

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: 2007-20689
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 15, 2007
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 in Flint on November 15, 2007. Claimant personally appeared and testified under oath. Claimant was represented at the hearing by [REDACTED] of [REDACTED] [REDACTED].

The department was represented by Lavonia Alston (ES).

The Administrative Law Judge appeared by telephone from Lansing.

Claimant requested additional time to submit new medical evidence. Claimant's new medical evidence was received and submitted to the State Hearing Review Team (SHRT) on August 14, 2009. Claimant waived the timeliness requirement so that her new medical evidence could be reviewed by SHRT.

ISSUE

Did the department establish medical improvement that enables claimant to perform Substantial Gainful Activity (SGA) for MA-P purposes?

FINDINGS OF FACT

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

(1) Claimant is a current MA-P recipient. The department proposes to close claimant's MA-P based on medical improvement. SHRT issued a Decision on October 19, 2007 stating that claimant is no longer eligible for MA-P because the impairment (left ankle dysfunction) which was the basis for her approval in January 2006 had improved. Claimant was originally approved for MA-P in January 2006. The basis for approval was SSI Listing 1.02 (inability to walk).

(2) Claimant's vocational factors are: age--49; education--high school diploma, post-high school education--currently enrolled at [REDACTED], working toward a Bachelor of Arts Degree in social work. Claimant is currently taking 8 credit hours of classes. The [REDACTED] [REDACTED] awarded her a work study stipend totaling \$1,500, which claimant performed at the rate of 6 to 8 hours a week. Claimant earned \$8.00 an hour and was a phone counselor on a university help line. Claimant's work study program ended November 14, 2007.

(3) SHRT evaluated claimant's medical evidence as follows:

OBJECTIVE MEDICAL EVIDENCE (October 19, 2007)

The medical examination of 4/2007 revealed no evidence of arthropathy. The motor exam was normal. A positive rheumatoid factor was found with no evidence of rheumatoid arthritis per history or examination. Hip x-rays were normal. The lumbar spine x-rays showed degenerative changes and no nerve root

involvement. No mental limitations were clinically documented (page 22).

ANALYSIS:

The impairments have improved. A severe impairment was not clinically documented.

* * *

SUPPLEMENTAL MEDICAL EVIDENCE (August 18, 2009)

On August 18, 2009, SHRT decided claimant was able to perform unskilled sedentary work.

SHRT denied ongoing MA-P using Med-Voc Rule 201.13.

(4) The following medical reports were persuasive:

(a) An [REDACTED] letter was reviewed. The physician provided the following comments:

I have been treating my patient [claimant] for the following diagnosis:

- (1) End Stage post-traumatic osteoarthritis left ankle joint status-post open reduction internal fixation bi-malleolar ankle fracture with distal tibiofibular joint dislocation status-post exostectomy and hardware removal.
- (2) Early post-traumatic subtalar joint osteoarthritis related to above.
- (3) Ankylosing spondylitis. The above injuries are due to her car accident in 1990 and it has not resolved itself. This injury limits weight-bearing and standing. She is capable of working a sedentary job. She will require vocational rehabilitation services for purpose of vocational career planning, job placement, possible re-training and ergonomic accommodations at her new place of employment.

* * *

(b) A July 12, 2007 Medical Examination Report (DHS-49) was reviewed. The physician provided the following current diagnoses: traumatic arthritis ankle.

The physician provided the following physical limitations: not able to lift any weight. Unable to stand at all. Unable to do simple grasping, reaching, pushing-pulling, fine manipulating. Unable to use her feet or legs for any purpose.

[Note: The physician's July 12, 2007 Medical Examination Report contradicts the physician's October 18, 2007 report, which states: "She is capable of working a sedentary job. She will require vocational rehabilitation services. * * *]

- (c) A July 12, 2007 Medical Needs form (DHS-54A) was reviewed. The physician states that claimant has a medical need for personal care services, but did not specify the service. The physician states that claimant is permanently unable to work at her usual occupation; the physician further states that claimant is permanently unable to work any job.

