervical spine was conducted on [REDACTED] with the following impression: 1. Degenerative changes of the cervical spine .. appearing greatest at C3-C4 and C5-C6 resulting in mass effect on the spinal cord. Improvement of the spinal canal stenosis with flexion and worsening with extension is noted. Postoperative changes at C6-C7.

In a clinical note of [REDACTED] the Claimant's treating physician noted, “the MRI shows evidence of moderate to severe congenital spinal stenosis at multiple levels, showing evidence of spinal stenosis a C#-C4, C4-C5 and C5-C6 as well. There is a flattening of the cord and at the C5-C6 level there is a moderate herniated disc with left paracentral extension and cord compression.” A February 2, 2012 clinical note notes pain in patient's neck radiating down to her shoulders and occasionally down to her arms. The exam found weakness in the right arm and is unable to raise it beyond the level of horizontal without exacerbation in pain substantially, and notes significant discomfort when lifting her arm in the deltoid area.

In June 2012 the Claimant's treating physician also prescribed a soft cervical collar to be worn at all times, to protect the cervical spine in the event of a fall. The clinical notes from a [REDACTED] visit reviewed the results of an MRI and observed that the MRI showed evidence of cervical spinal stenosis, congenital, with flattening of the spinal cord, C4-C5 level. Based on the MRI, the doctor recommended a cervical laminectomy and laminoplasty to decompress the spinal cord to prevent paralysis. Claimant Exhibit 1.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that she has significant physical limitations upon her ability to perform basic work activities such as sitting, standing, lifting, pushing, pulling, reaching, carrying or handling. Medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant's 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, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant's medical record will support a finding that Claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

This Administrative Law Judge consulted listing 1.04 Musculoskeletal, Disorders of the Spine when making the evaluation of listings.

The requirements for listing 1.04 Disorders of the spine, (eg. herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, ...) resulting in compromise of a nerve root, or the 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

The Claimant's credible testimony established that she has difficulty grocery shopping and cannot lift her groceries, which was also reflected in the restriction on lifting placed on Claimant by her treating physician and also supported by the prescription for assistance with activities in her home, and cervical collar to avoid paralysis if a fall occurs. The Claimant also credibly testified to dropping things due to inability to lift and hold on to objects (also reflected in medical documentation regarding reduced grip strength) and the limitations imposed by her treating physician limiting her ability to sit for more than 2 hours; lifting restrictions of no more than 5 pounds, no bending and limitations with repetitive arm/ shoulder movement. Lastly, the Claimant also credibly testified that she experiences continual pain and loss of strength to hold on to objects.

In this case, this Administrative Law Judge finds, based upon the objective medical evidence and the Claimant's testimony regarding her condition and abilities, that Claimant is considered presently disabled at the third step of the

sequential evaluation. Claimant meets the listing for 1.04A, or its equivalent. The medical records establish ongoing severe chronic neck pain with nerve compression and involvement including reference to an MRI demonstrating spinal stenosis with muscle involvement in both arms, diminished range of motion in both the neck and arms, and which satisfy the requirements of listing 1.04A.

With regard to steps 4 and 5, when a determination can be made at any step as to the Claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is disabled for the purposes of MA and SDA programs. Therefore, the decisions to deny Claimant's application for MA –P and SDA were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby REVERSED.

1. The Department is ORDERED to initiate processing the Claimant's MA –P application dated September 9, 2011, and any applicable retro month consistent with the application and award required benefits, provided Claimant meets all non medical standards required for eligibility as well.
2. The Department shall supplement the Claimant for any lost benefits (if any) that the Claimant was entitled to receive, if otherwise eligible and qualified in accordance with department policy.
3. The Department is further ORDERED to initiate a review of the Claimant's disability case in August 2013, in accordance with department policy.



Lynn M. Ferris
Administrative Law Judge
For Maura Corrigan
Department of Human Services

Date Signed: August 17, 2012

Date Mailed: August 17, 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

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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 to:

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

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cc:

