

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. 2008-21911  
Issue No. 2009, 4031  
Case No: ██████████  
Load No. ██████████  
Hearing Date:  
July 23, 2008  
DHS County:  
Wayne County/District ██████████

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 July 23, 2008. The Claimant, his mother ██████████ and his sister ██████████ appeared at the Department of Human Service (Department) in Wayne County District ██████████.

The record was left open to obtain additional medical information. Claimant waived the closure date on the record. 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 based on disability (MA-P) and State Disability Assistance (SDA) programs?

FINDINGS OF FACT

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

- (1) On January 17, 2008 the Claimant applied for MA-P and SDA.
- (2) On May 14, 2008 the Department denied the application; and on February 11, 2009 the SHRT found medical records did not establish duration per 20 CFR 416.909.
- (3) On May 20, 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-eight years of age.
- (5) Claimant completed grade 10; and can read and write English and can perform basic math skills.
- (6) Claimant last worked in December 2006 doing factory type work on/off for 15-20 years.
- (7) Claimant has alleged a medical history of right and left ankle swelling with fused joints both big toes, back pain from shoulders to toes, treatment for arthritis and depression with suicide ideation.
- (8) [REDACTED], in part:

CURRENT DIAGNOSIS: Pes planus [Flatfoot]; severe foot/ankle deformity secondary to pes planus; chronic low back pain.

Height 5'5" Weight 180, BP 100/60.

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

Musculoskeletal: positive fallen arches bilaterally, positive ankle deformity bilaterally. Mental: low mood/affect, depression.

TESTING: X-RAYS: loss of arch, deformities of talovavicular joint, joint callus calcification, tibial tendon dysfunction.

CLINICAL IMPRESSION: Deterioration

PHYSICAL LIMITATIONS: Limited; and expected to last more than 90 days. Lifting/carrying up to 10 pounds 2/3 of an 8 hour, 10 pounds 1/3 of 8 hour day; never 20 or over; stand and/or walk less than 2 hours in 8 hour day; sit about 6 hours in 8 hour day; assistive devices are medically needed for walking with a cane on as

needed basis; use of both hand/arms for simple grasping, reaching, pushing/pulling and fine manipulating; no use of either feet/legs for operating foot/leg controls. Findings for limitations: severe changes of bilateral feet and ankles. Antalgic gait. MENTAL LIMITATIONS: limited in sustained concentration. Needs help in home with errands/housework. Medications: Naproxyn, Propoxyphine. [REDACTED]. Department Exhibit (DE) 1, pp. 16-17.

[REDACTED] CT scan bilateral feet: IMPRESSION: Degeneration left subtalar joint changes with bilateral mid foot osteopenia right greater than left and medical subluxation of the talus bones bilaterally together with ill-definition of the posteriorly tibial tendon is suspicious for bilateral tibia tendon dysfunction. DE N, p. 13.

[REDACTED] Bilateral ankle ultrasounds: IMPRESSION: Right: posterior tibial tendinosis/tenosynovitis. Mild reactive tenosynovitis is seen at flexor digitorum longus. Severe flexor hallucis longus tendinosis. Fluid within tendon sheath may represent tenosynovitis. Left: Posterior tibial tendinosis/tenosynovitis. Severe flexor hallucis longus tendinosis. [REDACTED] DE N, p. 11.

(9) [REDACTED] in part:

Office Note: Bilateral PTTD, stage II. Referred to Rheumatology for connective tissue disorder work up, with no significant findings except mildly elevated ESR and CRP; and values will be followed. States pin in bilateral feet unchanged and unresolved with OTC medications. No other treatment has been tried. PHYSICAL EXAM: significant posterior tibial tendon weakness, weak foot inversion, left foot in plantar flexion. Significant tenderness over posterior tibial tendon. Significant pain down foot with hind foot valgus on standing; and not correctable with Root test and difficulty getting on toes. Recommend immobilization for one or both feet with walking cast with three week follow up [REDACTED] DE N, pp. 5-10

### 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 (SGA). 20 CFR 416.920(b). In this case, under the first step, Claimant testified to not performing SGA since December 2006. 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 (6<sup>th</sup> 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 (6<sup>th</sup> 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 to support a finding that Claimant has physical limitations due foot and ankle deformities that are more than minimal and impact his abilities to perform basic work.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s physical impairments are 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 impairments are “listed impairment(s)” or equal to a listed impairment 20 CFR 416.920(d). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Based on the medical records available, the Claimant's impairments are related to Listing 1.00 *Musculoskeletal System*, under Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant does not meet this listing because there are no medical records supporting that the Claimant has difficulties/dysfunctions with upper extremity functions even with lower extremity dysfunction of the major joints of the feet/ankles.

In this case, this Administrative Law Judge finds the Claimant is not 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) prevents Claimant 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. See 20 CFR 416.945.

Claimant's past relevant work was factory type work for 15-20 years. The medical records are sufficient to establish pain while using feet/ankles because of the extent of the deformities of the Claimant's feet/ankles confirmed in appropriate medical testing. This evidence is persuasive that the Claimant cannot return to past relevant work.

Given the complete longitudinal medical evidence history of evaluation of the Claimant's feet/ankle deformity; and the recommendation of [REDACTED] for use of a cane; and in use at the time of hearing, the undersigned finds the Claimant is disabled at step four. The undersigned

finds because the lower extremities are dysfunctional; a cane is needed and held by the upper extremity. This circumstance disables the Claimant from other work at the present time.

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 sufficient medical evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards, or prevent past relevant work or other work activities for ninety days. This Administrative Law Judge finds the Claimant is "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 "disabled" for purposes of the Medical Assistance and State Disability Assistance program.

It is ORDERED the Department's decision is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the January 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and the representative of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program benefits in February 2010.

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

Date Signed: March 3, 2009

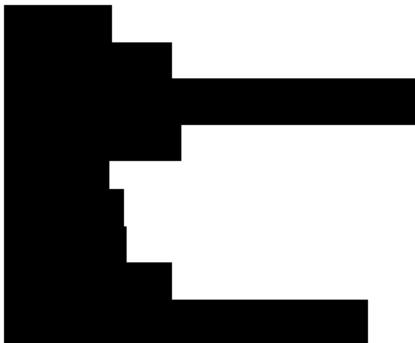
Date Mailed: March 5, 2009

**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.

JRE/jlg

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