

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: 2009-20854  
Issue No: 2009, 4031  
Case No. [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
June 18, 2009  
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Tyra Wright

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 telephone hearing was held on June 18, 2009. Claimant and his mother personally appeared and testified. An eligibility specialist/medical contact worker represented the Department.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA), retroactive MA 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) Claimant applied for Medicaid (MA-P) and SDA benefits due to a disability on October 10, 2008.

- (2) The Medical Review Team (MRT) determined Claimant was not disabled and, therefore, not eligible for State Disability and Medicaid on December 5, 2008 on the grounds that he is “capable of performing other work.”
- (3) Claimant was 37 years old with a birth date of [REDACTED] at the time of the hearing. Claimant is 6’4” and weighs 253 pounds. He is right hand dominant. Claimant completed high school. Claimant has a history of unskilled work as a mover and in the building industry where he spent nine years doing a variety of work that included painting, plumbing, roofing, and hanging dry wall. Currently, Claimant is not employed. He was last employed as a mover, a position that ended in March 2008.
- (4) On March 27, 2008, Claimant was in an assault in which he suffered a broken hip and bruise ribs. He had hip surgery on or about April 27, 2008 and was hospitalized until May 2008. Claimant was hospitalized again in June 2008 due to his broken hip.
- (5) Claimant’s doctor determined the following on April 27, 2008: “There is a fracture of the posterior acetabulum, with the bony fragment displaced laterally. The femoral head is displaced superiorly and posteriorly. Multiple small bony fragments are identified in the acetabulum. (Exhibit 8).
- (6) Claimant does not smoke, drink or use drugs.
- (7) Claimant lives with his mother, who testified at this hearing.
- (8) Generally, Claimant can perform his personal needs, except that bathing is difficult.

- (9) Claimant was prescribed crutches and a walker and always walks with either the crutches or walker. Moreover, he is unable to sit, stand or walk for any period of time without pain. He cannot bend, lift, stoop, climb or push anything.
- (10) Claimant has been prescribed physical therapy and medications which he cannot get due to the fact that he has no medical insurance. As a result, Claimant's treatment for a fractured hip is incomplete. Claimant can attend to most of his personal needs, but bathing himself is difficult due to his inability to bend, stoop or walk without assistive devices. Claimant does not drive, cannot shop for groceries, and cannot do outside chores or house cleaning.
- (11) Claimant takes several prescription medications for pain and swelling.
- (12) The Department received Claimant's hearing request on December 22, 2008,

#### 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies for FAP and MA 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 (formerly known as the Family Independence Agency) 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).

Pursuant to Federal Rule 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

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" (SGA). 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). In this case, Claimant is not employed. He last worked on [REDACTED], the day before his impairment.

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. In this case, Claimant's impairment, a broken hip has lasted longer than 12 months.

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 this case, the Claimant's impairment significantly limits his physical ability to perform basic work activities. Claimant can not walk or stand without assistive devices and is in need of physical therapy. In addition, he

complains of pain that prevents him from sitting or standing for reasonable periods of time. He has been prescribed several medications for pain and swelling.

In the fourth step of the process the social security listing in appendix 1 is used. If the impairment or combination of impairments meet or is the medically 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 instant case, Claimant's combined impairment is the medical equivalent of a listed impairment under Part 404, Subpart P. Listing of Impairments. 1.06 Fracture of the femur, tibia, pelvis, or one or more of the tarsal bones. With: 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. Here, Claimant has not returned to effective ambulation for more than a year.

In the fifth step an individual's residual functional capacity (RFC) is considered in determining whether disability exists. Part 404, Subpart P, App. 2. An individual's age, education, work experience and skills are use to evaluated whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e). In the present case, it was not necessary to proceed to the fifth step of the analysis because Claimant's impairment is the equivalent of a listed impairment under 20 CFR 416.920(c). Therefore, it is found that Claimant qualifies for MA based on disability and is disabled for purposes of the SDA program.

#### 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 MA and SDA programs as of his application on October 10, 2008. Retroactive MA is also applicable to October 2008.

Accordingly, the Department's determination is REVERSED.

The Department is ORDERED to initiate a review of the October 10, 2008 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant and his representative, if any, of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility in June 2010.

/s/ \_\_\_\_\_  
Tyra L. Wright  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: 06/26/09

Date Mailed: 06/29/09

**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 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.

TW/dj

cc:

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