

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

IN THE MATTER OF:

██████████
██████████
████████████████████

Reg. No.: 2013-48879
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: October 23, 2013
Oakland County DHS (02)

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, a telephone hearing was held on October 23, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, ES.

ISSUE

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

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 State Disability Assistance benefits on March 18, 2013.
2. On May 9, 2013, 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 May 9, 2013.

4. On May 20, 2013 the Department received the Claimant's timely written request for hearing. (Exhibit 1)
5. On July 25, 2013 the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued on October 24, 2013 in this matter so that additional medical evidence could be obtained and submitted to the State Hearing Review Team. The new evidence was submitted on December 7, 2013.
7. On February 12, 2013 the State Hearing Review Team found the Claimant not disabled.
8. Claimant alleged physical disabling impairments with chronic back pain including bilateral lower back pain due to degenerative disc disease with bilateral spondylolisthesis with disc protrusion at L4-L5 with radiating pain down both legs, bilateral hip pain and bilateral shoulder pain. The Claimant also alleged severe bilateral neuroforaminal stenosis with compression of the nerve roots at this level (L5 on S1).
9. The Claimant has not alleged any mental disabling impairment(s).
10. At the time of hearing, the Claimant was ■ years old with an ■ birth date; was 5' 6-1/2" in height; and weighed 189 pounds.
11. The Claimant has a GED and did not graduate from high school. The Claimant has an employment history working as a truck driver and delivery man for a furniture store. The Claimant also did furniture sales when not driving. The Claimant also worked in his own furniture store where he sold furniture and was on his feet at least half the day and lifted regularly 20 to 25 pounds.
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 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 lumbar spine was performed on [REDACTED]. The findings were a bilateral spondylolisthesis is present at L5 with grade 1 anterolisthesis of L5 on S1. There are severe bilateral neuroforaminal stenosis with compression of the nerve roots at this level. Moderate degenerative disc disease is present involving L2-L5. At L4-L5 there is a central disc protrusion without evidence for central canal stenosis. Impression: Grade 1 anterolisthesis of L5 on S1 with severe bilateral neuroforaminal stenosis resulting in compression of nerve root at this level. Disc protrusion centrally and L4-L5. Moderate degenerative disc disease involving L2-L5.

The claimant’s doctor who he began seeing in [REDACTED] indicated that any limitations are due to Claimant’s pain. He has advised that physical therapy and

possible steroid injections as therapy does not lessen pain symptoms. The doctor also opined that at some point Claimant may need surgical intervention. The DHS 49 was not fully completed but did rely on the MRI testing. As it is incomplete, it is of little value.

A consultative exam was performed on [REDACTED] without the benefit of the MRI. The examiner noted on examination of the Claimant that there was decreased and painful range of motion of the cervical spine. Painful decreased range of motion in both shoulders. Range of motion in lumbar spine was decreased and pain was noted. Function: the patient is able to ambulate without the use of an assistive device. Can sit and stand without assistance, Bending and stooping and squatting are limited secondary to low back pain and his carrying, pushing and pulling are limited secondary to his decreased and painful range of motion of the bilateral shoulders. The lumbar spine range of motion was significantly limited.

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 and squatting. 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, (eg. 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 the lumbar spine and

associated in both his legs. The Claimant can dress himself but has trouble with shirts or tight fitting shirts due to shoulder pain. The Claimant further credibly testified that he can stand 35-40 minutes and he then experiences back spasm. The Claimant can walk approximately 3 blocks with back pain. He can sit 15 to 20 minutes. He can lift/carry 8 pounds. The Claimant has difficulty climbing stairs and must go slowly and requires a stair rail. The Claimant's treating doctor based upon a prior MRI confirmed back pain. Claimant has minimal relief with pain with medication with persistent pain level of 7 or 8 out 10.

In this case, this Administrative Law Judge finds, based upon the objective medical evidence and MRI testing and the Claimant's credible 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 medical equivalent. The medical records establish ongoing severe chronic lumbar 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

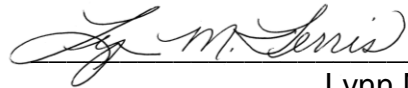
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Claimant is disabled for the purposes of MA and SDA programs. Therefore, the decisions to deny Claimant's application for MA -P and SDA were incorrect.

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 and SDA applications dated March 18, 2013 consistent with the application and award required benefits, provided Claimant meets all non medical standards required for eligibility as well.

2. The Department shall issue a Supplement to the Claimant for SDA benefits he is entitled to receive in accordance with Department policy and this Decision.
3. The Department is further ORDERED to initiate a review of the Claimant's disability case in March 2015, in accordance with Department policy



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

Date Signed: March 7, 2014

Date Mailed: March 7, 2014

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

2013-48879/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]
[REDACTED]