

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.: 2009-20595
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 1, 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 July 1, 2009. The Claimant appeared and testified. [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") program?

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 retroactive from July 2008, and SDA benefits on September 29, 2008.
2. On February 18, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled finding the Claimant's impairment(s) did not prevent employment for 90

days or more for SDA purposes and finding the impairment(s) lacked duration of 12 months. (Exhibit 2, pp. 1, 2)

3. On February 24, 2009, the Department sent the Claimant an eligibility notice informing the Claimant that his MA-P and SDA benefits were denied.
4. On March 9, 2009, the Department received the Claimant's Request for Hearing protesting the determination that he was not disabled.
5. On May 14, 2009, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 3)
6. The Claimant's alleged physical disabling impairments are due to a right patellar rupture, which required surgery, and pain in both right and left knees.
7. At the time of hearing, the Claimant was 25 years old with a [REDACTED] birth date; was 6' 2" in height; and weighed approximately 350 pounds.
8. The Claimant completed through the 10th grade and subsequently obtained a GED.
9. The Claimant's limited work history consist of general labor type positions.

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 applicant 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. 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 July of 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 non-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 due to a surgical repair of his right patella and continued knee pain in both extremities.

On [REDACTED], the Claimant was injured in a biking accident resulting in torn tendons in his right knee. X-rays found no fracture or bone abnormality with normal joint spaces. The possibility of an acute cortical avulsion was noted.

On [REDACTED], the Claimant presented to the emergency room for his right knee. Swelling and tenderness was noted with no bleeding. The Claimant's range of motion was limited due to pain. X-rays documented a large joint effusion and possible patellar tendon tear or rupture. The Claimant was diagnosed with a knee injury/sprain and released.

On [REDACTED], the Claimant presented to the emergency room with complaints of knee pain. As a result of an x-ray, the Claimant was diagnosed with a left knee sprain, and right patellar tendon rupture. The Claimant was placed on a knee immobilizer, given crutches, and referred to an orthopedist. Motrin 800 was prescribed.

On [REDACTED], the Claimant was evaluated by an orthopedic physician. The physical examination of the lower extremity revealed swelling and tenderness to palpation along the medial joint line. An MRI was recommended to determine whether the injury required surgery.

On [REDACTED], an MRI of the Claimant's right knee was performed which revealed a complete rupture of the patellar ligament. Complex tears of both medial and lateral menisci; sprain of the medial collateral ligament; moderate joint effusion; marrow contusion of the tibial

plateau and lateral femoral condyle; and hemosiderin deposition in the suprapatellar bursa was documented.

On [REDACTED], the Claimant presented to the orthopedic surgeon after having had a MRI. The MRI revealed a complete tear of the patellar tendon and ACL tear. Further, a “bucket handle type tear” of the meniscus was documented. The Claimant was informed that the patella rupture needed to be surgically repaired first, prior to the meniscal repair and ACL reconstruction. Underlying arthritis was also noted.

On [REDACTED], the Claimant underwent reconstruction of the patellar tendon with augmentation without complication. The Claimant was discharged the following day.

On [REDACTED], the Claimant attended his first post-surgery appointment. The incision was well healed and the sutures were removed. X-rays confirmed the patella was in the proper position and alignment with a screw holding the patella in place.

On [REDACTED], the Claimant attended a follow-up appointment, post-surgery. The incision was well healed with no signs of infection. The Claimant was able to perform a straight leg raise but had an extension lag which was presumed to be secondary to atrophy of the muscle. The Claimant’s Vicodin prescription was renewed.

On [REDACTED], the Claimant attended a follow-up appointment with his orthopedic surgeon. The Claimant was able to flex his knee to 85 degrees and the incision was well healed. The Claimant was instructed to continue use of crutches for protection purposes and was provided exercises to perform.

On [REDACTED], the Claimant attended a follow-up appointment with his orthopedic surgeon. The incision was well healed and the physician was able to palpate the patella tendon. The surgical repair was noted as well as confirmation of an ACL tear.

On [REDACTED], the Claimant attended a follow-up appointment with the orthopedic physician. The Claimant complained of pain and problems with his knee giving out. The right knee s/p patellofemoral repair was noted along with an ACL deficiency and medial meniscus tear. An MRI was recommended with the need for additional surgery noted.

On [REDACTED], a Medical Examination Report was completed by the Claimant's orthopedic surgeon. The current diagnoses were listed as right knee chronic patellar rupture, status post repair of a chronic patellar tendon rupture and ACL tear of the right knee. The foregoing diagnoses were confirmed by x-rays and MRIs. The Claimant was listed in stable condition. The Claimant was restricted to occasionally lifting/carrying 20 pounds and unable to stand and/or walk two hours or more in an 8-hour workday. An ACL brace was recommended for ambulation. There were no restrictions on the Claimant's ability to perform repetitive actions with his hands/arms and the Claimant was found able to operate foot/leg controls with his left foot/leg. The Claimant was able to meet his needs in the home.

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 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 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 in

part to back pain and arthritis. 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
- 1.03 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.

The medical records document surgical reconstruction of the patellar tendon with augmentation without complication. The records also document the need for additional surgical intervention to repair the Claimant's right knee ACL tear. In order to meet the severity requirement an inability to ambulate effectively must be shown. As previously stated, the 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. In this case, the Claimant is able to ambulate without assistance. Ultimately, based upon the submitted

medical documentation, it is found that the objective medical documentation is insufficient to meet the intent and severity requirement of a listed impairment within Listing 1.00 thus the Claimant cannot be found disabled, or not disabled, under this listing for purposes of the Medical Assistance program under this Listing. Accordingly, the Claimant's eligibility under Step 4 is considered. 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.*

The Claimant has a limited work experience. The Claimant prior employment consists of work as a handyman and general labor. The Medical-Social Questionnaire also documents employment as a cashier. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's past employment is considered unskilled, light work.

The Claimant testified that he was unsure how much weight he could lift and/or carry; could walk unassisted approximately 50 to 100 feet; is able to sit for 15 – 20 minutes before his knee begins to hurt; is unable stand for ½ hour; is able to bend and slowly climb/descend stairs but is unable to squat. The Claimant is able to perform repetitive actions with his hand/arms.

The medical evidence documents that the Claimant is able to occasionally lift/carry 20 pounds; is unable to stand and/or walk two hours or more in an 8-hour workday, noting that an ACL brace would be helpful for ambulation. There were no restrictions on the Claimant's ability to perform repetitive actions with his hands/arms and the Claimant was found able to operate foot/leg controls with his left foot/leg. The Claimant was able to meet his needs in the home. 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 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 25 years old thus considered a younger individual for MA-P purposes. The Claimant has the equivalent of a high school education with a limited employment history of unskilled work. 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). In general, age does not seriously affect a younger individual's (under age 50) ability to adjust to other work. 20 CFR 416.963(c)

In the record presented, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform sedentary work. As noted above, sedentary work involves sitting and lifting no more than 10 pounds at time with occasional walking and standing to carry out the job duties. After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 201.27, it is found that the Claimant is not 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. PEM 261, p. 1 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. PEM 261, pp 1 – 2

In this case, there is insufficient evidence to support a finding that the Claimant's impairment has disabled him under the SSI disability standards. Accordingly, it is found that the Claimant is not 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 and State Disability Assistance programs.

It is ORDERED:

The Department's determination is AFFIRMED.

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

Date Signed: 07/14/09

Date Mailed: 07/14/09

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

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