

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2007-19354

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 2, 2007

Berrien County DHS

ADMINISTRATIVE LAW JUDGE: Jana A. Bachman

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on October 2, 2007. Claimant was represented by [REDACTED]

ISSUE

Whether the Department of Human Services (department) properly determined that claimant has not established disability for purposes of Medical Assistance (MA).

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

(1) April 13, 2007, claimant applied for MA. Claimant submitted medical records for department consideration.

- (2) May 4, 2007, the Medical Review Team denied claimant's application.

Department Exhibit (Department) A.

- (3) May 18, 2007, the department sent claimant written notice that the application was denied.

- (4) May 24, 2007, the department received claimant's timely request for hearing.

- (5) August 22, 2007, the State Hearing Review Team (SHRT) denied claimant's application. Department B.

- (6) October 2, 2007, the telephone hearing was held.

- (7) Claimant asserts disability based on impairments caused by amputated toes and sickle cell trait.

- (8) Claimant testified at hearing. Claimant is 40 years old, 6'5" tall, and weighs 405 pounds. Claimant completed high school and has training in electronics. He is able to read, write, and perform basic math. He has a driver's license but does not drive due to painful hands.

- (9) Claimant's past relevant employment has been as a security guard, liquor store manager, correction officer, and doing meal preparation at a senior center.

- (10) July 25, 2006, medical treatment records indicate claimant has left big toe and next toe wound that is black with edema, pain, and erythema. Lower legs and feet have loss of sensation. Department A, page 100. October 4, 2006, claimant's doctor indicates in a letter that claimant had partial amputation of the left great toe a couple of years ago and now has 2 month history of ulcer in his left 1<sup>st</sup> web space. Wound is not healing despite 2 surgical debridements and medication. Department A, page 74. On or about November 6, 2006, claimant was admitted to hospital complaining of non-healing wound in the left foot. Consultative exam notes indicate that claimant has faintly palpable pulses in his left foot. He has a large fissure that is necrotic

with deeply tunneling in-between his 1<sup>st</sup> and 2<sup>nd</sup> metatarsals. Doctor cannot palpate bone.

Claimant has dense neuropathy. Final assessment is aggressive diabetes with neuropathy and retinopathy and non-healing ulcer. Culture shows enterococcus; rule out MRSA. Department A, pages 150-155. November 29, 2006, treatment records indicate claimant has undergone partial amputation of left second toe. The wound does not show good signs of healing. Department A, page 59. December 21, 2006, MRI of left foot revealed findings consistent with osteomyelitis in the remaining portion of the second metatarsal and in the proximal phalanx of the third toe with extensive associated soft tissue inflammation surrounding the mid to distal aspect of the second metatarsal. Department A, page 151. February 7, 2007 wound clinic treatment notes states that wound measures 7.4 cm x 2.1 cm x 3 cm at deepest. The wound was sharply debrided and doctor thought that there was some wound closure at the bottom of the wound. Department A, page 26. February 28, 2007, medical treatment notes indicate claimant has diabetic wound of the left foot with osteomyelitis of the 2<sup>nd</sup> metatarsal. Wound was sharply debrided. Doctor notes that MRI shows some evidence of continuing osteomyelitis, but wound is healing well. Department A, page 21-21a. February 22, 2007, MRI revealed claimant to have persistent but slightly decreased changes of cellulitis and osteomyelitis of the second metatarsal. Department A, page 146. March 1, 2007, treatment records indicate that claimant has MRSA osteomyelitis of the second metatarsal bone. He has a PICC inserted and has completed 32 days of 42 to 84 day course of medication. Doctor is concerned that PICC line has fallen out twice and may not be able to reinsert again. Doctor is concerned claimant will lose his foot. Department A, pages 116-117.

## CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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 set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)... 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3)

the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

If an individual fails to cooperate by appearing for a physical or mental examination by a certain date without good cause, there will not be a finding of disability. 20 CFR 416.994(b)(4)(ii).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, claimant is not engaged in substantial gainful activity and so is not disqualified from receiving disability at Step 1.

At Step 2, the objective medical evidence of record indicates that on or about July 2006, claimant developed a necrotic ulcer of his left large toe web space. The wound grew larger and did not heal. Claimant developed osteomyelitis and had his second toe amputated. The wound developed MRSA and failed to heal. During March 2007, claimant's foot required debridement and MRI revealed signs of osteomyelitis and cellulitis. The foot was beginning to show an area of healing on the bottom. Finding of Fact 10.

At Step 2, the objective medical evidence of record is sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is not disqualified from receiving disability at Step 2.

At Step 3, claimant's impairments do not rise to the level necessary to be specifically disabling by law.

At Step 4, claimant's past relevant employment has been as a security guard, liquor store manager, and doing meal preparation at a senior center. The objective medical evidence of record establishes that on or about July 2006, claimant developed a necrotic ulcer on his foot. In March 2007, the wound still showed signs of osteomyelitis and cellulitis. Claimant had an IV antibiotic line and the foot required debridement. Finding of Fact 9-10.

At Step 4, the objective medical evidence of record is sufficient to establish that claimant has functional impairments that prevent claimant, for a period of 12 months or more, from engaging in a full range of duties required by claimant's past relevant employment. Therefore, claimant is not disqualified from receiving disability at Step 4.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated.... 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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....

20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

At Step 5, the objective medical evidence of record indicates that claimant has a persistent necrotic ulcer on his left foot that has resulted in amputation of the second toe and continuing IV antibiotic treatment. After 9 months of treatment, claimant's wound shows signs of osteomyelitis and cellulitis. The wound may be beginning to heal. Finding of Fact 10.

At Step 5, the objective medical evidence of record is sufficient to establish that claimant does not retain the residual functional capacity to perform work activities. Accordingly, claimant is disabled and is not disqualified from receiving disability at Step 5.

Claimant meets the federal statutory requirements to qualify for disability. Therefore, claimant meets the disability requirements to qualify for Medical Assistance based on disability.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant has established disability for Medical Assistance.

Accordingly, the department's action is HEREBY REVERSED. The department is to initiate a determination of claimant's financial eligibility for MA in compliance with this decision and order and department policy. If otherwise eligible, medical review is set for March 2010.

/s/  
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Jana A. Bachman  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: April 7, 2009

Date Mailed: April 10, 2009

**NOTICE:** Administrative Hearings 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. Administrative Hearings 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.

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.

JAB/db

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