

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

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-33932
Issue No.: 2009
Case No.: [REDACTED]
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, Michigan on Monday, April 30, 2012. The Claimant appeared and testified. The Claimant was represented by [REDACTED] Participating on behalf Department of Human Services ("Department") was [REDACTED] observed the proceedings.

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 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 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 September 19, 2011, retroactive to July 2011.

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2. On December 20, 2011, the Medical Review 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 2nd and August 7, 2012, the SHRT found the Claimant not disabled. (Exhibit 2)
6. The Claimant alleged physical disabling 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 [REDACTED] years old with a [REDACTED] birth 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 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 fractured back, low back pain, left leg numbness, and incontinence.

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On [REDACTED] the Claimant presented to the hospital with complaints of low back pain. A CT scan of the lumbosacral spine revealed lumbarization of S1 with a pseudoarthrosis of the sacral wing at the S1-2 level bilaterally and a Schmorl's node in the superior endplate of L5. The Claimant was discharged on [REDACTED].

On [REDACTED] the Claimant presented to the hospital after a recent diagnosis of meningitis. The Claimant developed an abscess of the left shoulder which was positive for Staphylococcus aureus. Another PICC placement was performed without complication to allow for a 6 week course of intravenous antibiotics. The Claimant was discharged on [REDACTED] with the diagnoses of osteomyelitis of the left clavicle, bacteremia, history of meningitis, chronic back pain, and cellulitis of the arm.

On [REDACTED] a PICC line was placed without complication.

On [REDACTED] the Claimant was admitted to the hospital with complaints of paresthesia and numbness. An MRI of the thoracic spine was unremarkable. The MRIs of the lumbar spine were highly suspicious for underlying osteomyelitis and diskitis as well as paraspinal and epidural abscesses with severe stenosis of the lumbar canal posterior to L4-5 along with severe left and mild right exit foraminal encroachment at L4-5; right psoas muscle abscess versus organizing hematoma; and involvement of L3-4, L5-S1 intervertebral disc spaces with encroachment into the right L3-4 exit foramen. The Claimant was discharged on [REDACTED] with the diagnoses of L4-5 diskitis and osteomyelitis with paraspinal and epidural abscesses, status post decompressive lumbar laminectomy, MRSA infection, status post treatment of left shoulder septic arthritis and osteomyelitis ([REDACTED]) secondary to MRSA, and cocaine and marijuana abuse with suspicion of IV drug abuse despite Claimant's denial.

On [REDACTED], an MRI of the lumbar spine revealed persistent edema and enhancement at the disc space and vertebral bodies of L4-5 with interval progression of collapse of these vertebral bodies compatible with history of diskitis, osteomyelitis and mild to moderate degenerative disc disease at L3-4, L5-S1 levels. Persistent mass effect upon the thecal sac associated with mild to moderate spinal canal stenosis at L4-5 was also found.

On [REDACTED], the Claimant presented to the hospital for left basilica vein deep vein thrombosis ("DVT") secondary to PICC line placement for treatment of osteomyelitis and diskitis. The PICC line was removed from the left arm and inserted in the right arm. The Claimant was discharged on [REDACTED] with the diagnoses of DVT secondary to paraspinal abscess, chronic low back pain, and diskitis. Other diagnoses include acute osteomyelitis, lumbago, and acute venous embolism and thrombosis of the lower extremity.

On [REDACTED] the Claimant attended a consultative evaluation. The Claimant was unable to walk without a cane or able to stand for more than 10 minutes without support. The physical examination revealed significant muscle spasms in the lumbosacral spine area with significant difficulty when trying to lie down or change positions from sitting to lying down and lying down to standing up. Straight leg raise was positive on the left at 10-20 degrees and right side at 30 to 40 degrees. Contralateral straight leg was positive. Left hip had painful range of motion as did the left knee. X-rays of the lumbosacral spine revealed levoscoliosis in the lower lumbosacral spine; abnormal shape of L4 vertebra likely related to positioning 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 [REDACTED] a Medical Examination Report was completed on behalf of the Claimant. The current diagnosis 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 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 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 evidence confirms treatment/diagnoses of meningitis; osteomyelitis; chronic back pain; cellulitis; severe stenosis at L4-5 with severe left and right exit foraminal encroachment; right psoas abscess; L3-4, L5-S1 intervertebral disc spaces with encroachment into the right L3-4 exit foramen; persistent mass effect upon the thecal sac associated with mild to moderate spinal canal stenosis at L4-5; DVT; diskitis; degenerative changes; and lumbar radiculopathy.

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. 1.00B2c. 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 as 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 dyesthesia, 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 meningitis; osteomyelitis; chronic back pain; cellulitis; severe stenosis at L4-5 with severe left and right exit foraminal encroachment; right psoas abscess; L3-4, L5-S1 intervertebral disc spaces with encroachment into the right L3-4 exit foramen; persistent mass effect upon the thecal sac associated with mild to moderate spinal canal stenosis at L4-5; DVT; diskitis; degenerative changes; left knee pain, and lumbar radiculopathy. The evidence confirms significant muscle spasms and positive straight leg raise bilaterally along with painful range of motion of the left hip and knee. 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. 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

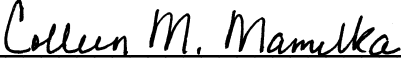
The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
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.

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



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

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cc:

