

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.: 2009-23657
2009-28005

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:
August 17, 2009
Macomb County DHS (36)

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 Sterling Heights, Michigan on August 17, 2009. The Claimant appeared and testified along with [REDACTED] and [REDACTED]. [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") and State Disability Assistance ("SDA") benefit programs?

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 public assistance application seeking MA-P and SDA benefits on April 18, 2008 and April 22, 2009.
2. On September 16, 2008 and May 8, 2009, the Medical Review Team (“MRT”) determined the Claimant was not disabled.
3. On September 23, 2008 and May 19, 2009, the Department sent the Claimant eligibility notices informing the Claimant that he was found not disabled.
4. On November 20, 2008 and June 2, 2009, the Department received the Claimant’s timely Requests for Hearing protesting the determination that he was not disabled.
5. On June 8, 2009 and July 9, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled.
6. The Claimant’s alleged physical disabling impairments are due to an boating/tubing injury.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 35 years old with a [REDACTED] birth date; was 5’ 10” and weighed 175 pounds.
9. The Claimant is a high school graduate with some college and work history in insurance and bar/restaurant management.
10. The Claimant’s physical impairment(s) have lasted continuously for a period of 12 months or longer.

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-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 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. In the record presented, the Claimant is not involved in substantial gainful activity and last worked 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 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 boating injury and gastritis.

On [REDACTED], the Claimant presented to the emergency room with complaints of vomiting after meals intermittently for approximately one month along with weight loss. The Claimant was found to have distal esophagitis and gastritis.

In [REDACTED], an ultrasound and CT examine revealed a small renal cyst.

On [REDACTED], the Claimant underwent an esophagogastroduodenoscopy ("EGD") with biopsy and colonoscopy with polypectomy with complication due to vomiting and satiety. The Claimant was diagnosed with esophagitis, gastritis, and rectal polypups.

On [REDACTED], the Claimant was involved in a boating/tubing accident. The Claimant sustained about a 15 inch laceration of the left buttock radiating toward the groin which was very deep to the gluteus muscle. The Claimant also had a left wrist laceration. Irrigation and exploration of the left gluteal and wrist laceration was performed with closure without complication. The following day, x-rays of the right foot revealed a severe comminuted oblique fracture involving the shaft of the fifth metatarsal with mild separation of the fracture fragments noted. Soft tissue swelling was also documented. The Claimant's pelvis was rotated to the right with no fractures found. A CT of the cervical spine found small disc protrusion at the C4-5 level.

On [REDACTED], the Claimant attended a follow-up appointment for treatment on this right foot. X-rays showed the metatarsal fracture and the proximal phalanx fracture of the great toe in good position. The Claimant was allowed to place weight on his heel only to aid in walking.

On [REDACTED], the Claimant was admitted to the hospital after complaints of increased pain, fever, and discharge from his buttock wound. A CT scan of the left buttock revealed a small 2 cm low density focus within the posterior aspect of the gluteus muscle. On [REDACTED], a left lower extremity venous duplex examination was performed which demonstrated no evidence of deep or superficial venous thrombosis. On [REDACTED], the Claimant was discharged with the diagnoses of wound infection and cellulitis.

On [REDACTED], the Claimant was prescribed a cast boot and was informed to continue to weight-bear as tolerated. X-rays found the fracture healing well.

On [REDACTED], the Claimant's treating physician certified the Claimant's need for a walking splint due to a fractured metatarsal.

On [REDACTED], the Claimant began physical therapy.

On [REDACTED], an internist completed a Medical Examination Report on behalf of the Claimant. The physical examination was normal finding the Claimant able to frequently lift/carry 50 pounds or more; stand and/or walk about 6 hours during an 8 hour workday; and sit about six hours during this same time span. The Claimant was also able to perform repetitive actions with all extremities.

On [REDACTED], the CT scan of the right foot revealed an old fracture deformity involving the fifth metatarsal bone with widening of the articulation between the cuboid and base of the fifth metatarsal bone.

