**STATE OF MICHIGAN**

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

**IN THE MATTER OF:**

[redacted]

Reg No.: 2013-5807
Issue No.: 2009
Case No.: [redacted]
Hearing Date: February 27, 2013
County: Oakland County DHS (03)

**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, February 27, 2013. Claimant appeared, along with [redacted] and [redacted] of [redacted], and testified. Participating on behalf of the Department of Human Services ("Department") was [redacted].

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 evidence. No records were received. On June 27, 2013, this office received communication that Claimant passed away. Accordingly, the record closed and 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. Claimant submitted an application for public assistance seeking MA-P benefits on April 20, 2012.

2. On August 17, 2012, the Medical Review Team ("MRT") found Claimant not disabled. (Exhibit 1, pp. 1, 2)

3. The Department notified Claimant of the MRT determination.

4. On October 22, 2012, the Department received Claimant's written request for hearing.

5. On November 29, 2012, the State Hearing Review Team ("SHRT") found Claimant not disabled. (Exhibit 3)

6. Claimant alleged physical disabling impairments due to hip pain, back pain with disc herniations, right-side numbness, and closed-head injury.

7. Claimant alleged mental disabling impairments due to anxiety, bipolar disorder, and depression.

8. At the time of hearing, Claimant was 42 years old with a [redacted] birth date; was 5'7" in height; and weighed 170 pounds.

9. Claimant had the equivalent of a high school education with an employment history as a welder.

10. Claimant's impairments lasted 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 was 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 hip pain, back pain with disc herniations, right-side numbness, closed-head injury, anxiety, bipolar disorder, and depression.

In support of his claim, some older records were submitted from as early as 1999 which document treatment/diagnoses of degenerative joint disease, back pain, generalized anxiety disorder, depression, ruptured disc, spinal tumor (removed), right leg weakness/pain, abdominal pain, right shoulder pain, right shoulder bursitis, degenerative disc disease, severe (C5-6) spinal stenosis (MRI), cord compression (C5-6), severe bilateral neural foraminal narrowing (C5-6), moderate disc protrusion at L5-S1 with spinal canal stenosis, mild central disc protrusion causing effacement of the anterior thecal sac, intradural lesion (tumor) at L2-3 status post laminectomy for resection, central and right paracentral disc herniation at L5-S1, spasms, central disc bulge at L4-5 and L3-4, gastritis, bronchitis, and complicated chronic pain syndrome.

On February 1, 2012, a Medication Review was performed. The diagnoses were major depressive disorder (recurrent, severe without psychosis), cocaine dependence (in

remission), drug dependence (in remission), cannabis dependence (in remission), and antisocial personality disorder. The Global Assessment Functioning ("GAF") was 50.
On February 17, 2012, Claimant sought treatment for low pain back with radiation to the right as well as numbness/tingling of right foot. The physical examination confirmed positive Gowers sign, positive straight leg raising bilaterally, positive Fabere sign, and positive tenderness. The diagnoses were lumbar facet joint arthropathy, lumbosacral radiculopathy, lumbar muscle spasms, cervical facet joint arthropathy, cervical spinal stenosis, and cervical muscle spasms.

On April 12, 2012, an initial psychiatric evaluation was performed. The diagnostic impressions were major depressive disorder, recurrent, severe without psychosis, cocaine dependence (in remission), alcohol dependence (in remission), and cannabis dependence (in remission). The GAF was 45.

On April 13, 2012, Claimant was diagnosed with lumbar spine radiculopathy and spasms, cervical spinal stenosis and spasms, lumbar facet joint arthropathy ("FJA"), and cervical FJA.

On April 18, 2012, a Psychiatric/Psychological Examination Report was completed on behalf of Claimant. The diagnosis was major depressive disorder, recurrent, severe. The GAF was 45.

On this same date, a Mental Residual Functional Capacity Assessment was completed. Claimant was markedly limited in 3 of the 20 factors; moderately limited in 3 factors; and not significantly limited in the remaining 14 factors.

On June 12, 2012, Claimant attended an appointment at the pain clinic with complaints of low back pain with radiation to the right all the way to the foot. The physical examination was positive for tenderness and positive Fabere sign. Regarding the lumbar spine, there was positive paraparavertebral muscle tenderness bilaterally L3 through S1; positive for spasms; and decreased range of motion. The diagnoses were lumbosacral radiculopathy, lumbar facet joint arthropathy, lumbar muscle spasms, cervical facet joint arthropathy, cervical neck pain, cervical spinal stenosis, and cervical muscle spasms. Claimant was prescribed pain medication and was to continue treatment with the pain clinic.

On November 15, 2012, a Medication Review was completed. The diagnoses were major depressive disorder (recurrent, severe without psychosis), cocaine dependence (in remission), drug dependence (in remission), cannabis dependence (in remission), and antisocial personality disorder. The GAF was 50.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above,

Claimant presented medical evidence establishing that established physical and mental limitations on his ability to perform basic work activities. The medical evidence established that Claimant had an impairment, or combination thereof, that had more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments lasted continuously for more than twelve months; therefore, 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. Medical records from 2012 confirmed treatment/diagnoses of major depressive disorder (severe, recurrent without psychosis), lumbar radiculopathy, lumbar FJA, lumbar muscle spasms, cervical FJA, cervical spinal stenosis, cervical spasms, and lumbar and cervical 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, the objective evidence shows lumbar radiculopathy, lumbar FJA, lumbar muscle spasms, cervical FJA, cervical spinal stenosis, cervical spasms, and lumbar and cervical pain. The evidence confirmed positive straight leg raising; positive Fabere sign; and positive Gowers sign. The objective findings establish chronic joint pain, stiffness, and reduced range of motion, numbness, pain, and weakness. As a result, Claimant required a cane for ambulation. In light of the foregoing, it is found that the Claimant's combined musculoskeltal 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 benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate processing of the April 20, 2012 application to determine if all other non-medical criteria were met for the period from the date of application through Claimant's date of death in accordance with Department policy.

Colleen M. Mamelka

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

Date Signed: July 11, 2013

Date Mailed: July 15, 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]