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.: 2009-12761
Issue No.: 2009
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
April 16, 2009
Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was held in Clinton Township, Michigan on April 16, 2009. The Claimant appeared and testified along with [redacted]. The Claimant was represented by [redacted] of [redacted], Inc. [redacted] appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA-P") program?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P retroactive from April 2008 on May 15, 2008.

2. On July 21, 2008, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant's impairment(s) lacked duration of 12 months. (Exhibit 1, pp. 1,2)

3. On July 26, 2008, the Department sent the Claimant an eligibility notice informing the Claimant that MA-P was denied.

4. On October 22, 2008, the Department received the Claimant's Request for Hearing protesting the determination that he was not disabled. (Exhibit 2)

5. On February 24, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)

6. The Claimant's alleged physical disabling impairments are due to an impalement injury with hip fractures requiring surgery, and back pain.

7. At the time of hearing, the Claimant was 24 years old with a [redacted] birth date; was 6' 2" and weighed 170 pounds.

8. The Claimant completed through the 11th grade and has a work history of detailing cars and boats.

9. The Claimant's physical impairment(s) has lasted, or is expected to last continuously for a period fo 12 months.

CONCLUSIONS OF LAW

The Medical Assistance ("MA") program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services ("DHS"), formally known as the Family Independence Agency, 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").

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) The person claiming a physical or mental disability has the burden to establish it through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work;

and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

As stated, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked, based upon the Claimant's testimony, in April 2008. The Claimant is not disqualified from receipt of disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) 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.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to a severe impalement injury resulting in hip fractures requiring surgery.

In [redacted], the Claimant presented to the emergency room after being involved in a dirt bike accident. The physical examination revealed a peritoneal laceration which did not extend into the rectum. X-rays of the pelvis documented a fracture involving the lateral aspect of the superior pubic ramus on the right. In addition, a diastasis of the pubic symphysis and right sacroiliac joint was found. A CT of the pelvis with intravenous contrast enhancement was performed on the Claimant which revealed diastasis and extraperitoneal air was present within the pelvis. Exploratory surgery was performed to determine the extent of the rectal and perineal injury. The surgery documented the Claimant's laceration of the perineum between the scrotum and the anus of at least 6 to 10 cm in diameter with the sacral bones exposed. No violation of the anus was found however due to the close proximity of the injury to the anus and because of the "extensive depth of the wound" a diverting transverse loop colostomy was performed to avoid fecal contamination of the wound. The Claimant was transferred and admitted to another hospital with an open pelvic fracture and complex pelvic laceration.

During his hospitalization, the Claimant had a right screw placement in the right sacroiliac joint as well as application of external fixation (anterior subcutaneous bar) of the open pelvic fracture. On [redacted], the Claimant's peroneal wound was closed. Upon discharge on [redacted], the Claimant was non-weightbearing on the right lower extremity. Additionally, the Claimant was unable to sit and needed assistance with transfers, activities of daily living, and was required to participate in a rehabilitation program.

On [redacted], the Claimant attended a postoperative follow-up appointment at the Orthopedic Clinic. X-rays showed the pelvis was stable with the SI screw and in-fix rod in place. The sutures were removed with no infection noted. The Claimant was instructed to remain non-weightbearing on his right and to weightbearing on his left as tolerated.

On [redacted], the Claimant attended a follow-up evaluation for his open pelvis fracture. At that time, the Claimant was ambulatory, and full weightbearing, with the assistance of crutches. The physical examination documented the Claimant's incision sites over the anterior and posterior aspects of his pelvis as well healed. X-rays found all hardware in good alignment. The Claimant was given clearance to have his colostomy reversed.

On [redacted], the Claimant was admitted to the hospital for surgery to reverse his colostomy. The Claimant tolerated the procedure well and was discharged on [redacted].

On [redacted], the Claimant presented to the [redacted] for x-rays and follow-up evaluation of his pelvis. The Claimant was ambulatory and "doing well overall." X-rays found the hardware properly aligned.

On [redacted], the Claimant attended a follow-up appointment at the [redacted]. The Claimant's strength was 5/5 in his lower extremities and was able to ambulate appropriately. The Claimant was restricted to lifting no more than 20 pounds. Range

of motion around his hip was normal. Plans to remove the subcutaneous rod and internal fixation were discussed.

On [redacted], the Claimant presented to the hospital for the removal of his internal fixation on an out-patient basis. The post-operative diagnosis was painful hardware anterior pelvis status post open reduction, internal fixation pelvis fracture.

On [redacted], the Claimant attended a follow-up appointment regarding the removal of the pelvic implant. The record documents that the Claimant's complaints of discomfort prior to surgery were gone. Bilateral strength of the lower extremities at the hip, knee, and ankle was 5/5. The Claimant was found not to need any follow-up from an orthopedic standpoint. A general surgery consult for his right inguinal hernia repair was made.

On [redacted], the Claimant presented to the hospital for the repair of traumatic abdominal wall hernia using Prolene mesh. The hernia was attributed to the initial massive trauma the Claimant suffered. The surgery was completed without complication.

In [redacted] and [redacted], the Claimant's surgeon completed Medical Examination Reports on behalf of the Claimant. The physical examinations found the Claimant's abdominal and musculoskeletal wounds as "healing." On each, the Claimant's condition was listed as improving and his limitations were not expected to last more than 90 days. The was restricted to occasionally lifting 10 pounds and was found able to stand and/or walk at least 2 hours in an 8-hour workday. There were no limitations on the Claimant's ability to perform repetitive actions and the Claimant's prescribed pain medication (Vicodin) was noted.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have physical

limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant asserts physical disabling impairment(s) due hip fractures as a result of an impalement injury and back pain. Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes. 1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A 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. 1.00B2a 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. *Id.* 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. 1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the

functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* 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. 1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively a defined in 1.00B2c

* * *

1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones. With:

A. Solid union not evident on appropriate medically acceptable imaging and not clinically solid;

And

B. Inability to ambulate effectively as defined in 1.00B2b, and return to effective ambulation did not occur or is not expected to occur within 12 months of onset.

The medical records document several surgical procedures as a result of the Claimant's [redacted] accident up through and including [redacted]. Throughout the 12 month period, the Claimant required continued medical intervention and pain management for the removal of hardware, reversed colostomy, and hernia repair. The Claimant testified credibly regarding his level of pain which were consistent with the objective medical evidence. 20 CFR 416.929 Although the Claimant is now able to ambulate with little or no assistance, the Claimant was initially bedridden and then could only walk with assistive devices. The Claimant's impairment lasted continuously for a period of 12 months. Ultimately, based upon the submitted medical documentation, it is found that the Claimant's physical disabling impairment meets the severity requirements of Listing 1.06, or is the medical equivalent thereof. Accordingly, the Claimant is found disabled at Step 3 for the 12 month period from April 2008 through March 2009, therefore subsequent steps in the sequential evaluation process are not necessary.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program for the closed period from April 2008 through March 2009.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the May 15, 2008 application which included Retro MA-P for April 2008 to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.

3. The Department shall supplement the Claimant any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with department policy for the closed period of April 2008 through March 2009.

/s/
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 06/03/09

Date Mailed: 06/03/09

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 the Circuit 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 recip date of the rehearing decision.

CMM/jlg

cc: [redacted]