

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-007100
Issue No.: 4009; 2009
Case No.: [REDACTED]
Hearing Date: September 16, 2014
County: TUSCOLA

ADMINISTRATIVE LAW JUDGE: Susanne Harris

HEARING DECISION

Following the 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 September 16, 2014, from Caro, Michigan. Participants on behalf of the Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist, [REDACTED].

ISSUE

Whether the Department properly determined that the 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 on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On May 5, 2014, the Claimant filed an application for SDA, MA-P and Retro-MA benefits alleging disability.
2. On June 30, 2014, the Medical Review Team (MRT) denied the Claimant's application for MA-P/Retro-MA indicating that he was capable of other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration.
3. On July 1, 2014, the Department sent the Claimant notice that his application was denied.
4. On July 14, 2014, the Claimant filed a request for a hearing to contest the Department's negative action.

5. The Claimant has a history of degenerative disc disease and lumbar disc herniation.
6. The Claimant is a [REDACTED] year old [REDACTED] born on [REDACTED].
7. The Claimant is 5'11" tall and weighs 180 lbs.
8. The Claimant completed a [REDACTED] and [REDACTED].
9. The Claimant last worked in [REDACTED]. Previous to that he had a job [REDACTED] which required him to carry windows and doors and occasionally lift up to 200 pounds. Previous to that the Claimant played [REDACTED].
10. The Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. 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.

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 413.913. 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 (e.g., 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 to 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 impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 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 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 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).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

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 and testified that he has not worked since [REDACTED]. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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). 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 degenerative disc disease and lumbar disc herniation. The Claimant's treating physician indicates that the Claimant is never to lift more than 25 pounds and can only occasionally lift up to 20 pounds. The Claimant cannot operate foot and leg controls with either foot or leg. The Claimant cannot use his hands and arms for reaching, pushing or pulling. The Claimant is now walking with a cane. The Claimant's treating physician indicates that the Claimant's condition is deteriorating and that the Claimant will be unable to work until such time as he can complete epidural steroid injections.

The [REDACTED] of the Claimant's spine dated [REDACTED] 14, shows the following:

1. A small hemangioma in the L1 vertebral body. The normal lumbar lordosis is straightened.
2. At T12-L1: the intervertebral disc is a mildly desiccated, and the disc spaces mildly narrowed. Small Schmorl's nodes are seen in the end plates. Mild right facet arthropathy. No disc herniation or spinal stenosis. The neural foramina are patent.
3. At L1-2: Minimal left facet joint hypertrophy. There is a minimal annular bulge without spinal stenosis. No disc herniation is appreciated. The neural foramina are patent.
4. At L2-3: there is a minimal annular bulge without spinal stenosis. No disc herniation is appreciated. The neural foramina are patent.
5. At L3-4: a minimal annular bulge contacts the L4 nerve roots. No spinal stenosis. No disc herniation is appreciated. The neural foramina are patent.
6. At L4-5: the intervertebral disc is desiccated, and the disc space is narrowed. Mild degenerative endplate change. Mild facet arthropathy, worse on the left. An annular bulge causes mild spinal stenosis. There is a left paracentral annular fissure at this level. A small central/right paracentral disc protrusion contacts the right L5 nerve root. The neural foramina are mildly narrowed.
7. At the L5-S1: the intervertebral disc is desiccated, and the disk space is a markedly narrowed. Degenerative endplate changes present. Mild facet arthropathy. A central disc protrusion contacts the S1 nerve roots. No spinal stenosis. Moderate to severe narrowing of the right neural foramen. The left neural foramen moderately narrowed.

The clinical impression of this MRI was as follows:

1. Disc degeneration with a small central/right paracentral disc protrusion at L4-5 contacting the right L5 nerve root. Mild spinal stenosis at this level.
2. Mark disc degeneration, moderate narrowing of the left neural foramen and moderate to severe narrowing of the right neural foramen at L5-S1.
3. Central disc protrusion at L5-S1 contacting the S1 nerve roots.

4. Mild facet arthropathy as above.

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 medical evidence establishing that he does have some 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* effect on 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 individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical disabling impairments due to degenerative disc disease and lumbar disc herniation. At the L4-5, the Claimant has an annular bulge which causes mild spinal stenosis, a left paracentral annular fissure, and nerve impingement at L4-5.

Listing 1.00 (musculoskeletal system) was considered in light of the objective evidence. Based on the Listing 1.04, the Claimant's impairments are severe, in combination, if not singly, (20 CFR 404.15.20 (c), 416.920(c)), in that Claimant is significantly affected in his ability to perform basic work activities (20 CFR 404.1521(b) and 416.921(b)(1)).

Listing 1.04 requires a disorder of the spine such as a 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 the spinal cord. With evidence of nerve root compression characterized by neural-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle spasm) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising tests (sitting and supine) and lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic non-radicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As indicated by the Claimant during his testimony, and supported by the medical evidence in the file, specifically the MRI, the Claimant has disc degeneration with a small central/right paracentral disc protrusion at L4-5 contacting the right L5 nerve root and mild spinal stenosis at this level. He has marked disc degeneration, moderate narrowing of the left neural foramen and moderate to severe narrowing of the right neural foramen at L5-S1. The Claimant's MRI also indicated a central disc protrusion at L5-S1 contacting the S1 nerve roots and mild facet arthropathy.

Accordingly, this Administrative Law Judge finds the Claimant's impairments meet Listing 1.04 and concludes the Claimant is disabled for purposes of the MA program.

A person is considered disabled for purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Receipt of SSI or RSDI benefits based upon disability or blindness or the receipt of MA benefits based upon disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in BEM 261. Inasmuch as Claimant has been found "disabled" for purposes of MA, he must also be found "disabled" for purposes of SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department erred in determining the Claimant is not currently disabled for SDA eligibility purposes.

Accordingly, the Department's decision is REVERSED, and it is Ordered that:

1. The Department shall process the Claimant's [REDACTED], SDA application, and shall award him all the benefits he may be entitled to receive, as long as he meets the remaining financial and non-financial eligibility factors.
2. The Department shall review the Claimant's medical condition for improvement in [REDACTED], unless his Social Security Administration disability status is approved by that time.
3. The Department shall obtain updated medical evidence from the Claimant's treating physicians, physical therapists, pain clinic notes, etc. regarding her continued treatment, progress and prognosis at review.

It is SO ORDERED.



Susanne Harris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **10/20/2014**
Date Mailed: **10/20/2014**

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

SEH / tb

cc:

