

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: 2009-12880  
Issue No: 2009  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
March 19, 2009  
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 Thursday, March 19, 2009. The claimant personally appeared and testified with his authorized representative, [REDACTED]

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (MA-P) and retroactive Medical Assistance?

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 September 15, 2008, the claimant applied for MA-P with retroactive MA-P to August 2008.

(2) On September 24, 2008, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant's impairments lacks duration of 12 months per 20 CFR 416.909.

(3) On October 1, 2008, the department caseworker sent the claimant a notice that his application was denied.

(4) On January 7, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On February 23, 2009, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P and retroactive MA-P eligibility for the claimant. The SHRT report reads in part:

The claimant is 34 years old with 12 years of education and an unskilled work history. The claimant alleges disability due to fractures of the tibia, fibula, and humerus, with arm, abdomen, and chest injuries. The claimant did not meet applicable Social Security Listings found in 1.01 and 5.01. The claimant's impairment lacks the durational requirement per 20 CFR 416.909.

(6) During the hearing on March 19, 2009, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on May 8, 2009 and forwarded to SHRT for review on May 21, 2009.

(7) On June 1, 2009, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P and retroactive MA-P. The SHRT report reads in part:

The claimant sustained multiple gunshot wounds in [REDACTED] New information submitted showed continued healing of the left shoulder. The medical evidence of record indicates that the claimant's condition is improving or is expected to improve within 12 months from date of onset or from date of surgery. Therefore,

MA-P is denied due to lack of duration under 20 CFR 416.909. Retroactive MA-P was considered in this case and is also denied.

(8) The claimant is a 35 year-old man whose date of birth is [REDACTED]. The claimant is 6' 2" tall and weighs 180 pounds. The claimant has gained 30 pounds in the past year as a result of medication and his injury. The claimant has a high school diploma and one year of college in business. The claimant can read and write and do basic math. The claimant was last employed as a sales clerk on August 3, 2008. The claimant has also been employed as a distribution clerk.

(9) The claimant's alleged impairments are multiple gunshot wounds on [REDACTED]  
[REDACTED]

#### 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. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"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 CFR 416.905.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that

you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...Medical reports should include --

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.
- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

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 CFR 416.905

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 the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, 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. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since August 3, 2008. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, 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 means, the abilities and aptitudes necessary to do most jobs. Examples of these 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. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant's treating orthopedic physician submitted a Medical Examination Report, DHS-49, on behalf of the claimant. The claimant had marked limitations of motion of the left shoulder and partial radial nerve palsy musculoskeletally. The claimant's motor nerves were intact on the left upper with some decrease in sensation of radial nerves. The claimant showed good healing of the fracture of the humerus on an x-ray on [REDACTED]. (Department Exhibit 32)

The treating orthopedic physician's clinical impression was that the claimant was stable with limitations that were expected to last more than 90 days. The claimant could frequently lift less than 10 pounds, could occasionally lift 10 pounds, but never 20 pounds. There were no assistive devices medically needed or required by the claimant for ambulation. The claimant could use the right hand/arm for repetitive action and the left for simple grasping only and the right foot/leg for operating foot/leg controls. The medical findings that support the above physical limitations were severe limitation of motion of the shoulder and damage from gunshot wounds. The claimant had no mental limitation. He did need assistance in housekeeping, lawn care, and house maintenance. (Department Exhibit 33)

On [REDACTED], the claimant was given an x-ray, two views, of the left shoulder series to check the alignment resulting from trauma. There had been further interval healing of previously seen fracture involving the proximal left humerus with other findings as described above. There were no other new abnormalities seen. Alignment of the fracture fragments was unchanged where findings were consistent with previous gunshot wounds. There was osseous fusion at the site of the fracture. A lateral metallic plate with screw fixation was again seen and appeared intact and unchanged in position. (Department Exhibit A-B)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED]. The claimant was seen for a regular checkup where he stated he felt much better. The claimant still had some mild pain in his abdomen that comes and goes. The claimant stated that the mild pain in his abdomen improved once he had a large bowel movement. The claimant denied nausea, vomiting, and diarrhea. The claimant is having bowel movements and taking a stool softener. The claimant stated that he has been eating and tolerating his diet well. The claimant has not seen or followed up with any of his follow-up physicians. The claimant was alert and oriented x3 and appeared to be in no acute distress. The claimant's abdomen was soft and non-tender, non-distended with no guarding or rebound noted. The claimant did have good bowel sounds. The claimant's midline incision was well-healed with no findings of cellulitis or erythema. There was no discharge and his extremities were non-tender. The claimant did have decreased range of motion to the left upper extremity given a left brachial plexus injury. His wounds were healing well in the left lower extremity. (Department Exhibit 15-17)

On [REDACTED], the claimant's treating trauma surgeon submitted a DHS-49, Medical Examination Report, for the claimant. The claimant was first examined on [REDACTED]. The claimant had 33 multiple gunshot wounds to the left arm, chest, and left leg. The claimant had a fracture of the left humerus with peripheral nerve injury, hemothorax, liver lacerations, and a left fibula fracture. The claimant's current diagnosis was a fracture of the left humerus, peripheral nerve injury of the left arm, left hemothorax, liver lacerations, and left fibula fracture. The claimant had limited ability for activities of daily living secondary to limited use. The claimant had painful unlimited chest excursion. The claimant's tachycardia was in the 120s.

The claimant had a midline incision. The claimant had limited ability to extend digits of the thumb and left hand. (Department Exhibit 30)

The claimant's treating trauma surgeon's clinical impression that that the claimant was stable and he had a temporary disability where the date expected to return to work was January 2009. The claimant had physical limitations that were expected to last more than 90 days. The claimant could occasionally lift up to 10 pounds and never more than 20 pounds. The claimant could stand and/or walk less than two hours of an eight-hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could use the right hand for repetitive action except for pushing/pulling and not the left arm for any repetitive action. The claimant could use the right foot/leg for operating foot/leg controls, but not the left foot/leg. The medical findings that support the above physical limitations were peripheral nerve injury and fracture of the humerus and left fibula. The claimant did not have any mental limitations, but did need assistance with transportation and assistance with activities of daily living. (Department Exhibit 31)

On [REDACTED], the claimant was admitted to [REDACTED] with a discharge date of [REDACTED] as the result of multiple gunshot wounds. The claimant's condition on discharge was improved. (Department Exhibit 25-27)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. The claimant had multiple gunshot wounds on [REDACTED] where he has received treatment and has continued to improve. The medical evidence on record indicates that the claimant's condition has improved and continues to improve from the date of his surgery. Therefore, the claimant is not disqualified from receiving

disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration 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. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration 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). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does have a driver's license and does drive. The claimant stated that his left arm shakes and he has pain so he has to drive with one hand. The claimant does not cook because he only has the use of one hand. The claimant does grocery shop with help once a week with no problem. The claimant does not clean his own home, do any outside work, or have any hobbies. The claimant felt that his condition has stayed the same where he still can't use his arm. The claimant stated he has no mental impairment.

The claimant wakes up 7:30 a.m. He watches TV, uses the phone and computer. The claimant goes to bed between 9:00 to 10:00 p.m.

The claimant felt that he could walk one block. The longest he felt he could stand was 5-10 minutes. The claimant did not have a problem sitting. The heaviest weight he felt he could carry was 5 pounds. The claimant is right-handed and has an issue with his left hand. The claimant stated that his level of pain on a scale of 1 to 10 without medication was an 8/9 that decreases to a 4/6 with medication.

The claimant does not or has ever smoked. The claimant no longer drinks alcohol since August 2008, where before he drank occasionally. The claimant does not or has ever taken illegal or illicit drugs. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any of his prior work. The claimant was previously employed as a sales clerk, which is a job that's performed at the sedentary to light level in the national economy. The claimant has also been employed as a distribution clerk, which is also performed at the light to sedentary level in the national economy. The claimant has continued to improve from his multiple gunshot wounds in [REDACTED]. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work.

20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and

- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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).

**Light work.** Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

The claimant has submitted insufficient evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual, with a high school education, and an unskilled work history, who is limited to light

work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.20. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of light activities and that the claimant does not meet the definition of disabled under the MA program. The medical evidence of record indicates that the claimant's condition is improving from the date of surgery and is expected to improve within 12 months.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P and retroactive MA-P. The claimant should be able to perform any level of light work. The medical evidence of record indicates that the claimant's condition is improving from the date of surgery and is expected to improve within 12 months. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/  
Carmen G. Fahie  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: October 22, 2009

Date Mailed: October 22, 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 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.

CGF/vmc

cc:

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