On [REDACTED], the Claimant attended a follow-up examination which revealed his instability and pain. X-rays of the right foot/ankle revealed a well healed comminuted shaft fracture of the 5th metatarsal of the right with a widening of the 5th metatarsal cuboid joint.

On [REDACTED], a CT of the lower extremity without contrast was performed. The deformity of the fifth metatarsal was documented as was the widening of the joint between the lateral cuneiform bone and fifth metatarsal. Irregularity of this joint as well as a small lateral marginal osteophyte was also revealed. Subarticular cysts in the lateral aspect of the talar dome were seen as was cortical irregularity of the talus. Air was also seen in the ankle joint laterally.

On [REDACTED], a CT scan was reviewed which revealed an impacted fracture involving the lateral aspect of the 5th metatarsal articular surface with a malunion and widening of the 5th metatarsal cuboid joint. The CT scan also showed an osteochondral lesion in the dome of the right talus.

On [REDACTED], [REDACTED], [REDACTED] and [REDACTED], the Claimant attended follow-up appointments where surgical intervention to realign the 5th metatarsal cuboid joint and possible an arthrodesis and arthroplasty was discussed as well as the need for a pair of custom orthotics and physical therapy.

On [REDACTED], the Claimant attended a department order internist evaluation. The physical examination documented the Claimant's difficulty with standing more than 10 minutes as well as right foot pain. The Claimant required a cane; he was unable to squat and the straight leg raising was 90 degrees bilaterally. The diagnoses were osteoarthritis and spinal disorder with pain and limitation to the range of motion. The Internist opined that the Claimant should be able to work a seated 8 hour per day job but was unable to stoop, carry, push, pull, bend, squat and arise, walk on heels and toes, tandem walk, with a wide based gait.

On [REDACTED], the Claimant attended a follow-up appointment where again surgical intervention was discussed.

On [REDACTED], an MRI of the Claimant's right ankle without contrast was performed which documented a high signal abnormality in the talar dome laterally and a focus of cartilage loss in the tibial plafond medially. A slight irregularity of the base of the fifth metatarsal was also documented.

On this same date, an MRI of the right foot was performed which revealed post-traumatic deformity of the fifth metatarsal.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as arthritis post-traumatic of the fifth metatarsal cuboid joint with malunion of the fifth metatarsal. The Claimant was listed as totally disabled with no carrying/lifting, standing, walking, or sitting until approximately [REDACTED] (noting the [REDACTED] surgery). The Claimant was non-weight bearing and required crutches or a walker to ambulate.

On [REDACTED], the Claimant presented to the hospital for surgery due to the malunion of the right fifth metatarsal and post-traumatic arthritis. The Claimant underwent arthroplasty of the right fifth metatarsal cuboid joint as well as of the right fourth metatarsal joint. The Claimant also underwent a partial ostectomy of the right fifth metatarsal. As a result, the Claimant was unable to bear any weight on his right foot. The Claimant was discharge on [REDACTED].

On [REDACTED], [REDACTED], and [REDACTED], the Claimant attended follow-up appointments which documented post-traumatic arthritis of the right 4th and 5th metatarsal cuboid joint with wound infection. The Claimant was allowed to do partial weight-bearing on his right heel.

On [REDACTED], the Claimant completed an IV infusion therapy.

On [REDACTED], the Claimant attended a follow-up appointment post surgery. X-rays of the right foot were non-weight bearing and revealed satisfactory alignment of the metatarsal cuboid joints with good screw placement. The Claimant was found to have post-traumatic arthritis of the right 4th and 5th metatarsal cuboid joint with wound infection.

On [REDACTED], an indium-labeled leukocyte study found no typical evidence for the presence of acute infection in right foot.

On or about [REDACTED], a CT of the left buttock was performed which showed evidence of a collection of fluid (hematoma, seroma, pus) requiring a sonography.

