

[REDACTED]

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.: 2009-686
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 4, 2009
Oakland County DHS (2)

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 Madison Heights, Michigan on February 11, 2009. The Claimant appeared and testified along with [REDACTED]. The Claimant was represented by [REDACTED] Service. [REDACTED] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical records.

On March 9, 2009, the additional medical records were received and reviewed. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA"), Retro MA-P, and State Disability Assistance ("SDA") 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 a public assistance application seeking MA-P, Retro MA-P from January 2008, and SDA benefits on March 19, 2008.
2. On April 18, 2008, the Medical Review Team (“MRT”) deferred the disability determination, requesting a psychiatric examination. (Exhibit 1, p. 13)
3. On May 1, 2008, the Claimant was evaluated by a physician who was board certified in Forensic medicine. (Exhibit 1, pp. 5 – 12)
4. On June 2, 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)
5. On this same date, the Claimant was approved for SDA benefits with a review date scheduled for August of 2008. (Exhibit 1, pp. 1, 2)
6. On June 18, 2008, the Department sent the Claimant an eligibility notice informing the Claimant he was found not disabled for MA-P and Retro MA-P purposes.
7. On September 10, 2008, the Department received the Claimant’s Request for Hearing protesting the determination that the Claimant was not disabled.
8. On October 13, 2008, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2, pp. 1, 2)
9. The Claimant’s alleged physical disabling impairments are due to chronic back, neck, hip, leg, knee, and wrist pain.

10. The Claimant has not alleged any mental disabling impairment.
11. At the time of hearing, the Claimant was 43 years old with an [REDACTED] birth date; was 6' 4" and weighed 240 pounds.
12. The Claimant graduated from high school and has a work history as a window cleaner and janitor.
13. The Claimant's impairment(s) has lasted, or is expected to last, continuously for a period of at least 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-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) As outlined above, 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) 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 previously 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 in 2006. 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 based on chronic back, neck, hip, leg, knee, and wrist pain as a result of two severe motor vehicle accidents. On July 24, 2007, the Claimant attended a follow-up appointment with B [REDACTED] following a motor vehicle accident. X-rays of the Claimant's pelvis and right hip showed that the surgical hardware's position was maintained. Post-traumatic arthritis and chronic pain were noted.

On January 1 – 8, 2008, the Claimant was admitted to [REDACTED] after complaints of abdominal pain, vomiting and an altered mental state. The Claimant was found to be in delirium tremens (“DTs”). The Claimant was admitted to the Intensive Care Unit. The Claimant's elevated blood pressures was attributed to his DTs. The Claimant was discharged in stable condition with the discharge diagnoses as DTs, alcoholic hepatitis, hypocalcaemia due to dehydration, hypertension due to DTs, history of polysubstance abuse, and history of motor vehicle accident (2006) status post open reduction with internal fixation in the past.

On February 8, 2008, the Claimant suffered multiple injuries as a result of motor vehicle accident. As a result, he was admitted to [REDACTED] for over 2 months. The following broadly summarizes in relevant part, the tests/procedures during his stay:

- Chest x-ray confirmed rib fractures without evidence of pneumothorax on February 8, 2008.
- On February 8th, a CT of the Claimant's head revealed soft tissue swelling in the right preseptal supraorbital region, likely secondary to acute trauma.
- The CT of the cervical spine found no evidence of acute osseous injury but found degenerative changes with neuroforaminal narrowing on the left at C5-6 and C6-7.
- CT of the Claimant's hip found acetabular roof fracture.
- On February 9th, an x-ray of the Claimant's left femur and knee found multiple radiopaque foreign bodies overlying the left knee with associated soft tissue defect.

- X-rays of the left hand found fifth metacarpal base fracture with suspicious appearance for extension into the carpometacarpal joint space. At least six osseous-like densities of uncertain origin were identified.
- On February 13th, pelvis AP and both obliques revealed a left acetabular fracture which involved the anterior and posterior columns as well as the left acetabular roof. Post surgical changes of the right acetabulum were noted.
- On February 13, 2008, surgery was performed on the Claimant to repair his left acetabulum pelvis fracture requiring internal fixations. No complications were noted and the Claimant tolerated the surgery well.
- On February 14th, x-rays of the pelvic (post-op) documented the open reduction with internal fixation (“ORIF”) with placement of the side plate and screw fixation devices for the bilateral acetabular fracture.
- On February 22nd, an ultrasound revealed left calf deep vein thrombophlebitis (“DVT”) involving the peroneal veins.
- On February 24th, two left hand radiographs were obtained as follow-up of the fracture. Casted comminuted intra-articular fifth metacarpal base fracture was documented with no significant callus noted.
- On March 3rd, the Claimant was treated for a hip abscess.
- On March 17, 2008, the Claimant participated in an infectious disease consultation. The physical examination found the Claimant with instability of the left femur, multiple rib fractures, and an injury to the left wrist. The Claimant developed hives and pruritus in response to the infusion of [REDACTED], which persisted upon removal of the IV site. Cultures obtained and sent for testing.
- On this same date, an ultrasound was taken of the Claimant’s left calf to evaluate DVT progression. No significant changes were noted from prior studies.
- The Claimant’s left hip was drained (arthrotomy) on March 17th.
- On March 19th, irrigation and debridement, Wound VAC change. No evidence of infection was noted however due to the amount of fluid output; a new Wound VAC dressing was inserted and sealed.
- On March 26th, irrigation and debridement (as performed on March 19th) was performed without complication.
- On April 5, 2008, the same procedure (March 19th) was performed.

- On April 9th, an ultrasound was taken of the Claimant's left calf to evaluate DVT progression. No significant changes were noted from prior studies.

The Claimant was discharged on April 12, 2008 with the following diagnoses; left acetabulum fracture, acute blood loss anemia, alcohol withdrawal syndrome, and bilateral open leg wounds.

On April 17, 2008, the Claimant's follow-up examination of his left acetabular which documented drainage from the incision with no infection noted.

On December 4, 2008, the Claimant was examined at [REDACTED] for a re-check. The Claimant's prior surgeries were document as healing with chronic pain and post-traumatic arthritis noted.

On February 27, 2009, the Claimant's orthopedic surgeon submitted a Medical Needs form on behalf of the Claimant. The Claimant was limited to lifting/carrying 10 pounds; standing/walking less than 2 hours in an 8- hour work day; sitting less than 6 hours during this same time period. The Claimant requires a cane for ambulation.

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 some 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, and are expected to last, 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 chronic back, neck, hip, leg, knee, and wrist 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. 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 as 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.

Based upon the submitted medical documentation, the Claimant's impairment may meet, or be the equivalent of 1.02 and/or 1.04 however there was no evidence presented to establish the a solid union was not evident thus the record was insufficient to support a finding of disability on the basis of Listing 1.02 and/or Listing 1.04 therefore the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv)

An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50

pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Over the past 15 years, the Claimant worked mainly as a window washer whose primary responsibilities included climbing and descending ladders, standing, stooping, bending, reaching, gripping and grasping. The Claimant was required to lift/carry up to approximately 50 pounds. Given these facts, the Claimant's past work history is classified as unskilled, medium work.

The Claimant uses a cane for walking and testified he can only walk short distances without it due to pain. The Claimant is able to sit for ½ hour; stand for 10 minutes (with assistance); and can lift approximately 15 pounds. The Claimant can no longer climb/descend stairs due to pain and dizziness. Although the Claimant experiences pain in his left wrist (he's right-hand dominant) the Claimant is able to grip and grasp. The Claimant's orthopedic surgeon limited the Claimant's lifting/carrying to 10 pounds and limited the Claimant's standing/walking/sitting. Additionally, the Claimant's need for a cane for ambulation was also noted. If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 In consideration of the Claimant's testimony, medical records, and current limitations, it

is found that the Claimant is not able to return to past relevant work as a window washer therefore the fifth-step in the sequential evaluation process is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 43 years old thus considered to be a younger individual for MA-P purposes. The Claimant graduated from high school. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). Transferability of skills is most probable and meaningful among jobs in which the same or a lesser degree of skill is required; the same or similar tools and machines are used; and the same or similar raw materials, products, processes, or services are involved. 20 CFR 416.968(d)(2)

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does not include the ability to meet the physical and mental demands to perform sedentary work on a regular and continuing basis. The record supports a

finding that at this point, the Claimant does not have the residual functional capacity for substantial gainful activity nor has the Department provided vocational evidence that would establish that, given the Claimant's age, education, and work experience, there are significant number of jobs in the national economy which the Claimant could perform despite his physical limitations. Accordingly, it is found that the Claimant is disabled for purposes of the MA-P program.

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, since the Claimant was found disabled for the purposes of the MA-P program, he is found disabled for purposes of the SDA program.

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 programs.

It is ORDERED:

1. The Department's determination is REVERSED.

2. The Department shall initiate review of the March 19, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized 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.
4. The Department shall review the Claimant's continued eligibility in March 2010.

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

Date Signed: [REDACTED] _____

Date Mailed: [REDACTED] _____

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.

CM/jlg

cc:

[REDACTED]