[NOTE: The comments provided by the physician on the Medical Needs form (DHS-54A) directly contradict her opinion stated in the October 18, 2007 letter which states:

* * * She is capable of working a sedentary job. She will require vocational rehabilitation services. * * *]

- (d) A May 21, 2007 physical examination report was reviewed. The orthopedic surgeon provides the following information:

Claimant has come back today regarding her end-stage post-traumatic osteoarthritis of the left ankle status-post ORIF of a bi-malleolar ankle fracture and distal tibiofibular joint dislocation. Most recently, she has been to see [REDACTED] for ankylosing spondylitis. She recently had to quit school. She was going back to school to re-educate herself to more of a sit down job, but she cannot even sit through the classes with her ankylosing spondylitis, due to back, hip and pelvic pain.

ASSESSMENT:

- (1) End-stage post-traumatic osteoarthritis of the left ankle joint status-post ORIF bi-malleolar ankle fracture with distal tibiofibular joint dislocation, status-post exostectomy and hardware removal;
- (2) Early post-traumatic subtalar joint osteoarthritis related to above;

(3) Ankylosing spondylitis.

(e) A September 6, 2007 physical examination report was reviewed.

The physician provided the following history:

Claimant presents to the office today for follow-up on left ankle pain secondary to post-traumatic arthrosis. The patient is her as a new patient. Her motor vehicle accident was in 1990, and treated by [REDACTED] with open reduction and internal fixation through medial and lateral incisions. The patient subsequently had her care turned over to [REDACTED], a foot and ankle specialist in [REDACTED], and has been followed by her. She has end-stage post-traumatic arthrosis development. She has had removal of the hardware. She has also had partial bone excision and continues to follow with [REDACTED]. Her symptoms are related to post-traumatic arthrosis today and they are actively related, worse after she has been up on it for a long period of time. She has had one cortisone injection in the past which provided relief for about a month. This was a number of years ago and she hasn't had any since.

* * *

X-rays: 3 view of the ankle taken in office today demonstrates post-surgical changes with evidence of prior placed medial and lateral hardware. The hardware is gone at this point. There is bone-on-bone arthritis with loss of the articular surface. These are not weight-bearing films and still show this amount of joint space loss. There are osteophytes, subcordical sclerosis, and a few cysts noted.

DIAGNOSIS

- (1) Post-traumatic left ankle arthrosis;
- (2) 4 year status-post hardware removal related to original internal fixation 17 years ago for bimalleolar ankle fracture.

(5) The objective medical evidence in the record shows that claimant's ankle status has not improved, and in fact, may have deteriorated, since claimant was approved in 2006.

Claimant continues to suffer from low back dysfunction and anxiety and depression.

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).

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).

A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e).

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).

ABILITY TO DO SUBSTANTIAL GAINFUL ACTIVITY

Under current MA-P policy, **the department has the burden of proof** to establish that claimant is now medically able to return to work. PEM 260. The osteopathic surgeon states that claimant's ankle is still not completely healed and that osteoarthritis is an ongoing serious concern.

However, based on the SHRT report, claimant was originally approved for MA-P based on SSI Listing 1.02 (inability to walk). It is clear from the most recent osteopathic report that claimant's ankle dysfunction has not improved. In fact, it appears to have worsened. In addition, claimant is also suffering from depression and anxiety.

Since claimant was originally approved for benefits based on her impaired ability to walk (Listing 1.02), she continues to be eligible based on that diagnosis.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department has not established medical improvement, as required by PEM 260.

Accordingly, the department's decision to close claimant's MA-P is, hereby, REVERSED.

SO ORDERED.

/s/ _____
Jay W. Sexton
Administrative Law Judge
for Marianne Udow, Director
Department of Human Services

Date Signed: August 24, 2009

Date Mailed: August 25, 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 mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the mailing date of the rehearing decision.

JWS/cv

cc:

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