On [REDACTED], the Claimant attended a consultative examination for pain management. The Claimant need for assistive device was noted and he was diagnosed with pain in his limb and reflex sympathetic dystrophy of the lower limb. A lumbar block was recommended.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as right foot fixation, left gluteal/left wrist lacerations. The Claimant was found able to occasionally lift 20 pounds; stand and/or walk less than 2 hours during an 8 hour day; and able to perform repetitive motions with his upper extremities. The Claimant's need for a cane was also documented.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as the inability to walk and sit, right ankle instability, left buttock/gluteal injury. The Claimant need for a cane and surgical boot for stance, ambulation, and gait was noted as well as his limited ability to dress. The Claimant was restricted to occasionally lift/carry under 10 pounds and was found disabled until he was able to sit and had improved right leg/ankle strength. The Claimant's inability to bear weight on his

right ankle independent of the boot was documented as was atrophy in the right lower extremity, particularly in the leg and ankle. Back pain and the inability to bend forward or extend his back independently were also noted. Ultimately, the Claimant was found to have osteoarthritis and spinal disorder.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In this case, the Claimant was hospitalized after persistent vomiting and weight loss. Further tests were performed and in [REDACTED], the Claimant was diagnosed with esophagitis and gastritis. There was no further treatment for this condition which was the basis of the April 18, 2008 application. This condition has not lasted continuously for a period of 12 months nor does it have more than a *de minimis* effect on the Claimant's basic work activities. Accordingly, on the basis of this impairment, the Claimant is found not disabled at Step 2.

On [REDACTED], the Claimant was involved in a severe boating/tubing accident. The determination of disability is considered in light of this incident. 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 as a result of this accident. 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 to

a boating/tubing accident which resulted in a left gluteal injury and right ankle fracture/surgery.

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
- 1.03 Reconstructive surgery or surgical arthrodesis of a major weight-bearing joint, with 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.

* * *

- 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.

In the record presented, the objective medical documentation establishes that in June of 2008, the Claimant was involved in a severe boating/tubing accident which resulted in a severe

left gluteal laceration, multiple right foot/ankle fractures, and a left wrist laceration. Subsequent to his release from the hospital, the Claimant went through a series of treatment for infection and cellulitis. In [REDACTED], the fractures (metatarsal and proximal phalanx) were noted as healing well however the Claimant's continued pain was documented. By [REDACTED], the fifth metatarsal bone showed an old fracture deformity with the widening of the cuboid joint. In [REDACTED], a CT revealed an impacted fracture involving the 5th metatarsal with malunion and widening of the cuboid joint which ultimately required surgical intervention in [REDACTED]. The Claimant's need for an assistive device is well documented as well as his inability to stoop, carry, push, pull, bend, squat, walk on heels and toes, and tandem walk. In [REDACTED], the Medical Examination Report documented the Claimant's inability to walk, sit, and bear weight on his right ankle independent of the boot. The Claimant was found to have osteoarthritis and spinal disorder. The Claimant testified credibly regarding his level of pain which were consistent with the objective medical evidence. 20 CFR 416.929 Ultimately, based upon the submitted medical documentation, it is found that the Claimant's physical disabling impairment meets, or is the equivalent thereof, the intent and severity requirement of a listed impairment within 1.00 as detailed above. Accordingly, the Claimant is found disabled at Step 3 effective June 26, 2008, therefore subsequent steps in the sequential evaluation process are not necessary.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 et seq. and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes 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.

In this case, the Claimant is found disabled for purposes of the Medical Assistance (“MA-P”) program, therefore the Claimant’s is found disabled for purposes of SDA benefits effective June 26, 2008.

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 and the State Disability Assistance program effective June 26, 2008.

It is ORDERED:

1. The Department’s determination that the Claimant is not disabled is AFFIRMED for the period from March (retro month) 2008 through June 25, 2008.
2. The Department’s determination that the Claimant is not disabled effective June 26, 2008 is REVERSED.
3. The Department shall initiate review of the April 18, 2008 application to determine if all other non-medical criteria are met and inform the Claimant of the determination for the period from June 26, 2008 forward.
4. The Department shall supplement for any lost benefits the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
5. The Department shall review the Claimant’s continued eligibility in July 2010 in accordance with department policy.

Colleen M. Mamelka

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

Date Signed: 12/08/09

Date Mailed: 12/08/09

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 receipt date of the rehearing decision.

CMM/jlg

cc:

