

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013-10377
Issue No(s): 2009
Case No.: ██████████
Hearing Date: February 14, 2013
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on February 14, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and A witness ██████████ ██████████ ██████████ the Claimant's Authorized Hearing Representative also appeared on his behalf. Participants on behalf of the Department of Human Services (Department) included ██████████ Medical Contact Worker.

ISSUE

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

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. The Claimant submitted an application for public assistance seeking MA-P and retro (May 2012) MAP-P benefits on August 1, 2012.
2. On August 13, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 2).
3. The Department notified the Claimant of the MRT determination on August 13, 2012.

4. On October 31, 2012 the Department received the Claimant's timely written request for hearing. (Exhibit 1)
5. On January 8, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued in this matter so that additional medical evidence could be submitted to the State Hearing Review Team on June 21, 2013.
7. On August 9, 2013 the State Hearing Review Team found the Claimant not disabled.
8. Claimant alleged physical disabling impairments due to chronic back pain including lower back pain due to herniated bulging disc, neck pain due to disc fusion, pain in the thoracic spine due to spinal stenosis and spinal cord compression. The claimant's ankles were shattered two times and were extremely brittle causing him to use a cane. The claimant uses a tens pain unit and experiences radiating pain in both legs with left leg numbness and pain which is more severe.
9. The Claimant has not alleged any mental disabling impairment(s).
10. At the time of hearing, the Claimant was [REDACTED] years old with an [REDACTED] birth date; was 5'11" in height; and weighed 180 pounds. The claimant has gained 30 pounds in the last year due to inactivity.
11. The Claimant has a high school education. The Claimant has an employment history working in construction performing home building including rough framing, and rough carpentry. The claimant also worked as a general laborer on construction sites. In most of his jobs he carried a minimum of 30 pounds and on average carried 50 sometimes 80 to 100 pounds. The claimant last worked in 2009.
12. At the time of the hearing the Claimant was not substantially gainfully employed and is currently not working.
13. Claimant's limitations and impairments have lasted or are expected to last for 12 months or more.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the

Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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 he 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.

An MRI of the claimant's CT thoracic spine was performed on [REDACTED]. The impression was minimal posterior endplate spurring at the T6 vertebral body with mild spinal canal stenosis at this level.

An MRI of the claimant's thoracic spine was performed on [REDACTED]. The impression was moderate cord compression, at T5 –T6 and T6 – T7 secondary to centrally extruded migrating discs.

The claimant's treating physician for internal medicine who has treated the claimant since [REDACTED] gave a current diagnosis of hypertension, back pain, and COPD. A DHS 49 was completed on [REDACTED] by the treating physician. At that time the pain level noted on the Examination Report was 10 out of 10. The musculoskeletal evaluation noted numbness in legs, back pain with reduced range of motion in the back. The clinical impression was that the claimant was deteriorating. The claimant has treated consistently every several months since [REDACTED]

An MRI of the thoracic spine was also performed on [REDACTED] with the following impression: persistent extra dural defect along the ventral aspect of the thoracic spine from T5 through T7 resulting in central canal stenosis as well as compression upon the thoracic spinal cord.

In this case, Claimant has presented the required medical data and evidence necessary to support a finding that he has significant physical limitations upon his 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, (e.g. 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 he has difficulty bending and squatting and putting on his socks due to his back pain in both the thoracic and lumbar spine and associated pain and numbness in both his legs with the numbness more severe in the left leg. The Claimant further credibly testified that he can stand 10 to 15 minutes and his left leg goes numb. He can sit 10 to 15 minutes. He can lift/carry 5 pounds. The claimant's testimony was deemed credible. It is noted that Claimant walks with a cane, and at the hearing advised that he had been prescribed a lifetime back brace and has been prescribed a tens unit for pain. He further credibly testified that he has difficulty descending stairs due to pain.

The Claimant's treating doctor based upon a prior MRI confirmed back pain 10 of 10 and noted the Claimant's condition was deteriorating.

In this case, this Administrative Law Judge finds, based upon the objective medical evidence and the Claimant's testimony regarding his 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 thoracic and lumbar pain with spinal cord compression and involvement including reference to MRIs demonstrating spinal stenosis with muscle involvement 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

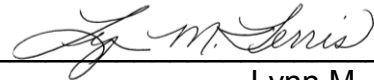
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is disabled for the purposes of MA and SDA programs. Therefore, the decisions to deny Claimant's application for MA-P and SDA were incorrect.

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

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS

HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department is ORDERED to initiate processing the Claimant's MA-P application dated August 1, 2012 with retro MA-P to May 2012 consistent with the application and award required benefits, provided Claimant meets all non-medical standards required for eligibility as well.
2. The Department is further ORDERED to initiate a review of the Claimant's disability case in December 2014, in accordance with Department policy.



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

Date Signed: December 3, 2013

Date Mailed: December 3, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

2013-10377/LMF

If submitted by mail, the written request must be addressed as follows:

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

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]