

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No. 2008-20707

Issue No. 2009; 4031

Case No: ██████████

Load No. ██████████

Hearing Date:

August 18, 2008

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Judith Ralston Ellison

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 hearing was held on August 18, 2008. The Claimant appeared at the Department of Human Services (Department) in Genesee Office 2.

The record was left open to obtain additional medical information. The medical information was submitted to the State Hearing Review Team (SHRT) and the application was denied. This matter is now before the undersigned for final decision.

ISSUES

Whether the Department properly determined the Claimant is "not disabled" for purposes of Medical Assistance (MA-P) program and State Disability Assistance (SDA) program?

FINDINGS OF FACT

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

(1) The Claimant filed an application for MA-P and SDA benefits on February 19, 2008.

(2) On April 8, 2008 the Department denied the application; and on November 24, 2008 the SHRT denied the application finding the medical records established improvement or expected improvement per 20 CFR 416.927 within 12 months.

(3) On April 17, 2008 the Claimant filed a timely hearing request to protest the Department's determination.

(4) Claimant's date of birth is [REDACTED]; and the Claimant is forty years of age.

(5) Claimant completed grade 11 and a GED; and can read and write English and perform basic math.

(6) Claimant last worked in [REDACTED] as a janitor for [REDACTED]; and work training for welding.

(7) Claimant has a medical history of injuries from [REDACTED] MVA with left ankle joint surgery leaving pain and foot swelling; and has problems sleeping.

(8) [REDACTED], in part:

CURRENT DIAGNOSIS: Left ankle pain.

HT 5'11", WT 216, BP 126/82

NORMAL EXAMINATION AREAS: General; HEENT; Respiratory; Cardiovascular, Abdominal, Musculoskeletal, Neuro, Mental.

ABNORMAL: Musculoskeletal: left ankle pain.

CLINICAL IMPRESSION: Deteriorating.

PHYSICAL LIMITATIONS: Limited. Stand and/or walk less than 2 hours in 8 hour day; sit less than 6 hours in 8 hour day; no assistive devices are needed; use of both hands/arms for simple grasping, reaching, pushing/pulling, fine manipulating only if sitting; No use of feet/legs for operating controls. Cannot stand long time due to pain. MENTAL LIMITATIONS: None.

X-ray 3 views left ankle: Advanced healing old fracture with internal fixation. Fairly advanced degenerative changes of ankle joint suggestive of old injury. [REDACTED]. DE N, pp. 13-14

MEDICAL NEEDS: Ambulatory. Cannot work at usual work or any work—indefinitely. [REDACTED]. Department Exhibit (DE) 1, pp. 3-4 and 14

(9) [REDACTED], in part:

HISTORY: Complex case of ex-con incarcerated for ten years and just prior fractured his left ankle and had surgery. Went to prison and bounced around without treatment; and no one did anything about his problem. He has poor distal pulses, everted foot and tight heel cord, limited range of motion of ankle but good range of motion of knee. Right lower extremity normal as was left hip and knee. Removing the hardware will not help now. Arthrotomy of the ankle will be done. He will be in a cast for three months, non walking six weeks and walking six weeks; and he may wind up with a pantalar arthrodesis some day and if that does not work out he might be better off with a below the knee amputation.

POSTOPERATIVE DIAGNOSES: Status post fractured dislocation of talus 10-11 years ago. Heel cord contracture. Osteophyte formation around ankle. Subtalar arthritis. Left operating room after quite complex operation in satisfactory condition. [REDACTED]. DE N, pp. 1-25

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 400.1 *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).

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 CFR416.905

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 impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then 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. 20 CFR 416.920(b). In this case, under the first step, Claimant testified that he was engaged in substantial gainful activities (SGA) at [REDACTED] until [REDACTED], the time of hearing. Therefore, Claimant is not disqualified for MA at step one in the evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec’y of Health and Human Servs*, 774 F2d 685 (6th Cir 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F2d 85, 90 (6thCir 1985).

In this case, the Claimant has presented sufficient medical evidence of physical limitations. See Finding of Facts 8-17.

The medical evidence has established that Claimant had a physical impairment due to left ankle deformity with limited time standing due to pain that has more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously since [REDACTED] and according to the opinion of [REDACTED] are expected to last. The Claimant’s medical records did not document any certain medical evaluations for a mental impairment.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant’s medical record will not support findings that the Claimant’s physical impairment is “listed impairment(s)” or equal to a

listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments (Listing) discusses the analysis and criteria necessary to a finding of a listed impairment. The undersigned's decision was based on Listing 1.00 *Musculoskeletal System*. The Claimant's impairment is related to left ankle deformity causing pain and limited standing. Listing 1.00 specifically defines the impairments preventing SGA as loss of function.

1.00B. *Loss of function.*

1. *General.* Under this section, loss of function may be due to bone or joint deformity or destruction from any cause; miscellaneous disorders of the spine with or without radiculopathy or other neurological deficits; . . .

2. *How We Define Loss of Function in These Listings*

a. *General.* Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. . . . We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. *What We Mean by Inability To Ambulate Effectively*

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that

interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. *What we mean by inability to perform fine and gross movements effectively*. Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

In this case, the Claimant's medical records do not establish loss of function of the right lower extremity or right/left upper extremities.

This Administrative Law Judge, based on the medical records, finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program.

Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Here, the medical findings were essentially normal for all body systems except left ankle deformity but the claimant had surgery [REDACTED]; and [REDACTED] notes a period of casting, non-walking but walking some few months after surgery. There were no medical records after [REDACTED] that limited physical function and as noted, the Claimant did not have dysfunction of either upper extremity. The Claimant's past relevant work was providing janitorial services for [REDACTED] which he was doing with the left ankle deformity. Based on this the undersigned finds the Claimant can return to past relevant work as a janitor.

It is the finding of the undersigned, based upon the medical evidence, objective physical/mental findings, and hearing record that Claimant is "not disabled" at step four and can return to past relevant work as a janitor.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 ninety days. Receipt of SSI or RSDI benefits based on disability or blindness or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is insufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "not disabled" for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "not disabled" for purposes of the Medical Assistance program and State Disability Assistance program.

It is ORDERED; the Department's determination in this matter is AFFIRMED.

/s/

Judith Ralston Ellison
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: February 5, 2009

Date Mailed: February 12, 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.

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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.

JRE

cc:

