STATE OF MICHIGAN

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

IN THE MATTER OF:

[redacted]

Reg No.: 2012-52022
Issue No.: 2009
Case No.: [redacted]
Hearing Date: July 25, 2012
Wayne County DHS (49)

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, July 25, 2012. The Claimant appeared and testified. Participating on behalf of the Department of Human Services ("Department") was Rodney Turner.

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 retroactive to November 2011, on February 10, 2012.

2. On April 18, 2012, 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 May 11, 2012, the Department received the Claimant's written request for hearing.

5. On June 26, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)

6. The Claimant alleged physical disabling impairments due to back pain, neck pain, asthma, shortness of breath, high blood pressure, incontinence, closed-head injury, and migraine headaches.

7. The Claimant alleged mental disabling impairments due to depression and anxiety.

8. At the time of hearing, the Claimant was [redacted] years old with a [redacted] birth date; was 5'2" in height; and weighed 160 pounds.

9. The Claimant is a high school graduate with vocational training and an employment history as a cashier training for a manager position at a fast food restaurant, in packaging, a nail technician, and as a home care provider.

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).

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a). First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate

the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.;* 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d). If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2). If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3).

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 pain, neck pain, asthma, shortness of breath, high blood pressure, incontinence, closed-head injury, migraine headaches, anxiety, and depression.

In support of her claim, medical records from [redacted] were submitted which confirm that the Claimant was involved in an automobile accident which resulted in an opened head injury, neck injury, and lumbar injury. Records from [redacted] were unremarkable for any significant cardiac impairment; however, a pulmonary function study revealed very severe obstruction. Medical records confirm continued treatment for shortness of breath.

On [redacted], x-rays revealed degenerative disc disease at the C3-4 and C4-5 levels.

On [redacted] the Claimant sought treatment for severe low back pain, neck pain, bilateral lower extremity pain. Surgical intervention was recommended in an effort to reduce pain. The physical examination revealed decreased range of motion in the low back and cervical spine with tenderness to palpitation. The Claimant had decreased grip strength in her right upper extremity. Imaging studies and EMGs [redacted] showed a right C6-7 radiculopathy and left L5-S1 radiculopathy. MRI of the cervical spine showed right paracentral herniation at C4-5 impinging on the anterolateral cord causing mild-to-moderate neuroforaminal narrowing, disc bulges impinging on the

thecal sac at C3-4, C5-6, and C6-7 levels. Epidural injections were scheduled and the Claimant was to follow up wit h neurops ychiatry for new-onset of anxie ty and panic attacks. T he Claimant was als o to follow up for her cephalgia, memory loss, and uncontrolled hypertension. The Claimant required a cane for ambulation.

On [redacted], the Claimant attended an in itial ev aluation and consultat ion for her back/neck pain.

On [redacted] the Cla imant attended a follow-up appoi ntment for neck and back pain status post motor vehicle accident in [redacted] The diagnoses were post-traumatic cerebral c oncussion and post-tr aumatic n eck and lumbosacral pain. The Claimant was scheduled for lef t epidural block and her pai n m edication regime was continued.

On [redacted] the Claimant underwent epidural injections.

On [redacted] the Claimant attended a follow-up appointment for her neck and low back pain. The MRI r evealed L3-4, L4-5, and L5-S1 impinging on the thec al sac with neuroforaminal narrowing. The Claimant underwent a lami notomy L5, laminotomy S1, and fluoroscopy without complication. T he post-operative dia gnoses were lumbar radiculopathy, and lumbar disc herniation.

On [redacted] the Claim ant underwent left-sided L4-5 and L5-S1 tran sforaminal epidural steroid injec tion with fluorosc opic guidanc e without complication. The diagnosis was bilateral radiculopathy.

On [redacted] the Cl aimant sought treatment for pain. The dia gnoses were post-traumatic cerebral cont usion, post-traumatic cervical and low back pain. The Claimant's pain medication wa s increas ed. The Claimant was sent for surgical evaluation.

On [redacted], the Cl aimant underwent lumbar m edial branch block at L3-4, L4-5 and L5-S1 bilaterally with fluoroscopi c guidance without complication. The diagnoses were traumatic lumbar facet arthropathy and lumbar spondylolysis.

On [redacted] the Claimant was diagnosed with muscle spasms, headaches, cervical radic ulopathy, and lumbar radiculopathy.

The Claimant received chiroprac tic manipulation from [redacted] without relief.

On [redacted] the Claimant sought treatment for neck and back pain. The Claimant had undergone physical therapy, chiropractic manipulation, multiple epidural injections, and facet blocks with minimal improvement in her symptoms. Imaging studies revealed severe disc herniation at C6-7 and C5-6 as well as L5-S1 disc herniation with foraminal stenosis. The Claimant had positive straight leg test bilaterally with decreased range of motion of the cervical and lumbosacral spine and hips. Surgical intervention was recommended.

On [redacted], the Claimant was diagnosed with muscle spasms at C3 – 6, T2 – 7, and L3-S1; headaches, cervical radiculopathy, and lumbar radiculopathy.

On [redacted], the Claimant attended a follow-up appointment status post L5-S1 decompression surgery on [redacted]. Review of imaging studies revealed multi-level disc herniations. EMGs confirm radiculopathy at C6 – 11. The Claimant was referred to a pain management physician and physical therapy.

On [redacted], the Claimant attended a follow-up appointment for re-evaluation secondary to injuries sustained in the [redacted] motor vehicle accident. The Claimant continued to experience pain (albeit reduced since the lumbar decompression at L5-S1 in [redacted] and weakness in her low back and legs requiring a cane for ambulation. The examination of the cervical spine revealed diffuse pain to all range of movement noting flexion at less than 20 degrees with pain. Positive cervical spasms and cervical/paraspinal tenderness was noted. The diagnoses were cervical neck strain, bilateral cervical radiculopathy, traumatic cervical facet arthropathy, cervical spondylosis, traumatic lumbar facet arthropathy, lumbar spondylosis, and traumatically-induced cephalgia. The Claimant was scheduled for cervical epidural injections and her pain medication/management regime was to continue.

On [redacted] the Claimant attended a follow-up appointment for her daily headaches.

On [redacted] the Claimant underwent a clinical neuropsychological evaluation. The Claimant's full scale IQ was 57 which fell within the extremely low range of intelligence. Further testing revealed a pattern of extremely low auditory and visual memory functions, extremely low visual working memory, and extremely low immediate and delayed memory.

On [redacted] the Claimant underwent C6-7 epidural without complication. The MRI of the cervical spine showed right paracentral herniation at C4-5 impinging on the anterolateral cord; disc bulging impinging on the thecal sac at C3-4, C4-5, and C5-6; spinal canal stenosis; and no acute fractures.

On [redacted], the Claimant attended a follow-up appointment for her back and neck pain. The physical examination revealed neck pain with spasms noting failed pain medication control. The diagnoses were cervical strain and spasms, cervical disc displacement, cervical radiculopathy, traumatic cervical facet arthropathy, and cervical spondylolysis. The Claimant had some improvement with epidural injections. The Claimant was prescribed pain medication, referred for physical therapy and chiropractor care, and scheduled for epidural injections.

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 limited medical evidence establishing that she does have some limitations on her ability to perform basic work activities. In light of the *de minimus* standard, the sequential analysis will continue.

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 and mental disabling impairments due to back pain, neck pain, asthma, shortness of breath, high blood pressure, incontinence, closed-head injury, migraine headaches, anxiety, and depression.

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:

* * *

1.04 Disorders of the spine (e .g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc dis ease, facet arthritis, vertebral fracture), resulting in compromise of a ner ve root (inc luding 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 sens ory or refl ex 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, r esulting 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 accept able imaging, manifested by chronic nonradic ular pain and weak ness, and resulting in inability to ambul ate effectively, as defined in 1.00B2b. (see above definition)

Listing 12.00 encomp asses adult mental disorder s. The evaluation of disab ility on the basis of mental dis orders requires doc umentation of a medically d eterminable impairment(s) and consideration of the degr ee in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected t o last for a continuous period of at least 12 months. 12.00A. The existence of a medically determinable impai rment(s) of the required duration must be established through medical evidence cons isting of sy mptoms, si gns, and laboratory findings, to include psychological test findings. 12.00B. The evaluation of disability on the basis of a mental disorder requires sufficient evid ence to (1) establis h the presence of a medically determinable ment al impairment(s), (2) asse ss the degree of functional limitation t he impair ment(s) imposes, and (3) project the probable duration of the impairment(s). 12.00D. The ev aluation of disability on the basis of mental disorder s requires documentation of a medically determinable impairment (s) and cons ideration of the degree in which the impairment limits the indiv idual's ab ility to work consideratio n, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A.

Listing 12.05 discusses mental retardation which refers to significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period. The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration.

In this case, the medical evidence reveals multiple impairments to include, cervical strain and spasms, cervical disc displacement, cervical radiculopathy, traumatic cervical facet arthropathy, cervical spondylolysis, right paracentral herniation at C4-5 impinging on the anterolateral cord, C3-4, C4-5, and C5-6 disc bulge impinging on the thecal sac, spinal canal stenosis, bilateral cervical radiculopathy, facet arthropathy, lumbar spondylosis, and foraminal stenosis. The Claimant had positive bilateral straight leg testing in September, and despite lumbar decompression surgery at L5-S1 in November, continues to experience pain and weakness requiring a cane for ambulation. The Claimant has undergone several conservative treatments without improvement of

her symptoms. In addition to the ongoing back/neck issues, the Claimant's full scale IQ was 57. In light of the foregoing, the combination of the Claimant's physical and mental impairments meet, or are the medical equivalent of, listing impairments within Listing 1.00 and Listing 12.00 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 benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the February 10, 2012 application, retroactive to November 2011, 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 for any 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 accordance with Department policy in September 2013.

Colleen M. Mamelka

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

Date Signed: August 13, 2012

Date Mailed: August 13, 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]