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

**IN THE MATTER OF:**

[redacted]

Reg No.: 2012-66869
Issue No.: 2009, 4031
Case No.: [redacted]
Hearing Date: December 17, 2012
Wayne County DHS (41)

**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 Monday, December 17, 2012. The Claimant appeared, along with [redacted], and testified. Participating on behalf of the Department of Human Services ("Department") was [redacted].

## ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefit programs?

## 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 and SDA benefits on March 12, 2012.

2. On July 13, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 5, 6)

3. On July 17, 2012, the Department notified the Claimant of the MRT determination. (Exhibit 1, p. 4).

4. On July 26, 2012, the Department received the Claimant's written request for hearing. (Exhibit 1, p. 2)

5. On September 7, 2012, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)

6. The Claimant alleged physical disabling impairments due to back pain with radiculopathy, degenerative disc disease, shoulder pain, irritable bowel syndrome, and fibromyalgia.

7. The Claimant has not alleged any mental disabling impairment(s).

8. At the time of hearing, the Claimant was 42 years old with a [redacted] birth date; was 5'3" in height; and weighed 203 pounds.

9. The Claimant is a high school graduate with some college and an employment history as a direct care worker.

## 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 pain with radiculopathy, degenerative disc disease, shoulder pain, irritable bowel syndrome, and fibromyalgia.

On April 11, 2011, the Claimant was treated for mid and low back pain. Chronic problems included benign essential hypertension, irritable bowel syndrome, and generalized anxiety disorder.

On April 20, 2011, the Claimant attended a follow-up appointment for back pain. The diagnoses were thoracic or lumbosacral neuritis or radiculitis, sciatica, non-dependent tobacco use disorder, leimyoma of uterus, generalized anxiety disorder, benign essential hypertension, and contact dermatitis.

On May 4, 2011, the Claimant attended a follow-up appointment where, in addition to the previous diagnoses, the Claimant was diagnosed with hyperlipidemia.

On July 19, 2011, the Claimant sought treatment for altered bowel habits. The diagnoses were diabetes mellitus without complication, thoracic or lumboscaral neuritis or radiculitis, non-dependent tobacco use disorder, leiomyoma of uterus, unspecified essential hypertension, and external hemorrhoid.

On August 31, 2011, a MRI of the lumbar spine revealed mild spondylotic changes of the lower lumbosacral spine.

On this same date, a MRI of the thoracic spine revealed discogenic changes at T5-6, T7-8, and T8-9.

On September 19, 2011, the Claimant sought treatment for back pain. The diagnoses were degenerative joint disease involving multiple joints. The Claimant was found unable to work and required to use a back brace.

On September 26, 2011, the Claimant sought treatment for her back pain.

On October 3, 2011, the Claimant sought treatment for low back pain. The physical examination documented muscle spasms of the lumbar spine with severe pain with motion. An epidural injection was given without complication. The diagnosis was degenerative joint disease involving multiple joints.

On October 17, 2011, the Claimant was diagnosed with unspecified essential hypertension, lumbar degenerative disc disease, and with being over weight.

On November 16, 2011, the Claimant was treated for lumbar degenerative disc disease, over weight, and pre-hypertension.

On December 15, 2011, the Claimant was treated for/diagnosed with B12 deficiency anemia, degeneration of lumbar/lumbosacral intervertebral, and fibromyalgia.

On January 3, 2012, the Claimant was diagnosed with/treated for degeneration of the lumbar spine and back muscle spasms.

On January 5, 2012, the Claimant attended a follow-up appointment for back pain. The physical examination documented severe thoracic muscle spasms with pain on motion. The diagnoses were back pain, muscle spasms, and anxiety.

On this same date, a CT of the thoracic spine revealed left paracentral disc osteophyte complex with compression of lateral thecal sac at T5-6 and diffuse mild disc osteophyte complex with anterior indentation of thecal sac.

