

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.: 2008-10515
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 28, 2008
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 28, 2008. Claimant appeared and testified.

ISSUE

Whether the Department of Human Services (DHS or Department) properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

FINDINGS OF FACT

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

1. On May 4, 2007, Claimant's representative applied for MA-P and retro MA-P.
2. On June 4, 2007, the Medical Review Team denied Claimant's request.
3. On November 26, 2007, Claimant submitted to the Department a request for hearing.

4. The State Hearing and Review Team (SHRT) denied Claimant's request.
5. Claimant is 59 years old.
6. Claimant completed education through high school.
7. Claimant has employment experience in landscaping and handy man work.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from adjustment disorder with depressed mood, a gunshot wound to his right leg, open reduction and internal fixation with pin placement in his right tibia, mild deformity of his right tibia, and osteoarthritis involving his right knee and ankle.
10. Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.

CONCLUSIONS OF LAW

The Medical Assistance (MA-P) 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 administers the MA-P 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 uses the Federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA-P 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 are 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSR's) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a social security listing. If the impairment or combination of impairments

meet or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Here, Claimant has satisfied requirement as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in

Appendix 1, 20 CFR 416. 926. Therefore, vocational factors will be considered to determine the claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with adjustment disorder with depressed mood, a gunshot wound to his right leg, open reduction and internal fixation with pin placement in his right tibia, mild deformity of his right tibia, osteoarthritis involving his right knee and ankle. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions. Claimant's treating physician noted that Claimant would be able to stand and walk at least 6 hours in an 8-hour day with no limitations on sitting noted and would be able to lift up to 25 lbs frequently. A consultative exam, however, indicated more restriction on Claimant's ability to ambulate effectively and indicated that Claimant was in need of follow-up treatment. A consultative psychological exam noted Claimant suffering with adjustment mood disorder with a depressed mood. This Administrative Law Judge witnessed very restricted ambulation on the part of Claimant at the hearing. Claimant required the use of a cane to ambulate. He testified that he was in a wheelchair for 2 months, then went to using a walker for 5 months, then went to using crutches for 3 months, then went to using a cane. Claimant testified he was unable to stand for more than 30 minutes which is supported by the consultative evaluation.

This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work on no more than a light work level.

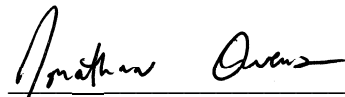
Claimant is an individual of advanced age. 20 CFR 416.963. Claimant has a high school education. 20 CFR 416.964. Claimant's previous work was unskilled. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on

residual functional capacity and vocational profiles. Under Table I, Rule 202.04, Claimant is disabled for the purposes of the Medical Assistance program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of February 2007.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated May 4, 2007, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant and his authorized representative of the determination in writing. A review of this case shall be set for January 2011.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 16, 2010

Date Mailed: April 16, 2010

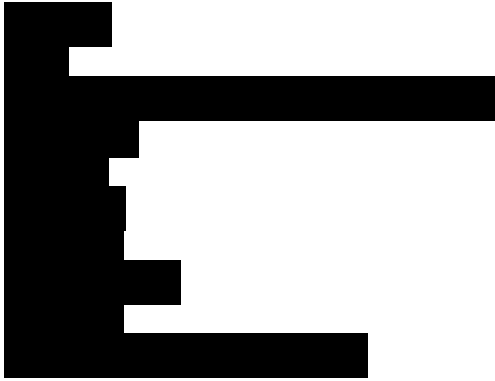
NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final 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 mailing 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.

JWO/pf

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