

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: 2009-2066

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

December 10, 2008

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

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 10, 2008. Claimant appeared and testified. Following the hearing, the record was kept open for the receipt of additional medical evidence. Additional documents were received and reviewed.

ISSUE

Did the Department of Human Services (DHS or department) properly determine 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 material fact:

- (1) On September 22, 2008, claimant filed an application for MA-P benefits.

Claimant requested MA-P retroactive to July of 2008.

(2) On September 30, 2008, the department denied claimant's application for benefits based upon the belief that claimant did not meet the requisite disability criteria.

(3) On October 7, 2008, claimant filed a hearing request to protest the department's determination.

(4) Claimant, age 59, has a high school education.

(5) Claimant last worked in July of 2008 as a construction worker. Claimant has had no other relevant work experience. Claimant's relevant work has required the ability to engage in medium work activities.

(6) On July 31, 2008, claimant suffered a displaced trimalleolar left ankle fracture. He underwent closed reduction.

(7) On August 12, 2008, an external fixator was placed on claimant's left ankle.

(8) On September 3, 2008, claimant underwent open reduction and internal fixation of his left ankle fracture.

(9) On November 26, 2008, claimant had his left ankle cast removed.

(10) Claimant has continued to suffer with left ankle pain, edema, and limited range of motion. Claimant is medically required to use a cane or crutches for ambulation.

(11) Claimant has severe limitations upon his ability to walk, stand, lift, push, pull, reach, carry, and handle. Claimant's limitations are expected to last 12 months or more.

(12) Claimant's complaints and allegations concerning his impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who, at best, has the physical and mental capacity to engage in sedentary work activities in a regular and continuing basis.

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).

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). In this case, claimant is not working.

Therefore, claimant may not be disqualified for MA at this step in the sequential evaluation process.

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 (6th 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.

In this case, claimant has presented the required medical data and evidence necessary to support a finding that claimant has significant limitations upon his ability to perform basic work

activities such as walking, standing, lifting, pushing, pulling, reaching, carrying, or handling. Medical evidence has clearly established that claimant has an impairment (or combination of impairments) that has more than a minimal effect on claimant's work activities. See Social Security Rulings 85-28, 88-13, and 82-63. The record supports a finding that claimant's severe limitations are expected to last 12 months or more. Claimant sustained his fracture in July of 2008. On January 15, 2009, his treating orthopedic surgeon reported that claimant continued to have difficulties with reduced range of motion, tenderness to the touch, and swelling. The treating orthopedic surgeon indicated that claimant was incapable of lifting any amount of weight and was medically required to use a cane or crutches for ambulation. It is reasonable to expect that claimant's impairments and limitations will continue through July of 2009.

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).

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 claimant is not capable of the walking, standing, lifting, or carrying required by his past work as a construction worker.

Claimant has presented the required medical data and evidence to support a finding that he is not, at this point, capable of performing such work.

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 your 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.

See *Felton v DSS* 161 Mich. App 690, 696 (1987). Once claimant reaches Step 5 in the sequential review process, claimant has already established a *prima facie* case of disability.

Richardson v Secretary of Health and Human Services, 735 F2d 962 (6th Cir, 1984). At that point, the burden of proof is on the state to prove by substantial evidence that the claimant has the residual functional capacity for substantial gainful activity.

In this matter, claimant suffered a severe fracture of his left ankle on July 31, 2008. As a result of problems with healing, claimant underwent open reduction and internal fixation of his fracture on September 3, 2008. As of January 15, 2009, claimant's treating orthopedic surgeon reported that claimant continued to have reduced range of motion in the left ankle with tenderness to the touch and swelling. The treating orthopedic surgeon opined that claimant was medically required to use crutches and/or cane for ambulation. The treating physician indicated that claimant was incapable of operating foot or leg controls with the left lower extremity. At the

hearing, claimant testified quite credibly as to his ongoing problems with left ankle pain, edema, and reduced range of motion.

When considering pain, there must be an assessment of whether the claimant's subjective complaints are supported by an objective medical condition which can be expected to cause such complaints. 20 CFR 416.929. If so, then an assessment must be done to consider whether objective medical evidence confirms the severity of the alleged pain or whether the objectively established medical condition is of such a severity that it can reasonably be expected to produce the alleged disabling pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (1986); *Felisky v Bowen*, 28 F3d 213 (6th Cir, 1994). In this case, the medical records and reports from claimant's treating orthopedic surgeon confirms the existence of a condition which can be expected to cause complaints of pain. After careful review of claimant's extensive medical record and the Administrative Law Judge's interactions with claimant at the hearing, this Administrative Law Judge finds that claimant's medical condition is of such a severity that it can reasonably be expected to produce claimant's complaints of disabling pain.

The undersigned Administrative Law Judge finds that, at best, claimant's residual functional capacity for work activities on a regular and continuing basis includes the ability to meet the physical and mental demands required to perform sedentary work. Sedentary work is defined as follows:

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).

Given the hearing record, the undersigned Administrative Law Judge finds that, at best, claimant is capable of sedentary work activities. The record will not support a finding that claimant is capable of, or will be capable of by July of 2009, prolonged walking and standing and/or heavy lifting as would be required to return to his past medium work activities. See 20 CFR 416.967(c). At best, by the one year anniversary of his injury, claimant would be limited to sedentary work activities. Considering that claimant, at age 59, is of advanced age, has a high school education, has a relevant work history which required the ability to engage in medium work activities, and has a maximum sustained work capacity which is limited to sedentary work, the undersigned finds that claimant's impairment does prevent him from doing other work. As a guide, see 20 CFR, Part 404, Subpart P, Appendix 2, Table 1, Rule 201.06. The record fails to support that claimant has the residual functional capacity for substantial gainful activity. The department has failed to provide vocational evidence which establishes that, given claimant's age, education, and work experiences, there are significant numbers of jobs in the national economy which claimant could perform despite his limitations. Accordingly, the undersigned concludes that claimant is disabled for purposes of the MA program. Even if claimant were to be capable of light work activities, he would still be found disabled. See Med-Voc Rule 202.05.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant meets the definition of medically disabled under the Medical Assistance program as of July of 2008.

Accordingly, the department is ORDERED to initiate a review of the September 22, 2008 application, if it has not already done so, to determine if all other non-medical eligibility criteria are met. The department shall inform claimant of its determination in writing. Assuming that claimant is otherwise eligible for program benefits, the department shall review claimant's continued eligibility for program benefits in December of 2009.

/s/

Linda Steadley Schwarb
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 6/18/09

Date Mailed: 6/18/09

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.

LSS/pj

cc:

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