On January 16, 2012, a CAT scan of the thoracic spine revealed left paracentral disc osteophyte complex with compression of lateral thecal sac at T5-6 and diffuse disc osteophyte complex, lesser degree than T5-6 with mild anterior indentation of thecal sac at T7-8, T8-9.

On January 17, 2012, the Claimant was diagnosed with degenerative disc disease (thoracic) with calcified nodules pressing on the cord resulting in severe pain. The Claimant was referred to outpatient pain management through April 30, 2012.

On January 30, 2012, epidural injection at T5-6 was ordered.

On January 31, 2012, the Claimant was diagnosed with thoracic or lumbosacral neuritis or radiculitis. The Claimant was instructed to avoid lifting noting that the epidural injection should reduce swelling and pain.

On February 21, 2012, the Claimant sought treatment for back pain. The physical examination revealed muscle spasms of the thoracic spine with reduced range of motion. The diagnoses were degenerative disc disease of the thoracic spine, anxiety, and hypertension.

On February 27, 2012, a MRI of the cervical spine revealed degenerative spondylosis without canal or foraminal narrowing at any level.

On March 13, 2012, the Claimant attended a follow-up appointment for back pain. The physical examination revealed thoracic spine tenderness with severe pain on motion and lumbar spine muscle spasms with severe pain on motion.

On March 13, 2012, the Department received a Medical Examination Report completed on behalf of the Claimant. The current diagnosis was thoracolumbar degenerative disc disease with spasms and reduced range of motion. The Claimant was in stable condition and able to meet her needs in the home.

On this same date, a Medical Needs Form (DHS 54A) was completed on behalf of the Claimant. The current diagnosis was thoracolumbar degenerative disc disease. The Claimant was found unable to work any job due to her severe pain and spasms.

On March 13, 2012, another Medical Needs Form was completed (DHS 54E) on behalf of the Claimant. The current diagnosis was thoracolumbar degenerative disc disease.

The Claimant's limitations were expected to exceed 90 days and she was found unable to lift/carry any weight.

On March 19, 2012, the Claimant was diagnosed with low back pain, thoracic spine pain, and neck pain.

On March 27, 2012, the Claimant attended a follow-up appointment for sinusitis. The diagnoses were degeneration of thoracic spine and sinusitis.

On or about March 28, 2012, the Claimant was treated/diagnosed with fibromyalgia, eye pain (not otherwise specified), and headache.

On May 17, 2012, the Claimant was treated for/diagnosed with degeneration of thoracic spine and anxiety.

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 some medical evidence establishing that she does have physical limitations on her 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 minimis* 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 back pain, hypertension, irritable bowel syndrome, anxiety, diabetes mellitus, thoracic or lumbosacral neuritis or radiculitis, degenerative disc/joint disease at multiple levels, muscle spasms, severe pain, reduced range of motion, fibromyalgia, sinusitis, and neck pain.

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, evidence confirms treatment/diagnoses of back pain, hypertension, irritable bowel syndrome, anxiety, diabetes mellitus, thoracic or lumbosacral neuritis or radiculitis, degenerative disc/joint disease at multiple levels, muscle spasms, severe pain, reduced range of motion, fibromyalgia, sinusitis, and neck pain. Imaging studies revealed degenerative spondylotic changes of the lower lumbar spine; discogenic changes at T5-6, T7-8, and T8-9; left paracentral disc osteophyte complex with compression of lateral thecal sac at T-5-6; and diffuse disc osteophyte complex with anterior indentation of thecal sac at T7-8, T8-9. Despite adherence to prescribed medication and conservative treatment to include epidural injections and a TENS unit, the Claimant was found incapable of working. In light of the multiple, ongoing impairments with the Claimant's cervical, thoracic, and lumbar spine with radiculopathy and degenerative joint and disc disease, it is found that the combination of the impairments meet, or is the medical equivalent of a listed impairment 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 March 12, 2012 MA-P and SDA application, 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 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 February 2014 in accordance with Department policy.

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

Date Signed: January 9, 2013
Date Mailed: January 9, 2013

**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

CMM/tm

cc: [redacted]