

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: 2008-17367
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 30, 2008
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Rhonda P. Craig

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, an in-person hearing was held on July 30, 2008. Claimant was represented at the hearing by [REDACTED]. The record closed on February 4, 2009.

ISSUE

Is claimant disabled for the purposes of the Medical Assistance and State Disability Assistance 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) Claimant applied for Medical Assistance and State Disability Assistance on September 2, 2007. Claimant requested Medical Assistance retroactive to August 2007.

(2) Claimant's impairments have been medically diagnosed as August 2007 fractures to the face: nasal orbital ethmoid fracture, open; right Le Fort III fracture, open; right Le Fort II fracture, open; left Le Fort II fracture, open; right ZMC fracture, closed; Le Fort I fracture, closed; right orbital blowout fracture, open; left orbital blowout fracture, open; right mandibular symphysis fracture, open; right mandibular subcondylar fracture, closed; and open nasal bone fractures. Claimant also has a status post fracture of the left proximal tibia-fibula fracture (August 2007) and status-post repair of the left index finger.

(3) Claimant's physical symptoms are constant head pain; pain in the left leg; numbness in the left leg, index finger and knee; weakness in the arms; and dizziness and blurred vision.

(4) Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.

(5) Claimant is 37 years of age.

(6) Claimant has a 9th grade education.

(7) Claimant has employment experience as a temporary worker, factory worker, and restaurant worker.

(8) Claimant has significant limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping. Claimant has some difficulty using his left hand (claimant is right-handed).

(9) The department found that claimant was not disabled and denied claimant's application on January 3, 2008.

(10) New medical evidence (marked new in the file) was received and entered after the hearing. It was submitted to the State Hearing Review Team for reconsideration. The State Hearing Review Team again determined that the claimant was not disabled for the programs.

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; MSA 16.490(15). Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *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).

The Department of Human Services conforms to state statute in administering the State Disability Assistance program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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.

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).

Here, claimant's impairment or combination of impairments is severe but does not meet nor is it the equivalent of a listed impairment. Claimant is also unable to do past work.

Therefore, the determination of disability will be based on claimant's residual functional capacity.

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).

In the present case, the medical evidence indicates that claimant may no longer be able to perform his previous work which was medium and light labor. In August of 2007, claimant was physically assaulted which resulted in injuries to his face, left hand, left leg and ribs. Claimant testified that he has constant head pain. However, he did indicate that medication does help relieve the pain. He also complained of pain in his left leg. He also indicated that medication does alleviate his pain. Claimant complained of numbness in his left index finger and left knee. He testified that he has no swelling but has dizziness and blurred vision. Claimant underwent an eye examination, and pursuant to a report dated September 24, 2007, claimant's best corrected

vision is 20/60, plus or minus 3, in the right eye and 20/20, minus 2, in his left eye. Claimant's vision problems do not meet a listing as set forth in Appendix I. 20 CFR 416.926. His eyesight can be sufficiently corrected to normal status. Claimant testified that he is severely limited in the amount of sitting, standing, walking, bending, lifting and stooping he can perform. Although this Administrative Law Judge takes into account claimant's complaints of pain and limitations, the medical evidence does not support claimant's testimony regarding the frequency or severity of the pain or limitations. In an examining report, dated June 10, 2008, the doctor indicated that neurologically claimant has no evidence of focal muscle atrophy in the right or left, upper or lower extremity. His muscle tone is normal in all extremities. Muscle strength is generalized 5/5. Deep tendon reflexes are +2. His coordination is intact. The physician indicated, regarding his cervical spine, that there is no evidence of increased or flattening of the cervical lordosis. There is no tenderness. He indicated that claimant's thoracic spine and ribcage were normal and there was no significant muscle trophy in his upper extremity. He did note that the grip strength on his left side is 3/5. The left index finger has pins in it. Claimant has some limited range of motion in his right hand and fingers and in his left knee because of pain. He further indicated that claimant is somewhat limited in the ability to carry, push and pull with his left hand, although it should be noted that claimant is right-handed. The physician noted that claimant could not walk on heels and toes, but that he had a normal gait and could walk tandemly. He further indicated that there was no evidence to support the need for a walking aid.

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.” 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 an impairment that must have lasted or must be expected to last for a continuous period of at least 12 months. This is the “durational requirement.” 20 CFR 416.909

The third step in the process is to assess whether the impairment or combination of impairments significantly limits an individual’s physical or mental ability to perform basic work activities. If these abilities are not significantly limited, an individual does not have a severe impairment and is therefore not disabled. 20 CFR 416.920(c)

In the fourth step of the process, the Social Security listing in Appendix 1 is used. If the impairment or combination of impairments meets or is the medical equivalent of a listed impairment as set forth in Appendix 1, the individual is considered disabled. If not, vocational factors are considered. 20 CFR 416.920(d)

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 use to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e)

Here, claimant has satisfied the requirements as set forth in steps one, two and three of the sequential evaluation. However, claimant 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.

Considering the medical evidence, claimant appears to have the residual functional capacity to perform work on at least a sedentary level. Claimant is a younger individual. 20 CFR 416.963. Claimant has a limited education. 20 CFR 416.964. Claimant's previous work has been 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 1, Rule 201.24, claimant is not disabled for the purposes of the Medical Assistance and State Disability Assistance programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department was correct in determining that claimant was not disabled for the purposes of the Medical Assistance and State Disability Assistance programs and it is ORDERED that the department's decision in this regard be and is hereby AFFIRMED.

/s/ _____
Rhonda P. Craig
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 5/4/09

Date Mailed: 5/4/09

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.

RPC/cv

cc:

