

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.: 2008-29097  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
December 8, 2008  
Wayne County DHS (35)

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 December 8, 2008. The Claimant appeared at the Department of Human Service (Department) in Wayne County.

The record was left open to submit additional medical information. The closure date was waived 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 in disability (MA-P) retroactive MA-P to October 2007 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 11, 2008 the Claimant applied for MA-P and SDA.

- (2) On August 4, 2008 the Department denied the application; and on March 12, 2009 the SHRT denied the application based on insufficient evidence.
- (3) On August 11, 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 fifty years of age.
- (5) Claimant completed grade 12; and machinist trade training; and can read and write English and perform basic math.
- (6) Claimant last worked in October 2007, trimming trees but December 2002; after incarcerated/paroled/released July 2007; worked at the US post office, as boiler operator, driving for a cleaner, odd jobs including electrical type work.
- (7) Claimant has alleged a medical history of broken back with October 2007 surgery, right foot/heel surgery. 2008 left knee fracture with infection after a fall from a tree; and bipolar disorder diagnosed in 2005.
- (8) October and December 2007, in part:

October: Via EMS after a fall. No loss of consciousness. Alert and orientated. /CO back pain and right lower extremity. Current medications: Lexapro and Seroquel. Urine drug screen positive for cocaine and opiates. X-rays negative for spine and pelvis. CT lumbar spine was showing compression fracture of first lumbar vertebral body, anterior wedging displaced fragment in spinal canal with narrowing of spinal canal. Right ankle X-ray showed comminuted displaced intrarticular fracture of right heel. CT of cervical and thoracic spine was negative. Blood cultures were positive for MRSA. Left lower lobe pneumonia that resolved. Left knee X-ray showed healing left tibial fracture/dislocation. Taken to OR for ORIF of left tibial with bone graft. Uncooperative with rehab due to left knee pain and right shoulder pain. Function limited due to multiple fractures and being non-weight bearing. Follow with PCP in two weeks. Medications: Celexa, Seoquel, Iron supplements, Tylenol, Ativan, Protonix, Folic acid. Norco, Cipro. Will try to arrange home physical therapy. [REDACTED]

December: Admitted for dark urine and frequency. Recent history for fracture of right heel and left tibia status post op ORIF. C/O back pain. Duplex shoed DVT left femoral and popliteal vein. Endoscopy showed duodenal ulcer and diverticulosis. Had low hemoglobin and blood transfusions. Medically treated with antibiotics. Given course of PT. Acute DVT of left lower extremity extending to femoral and popliteal veins. Started on coumadin with IVC filter.

PHYSICAL EXAM ON DISCHARGE: [Within normal limits.]  
Except extremities swelling left lower extremity. None on right.  
Medications [As previously noted.] [REDACTED]  
Department Exhibit (DE) N, pp. 21-36

(9) January to September/October 2008, in part:

January: Presents for follow up of right foot heel fracture S/P ORIF. In wheelchair until January 16, 2008; and now has been partial weight-bearing and had PT and feeling much better. Pedal pulses intact. Neurological intact. No pain on palpation, any redness or signs of infection with medial and lateral range of motion. Weight-bearing as tolerated and return four months.  
[REDACTED] DE N, pp. 7-10.

February: Seen for follow up of T12 through L2 pedicle screw fusion and reduction of L1 burst fracture. No longer wearing TLSO and incision well healed. Moving right leg well. Left foot moves normally distally but range of motion decreased in hip and knee. Knee markedly swollen and tender. Recommend CT scan thoracolumbar spine to evaluate fusion. [REDACTED]  
p. 12

February:  
CURRENT DIAGNOSIS: Vertebral fractures, heel fractures, left tibial plateau fracture healed by X-rays.

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

FINDINGS: General: needs help due to fractures in wheelchair.  
Musculoskeletal: decreased range of motion, positive SLR, left knee, unsteady gait.

CLINICAL IMPRESSION: Stable.

PHYSICAL LIMITATIONS: No Lifting/carrying; wheelchair assistive device is needed; use of both hand/arms for simple grasping; no reaching, pushing/pulling, fine manipulating; No use of either feet/legs for operating controls.

MENTAL LIMITATIONS: None. Cannot meet own need at home. Cannot work at current occupation or any other work indefinitely. [REDACTED] DE 1, pp. 4-5.

June: Presents for leg swelling for past several days. Feeling warmth in leg and denies new injury. Vicodin has not relieved the pain. Physical Examination [within normal limits.] Except unable to demonstrate gait due to pain with edematous left knee. Has effusion with ballottement. Limited range of motion. Pulses normal.

Suspicious for septic joint and was evaluated by ortho with needle aspiration of knee. Admitted for possible septic joint. Antibiotics started and Dilaudid given for pain. Condition serious. [REDACTED] DE N, pp. 9-11.

September/October: Admitted for left knee septic arthritis with pus drainage and had I&D operation. MRSA left knee joint. Knee X-ray showed suprapatellar joint effusion and the left tibia and fibula showed new osteopenia. Had blood transfusions due to low hemoglobin. WBCs were coming down. Plan to be treated for with antibiotics for 6-8 weeks. Medications at time of discharge: Insulin subq, Novolog, aspart sliding scale insulin, Cefazolin, Protonix, Oxycontin, Quetiapine. Lactulose, Colace, Lisinopril, Folic Acid. Iron supplement, Morphine or Contin, Keflex. Condition on discharge afebrile, WBCs coming down, blood sugars were controlled with insulin sliding scale, pain controlled with Contin. Left leg swelling almost back to normal. Transferred to subacute rehab with PICC line. [REDACTED] DE N, pp. 27-29 and 30-32

(10) July 2008, in part:

INDEPENDENT PSYCHIATRIC EXAMINATION: C/O mood swings and lack of concentration. First treatment while in jail in 2005 when he couldn't get along with other inmates. States having children has reformed his life. No history of drug/alcohol abuse. States relates well to others. States can hardly move now. No household chores or shopping, and mother takes care of him. Hygiene and grooming fair. Brought by his father and was

punctual. Walked with crutches but gait posture and mannerisms were normal. Appears to be in some pain. He used to be angry but now is suspicious. Sensorium and Mental Capacity [near normal] with some memory deficits. Axis I: Dysthymic Disorder and probable Bipolar Disorder. Axis III: Chronic back pain, severe right heel damage and severe left knee damage. Can manage own benefit funds. [REDACTED]. DE N, pp. 2-6.

### 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, the Claimant testified to not

performing SGA since the date of his fall from a tree, October 2007. 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 (6<sup>th</sup> Cir 1985)

In this case, the Claimant has presented sufficient medical evidence to support a finding that Claimant has mental/physical limitations on his abilities to perform basic work activities. See finding of facts 8-10. The medical evidence has established that Claimant has mental/physical limitations that have more than a minimal effect on basic work activities and the impairments have lasted over 12 months.

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 physical impairments are "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. In this matter, the medical records since October 2007 have established multiple fractures to the thoracic and lumbar spine with ORIF, left tibia and fibula showed new osteopenia [bone loss], left knee septic arthritis, and right heel fracture with numerous post operative complications and infections along with episodes of DVT treated with anticoagulants and an internally placed filter. The Claimant was diagnosed in February 2008 with dysthymic disorder.

The undersigned will evaluate the Claimant's physical limitations under Appendix 1 of Subpart P of 20 CFR, Part 404, Listing 1.00, *Musculoskeletal System*. The criteria of musculoskeletal impairments require loss of function. The medical records establish loss of function of the Claimant's bilateral lower extremities. [REDACTED] returned the Claimant to partial weight-bearing in January 2008. But subsequent re-hospitalizations, deteriorating bones and severe infections did happen after seeing [REDACTED]. The Claimant now uses a wheelchair and has used crutches.

Listing 1.06 *Fracture of femur, tibia, pelvis or one or more of the tarsal bones* was reviewed. There was no solid medical evidence because records were not complete of the following criteria: that a solid union on appropriate medically acceptable imaging did not take place or inability to ambulate effectively, as defined in 1.00B2b did not or was not expected to occur within twelve months of onset.

The explanative criteria above explain why the Claimant's impairment does not meet the Listings. Thus, the impairment does not meet the intent and severity of the listings.

In this case, this Administrative Law Judge 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 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 work trimming trees, equipment assembler, driver or electrical services required lower extremity functioning. The undersigned, based upon the medical data and hearing record finds that the Claimant cannot return to past work. Evaluation under step five will go forward.

In the fifth 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 other work. 20 CFR 416.920(f). This determination is based on the claimant's:

- (1) "Residual function capacity," defined simply as "what you can still do despite your limitations," 20 CFR 416.945.
- (2) Age, education and work experience, and
- (3) The kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her impairments.

20 CFR 416.960. *Felton v DSS*, 161 Mich App 690, 696-697, 411 NW2d 829 (1987)

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally limited to sedentary work. See find of facts 8-10. Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines 20 CFR 416.967(a):

*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.

Claimant at fifty is considered *closely approaching advanced age*; a category of individuals age 50-54. Under Appendix 2 to Subpart P: Table No. 1—Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s), Rule 201.14, for individuals *closely approaching advanced age*; a category of individuals age 50-54; education: high school graduate or more—does not provide for direct entry into skilled work; previous work experience, skilled or semi-skilled skills not transferable; the Claimant is “disabled” per Rule 201.14.

It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is “disabled” at the fifth step.

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 evidence to support a finding that Claimant's impairments meet the disability requirements under SSI disability standards. 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 program and State Disability Assistance program.

It is ORDERED; the Department's determination in this matter 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 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 March 2010.

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

Date Signed: 03/26/09

Date Mailed: 03/27/09

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.

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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