

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

IN THE MATTER OF:

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Reg. No.: 2013-64820
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: January 8, 2014
County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

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 conducted from Detroit, Michigan on Wednesday, January 8, 2014. Claimant appeared and testified. ██████████ interpreted Claimant's testimony. Participating on behalf of the Department of Human Services (Department) was ██████████

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On March 6, 2014, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that 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. Claimant submitted an application for public assistance seeking MA-P and SDA benefits on May 14, 2013.

2. On July 23, 2013, the Medical Review Team (MRT) found Claimant not disabled for purposes of the MA program. (Exhibit 1, pp. 3a; Exhibit 2, p. 4)
3. The Department sent a Notice of Case Action to Claimant stating he was not eligible for cash or medical assistance because he was found not disabled. (Exhibit 2, pp. 1, 2)
4. The Department resent the medical packet to the MRT for a determination regarding SDA.
5. On August 5, 2013, the Department received Claimant's timely written request for hearing protesting the finding of being not disabled. (Exhibit 3)
6. On August 21, 2013, the MRT found Claimant not disabled for purposes of the SDA benefit program. (Exhibit 1, pp. 1a)
7. On October 2, 2013, and March 4, 2013, the State Hearing Review Team found Claimant not disabled for purposes of the SDA benefit program.
8. Claimant alleged physical disabling impairments due to neck and back pain due to a fracture with atrophy of the left leg and headaches.
9. Claimant has not alleged any mental disabling impairment(s).
10. At the time of hearing, Claimant was 33 years old with a [REDACTED], birth date; was 5'10" in height; and weighed 199 pounds.
11. Claimant has a 6th grade education, does not read/write English, and has an employment history as a care provider.

CONCLUSIONS OF LAW

As a preliminary matter, the Department sent the medical packet to the MRT for review of eligibility for both the MA and SDA programs. MRT only considered MA. The Department notified Claimant that he was denied cash and MA benefits because he was not disabled. Claimant timely requested a hearing. The Department discovered that the MRT only looked at MA so the medical packet was sent back to the MRT for an eligibility determination regarding SDA benefits. The MRT found Claimant not disabled for SDA purposes. When the case was forwarded to the SHRT, SHRT only looked at SDA, not MA. Claimant's request for hearing specifically references MA and SDA. As such, eligibility under both MA and SDA will be decided.

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. 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 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). An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not working therefore is not involved in substantial gainful activity. Accordingly, Claimant is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. 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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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, Claimant alleges disability due to neck and back pain due to a fracture with atrophy of the left leg and headaches.

In support of his claim, a police report was submitted which established that Claimant was involved in a motor vehicle accident on February 14, 2010.

On May 13, 2013, a MRI revealed midline herniated disc at C3-4 with areas of prominence at C4 through C7; degenerative spondylosis greatest at L5-S1 with diffuse disc bulge with midline annular fissure; and disc bulge at L4-5. The MRI of the thoracic spine was unremarkable.

On May 21, 2013, Claimant presented to a pain center for a comprehensive rehabilitation evaluation and pain management. The physical examination revealed decreased range of motion of the neck, shoulder, and back; negative straight leg raising; give-way weakness in the lower extremities; and mild to moderate spasms. The impressions were cervical radiculopathy with midline herniate disc at C3-4 with prominence of discs and possible herniations at C4-5, C5-6, and C6-7; cervical spasms; L4-5 radiculopathy with a diffuse disc bulge asymmetric to the left encroaching upon the

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anterior aspect of the left neural foramen; and headaches. The physician found Claimant disabled and unable to work.

On May 23, 2013, a Medical Examination Report was completed on behalf of Claimant. The current diagnoses were chronic neck and back pain and headaches. Claimant was in stable condition and found able to lift/carry less than 10 pounds and was unable to perform repetitive actions with his upper extremities.

On July 27, 2013, Claimant's treating physician wrote a letter confirming diagnoses and treatment for neck pain with radiculopathy to the right arm; low back pain with radiculopathy to the left lower extremity; left leg weakness; and chronic headaches. An MRI from May 2013, of the cervical and lumbar spine revealed disc herniation at C3-4 and diffused disc bulging at L5-S1. Claimant was referred to a surgeon.

On August 1, 2013, another letter was written on behalf of Claimant based on examinations from May 21, 2013 through July 23, 2013. Claimant's range of motion of the cervical spine was 30 degrees to the left and 45 degrees to the right. Claimant was unable to touch his chin to his chest. Back flexion was 40 degrees noting moderate spasms in the cervical and thoracic spine with lumbar paraspinals. Shoulder elevation was limited to 70 degrees on the right with 140 degrees on the left. The impressions were headaches, C3-4 disc herniations, L5-S1 disc protrusion with annular tear, L4 radiculopathy, and persistent cervical and lumbar spasms. Claimant was found unable to work and unable to seek gainful employment. The prognosis was fair to poor.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* impact on the Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for a period of twelve months or longer; 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 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 disc herniations at C3-4 and L5-S1 (with annular tear); degenerative spondylosis; cervical and lumbar radiculopathy; lower extremity weakness; spasms; and headaches.

Listing 1.00 (musculoskeletal system) and Listing 11.00 (neurological disorders) were considered in light of the objective evidence. There was evidence of disc herniations with radiculopathy and lower extremity weakness. Straight leg raising was negative and

there was no evidence that Claimant was unable to ambulate effectively. That being stated, Claimant's treating physician found him capable of less than sedentary activity noting he was unable to perform repetitive actions with his upper extremities and unable to work. In review of listing 1.04 regarding disorders of the spine, the objective evidence does not meet this listing. Regarding Claimant's chronic headaches; the evidence does not meet the intent and severity requirement of a neurological listing. As such, Claimant cannot be found disabled, or not disabled, at Step 3.

Before considering the fourth step in the sequential analysis, a determination of the individual's residual functional capacity ("RFC") is made. 20 CFR 416.945. An individual's RFC is the most he/she can still do on a sustained basis despite the limitations from the impairment(s). *Id.* The total limiting effects of all the impairments, to include those that are not severe, are considered. 20 CFR 416.945(e).

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In

considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In this case, the evidence confirms treatment/diagnoses of confirms treatment/diagnoses of disc herniations at C3-4 and L5-S1 (with annular tear); degenerative spondylosis; cervical and lumbar radiculopathy; lower extremity weakness; spasms; and headaches. Claimant continues to wear both his neck and back brace while taking prescribed pain pills and muscle relaxers. Claimant testified that he can walk short distances; lifting carry less than 10 pounds; stand for less than ½ hour; and is unable to bend, squat, or climb stairs. Claimant's treating physician found Claimant unable to work, placing him at less than sedentary activity. After review of the entire record, giving deference to Claimant's treating physician, it is found that, at this time, Claimant is unable to maintain the physical demands necessary to perform sedentary work as defined by 20 CFR 416.967(a).

The fourth step in analyzing a disability claim requires an assessment of Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Claimant's limited work history consists of employment as adult care provider whose duties included lifting/carrying 20 to 25 pounds; bending and squatting; and a great deal of standing and/or walking. In consideration of Claimant's testimony and referring to the

Occupational Code, Claimant's prior employment as an adult care provider is classified as unskilled, light work. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In light of the entire record, to include Claimant's physician's imposed limitations along with Claimant's testimony and RFC (see above), it is found that Claimant is unable to perform past relevant work.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience would be considered to determine whether an adjustment to other work could be made. 20 CFR 416.920(4)(v). At the time of hearing, Claimant was 33 years old thus considered to be a younger individual for MA purposes. Claimant has a limited education and is unable to read/write English. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, the objective findings confirm treatment/diagnoses of evidence confirms treatment/diagnoses of confirms treatment/diagnoses of disc herniations at C3-4 and L5-S1 (with annular tear); degenerative spondylosis; cervical and lumbar radiculopathy; lower extremity weakness; spasms; and headaches. Two of Claimant's physicians found him unable to work despite adherence to prescribed treatment and the wearing of both a neck and back brace. Claimant's physician imposed less than sedentary limitations noting the most comfortable position was lying down. After review of the entire record, and giving deference to Claimant's treating source(s), it is found that Claimant is unable to perform even sedentary acting, warranting a finding of disabled at Step 5.

The State Disability Assistance 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

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based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

In this case, Claimant is found disabled for purposes of the MA-P program; therefore, he is found disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds 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 May 14, 2013 MA and SDA application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
3. The Department shall supplement for any lost lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
4. The Department shall review Claimant's continued eligibility in accordance with Department policy in April 2015.



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

Date Signed: March 25, 2014

Date Mailed: March 26, 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

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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

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

CMM/tm

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