

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: 200923675
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 29, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on July 29, 2009.

ISSUE

Was the denial of claimant's application for MA-P for lack of disability correct?

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 MA-P, Retro MA-P and SDA on January 12, 2009.
- (2) Claimant is 51 years old.
- (3) Claimant has an 8th grade education.
- (4) Claimant is not currently working.
- (5) Claimant has a prior work history consisting of maintenance, handy work, carpentry, and roofing.

- (6) Claimant performed these jobs at a medium and heavy exertional level.
- (7) In December 2008, claimant fell, resulting in a fracture of his left leg bones.
- (8) A surgery on these bones was performed in December, 2008.
- (9) This injury did not heal correctly.
- (10) The injury became severely infected.
- (11) In July of 2009, claimant underwent a debridement of the wound, which had been causing him extreme pain for almost 7 months.
- (12) In July of 2009, claimant's wound was still not draining, though the signs of infection were gone.
- (13) Claimant requires surgery to correct the lingering problems with the fracture, but surgery would not be possible until this infection and initial incision healed.
- (14) Claimant, according to medical records, has been using two crutches to ambulate.
- (15) Claimant's functional capacity is limited, and only retains the capacity to lift less than 10 lbs frequently, is not to lift any weight heavier than 10 lbs, should not stand or walk more than 2 hours in an 8 hour day, and retains no capacity for pushing and pulling.
- (16) At the time of the hearing, claimant was unable to ambulate effectively, and was warned by his doctor to keep weight off of the wound.
- (17) On February 11, 2009, the Medical Review Team denied MA-P and Retro MA-P, stating that claimant's disability did not meet the 12 month durational requirement and was not a severe impairment.
- (18) On March 18, 2009, claimant filed for hearing.

- (19) On June 10, 2009, the State Hearing Review Team denied MA-P and Retro MA-P, stating that the claimant's impairment did not meet the durational requirement and was thus not a severe impairment.
- (20) A hearing was held on July 29, 2009.
- (21) Claimant requested time to submit additional medical evidence, and the record was extended.
- (22) In September 2009, the State Hearing Review Team denied MA-P and Retro MA-P again, stating that claimant's impairment did not meet the 12 month durational requirement.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five step sequential evaluation, and when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is \$1,640. For non-blind individuals, the monthly SGA amount for 2009 is \$980.

In the current case, claimant has testified that he is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of a gross dysfunction of a weight bearing joint that has more than a minimal effect on the claimant’s ability to do basic work activities. Claimant’s treating source and hospital records state that claimant has restrictions in his functional capacities to do physical activities, including lifting, walking, and standing.

However, claimant’s injury occurred in December 2008. At the time of the injury and the application, claimant’s injury was expected to heal within a short period of time. At that time, claimant would have failed step two because his injury was not expected to last 12 months.

This situation had changed by the time of the hearing. According to claimant’s testimony, which was verified by claimant’s treating sources, shortly after the surgery and

application for MA, claimant's wound became staph-infected. The bone fracture ceased to heal cleanly. Claimant embarked upon an extremely painful several month regimen to keep the wound clean in an attempt to halt the infection. This was ultimately unsuccessful, and in late June 2009, claimant underwent a debridement of the necrotic tissue. According to the claimant, at least one more surgery would be necessary in order to heal the leg, but this would not occur until the initial surgery had healed. There was no indication when this would be, and medical records indicate that while the signs of infection have ceased, claimant's wound is still not draining properly.

Therefore, the undersigned believes that claimant's injury, while initially not particularly serious or of long duration, will not be expected to heal within 12 months of the initial accident. Claimant thus passes step two of our evaluation.

In the third step of the sequential evaluation, we must determine if the claimant's impairments are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.925. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records contain medical evidence of an impairment that meets or equals a listed impairment. The great weight of the evidence of record finds that claimant's mental impairment meets or equal the listings for mental impairments contained in section 1.00 (Musculoskeletal Impairments).

Appendix 1 of Subpart P of 20 CFR 404, Section 1.00 has this to say about musculoskeletal disorders:

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;

In order to meet or equal the listings for a joint dysfunction, claimant must have a gross anatomical deformity in one of the major weight-bearing joints resulting in an inability to ambulate effectively. After viewing the evidence of record, including treating source opinions, the undersigned believes that the evidence shows claimant has a major joint dysfunction consistent with the listings. Claimant was injured in December 2008. The hospital reports of April, 2009, indicate that claimant's tibia and fibula were fractured and had since become infected. Claimant's pain was an objective 10 on the pain scale. Claimant was unable to walk without assistance. By July of 2009, claimant had undergone a debridement in order to stop the infection. Claimant's wound was not draining, and claimant testified credibly that he could not walk without assistance. Claimant still required at least one surgery in order to regain usage of his leg, but this would not occur unless claimant's wound underwent full recovery.

As claimant meets the criteria of 1.02, the Administrative Law Judge holds that claimant meets or equals the listings contained in section 1.00, and therefore, passes step 3 of our 5 step process. By meeting or equaling the listing in question, claimant must be considered disabled.

20 CFR 416.925.

With regard to steps 4 and 5, when a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps are necessary. 20 CFR 416.920. Therefore, the Administrative Law Judge sees no reason to continue his analysis, as a determination can be made at step 3.

However, the Administrative Law Judge, while declining to do a full analysis, would point out that claimant's functional limitations as a result of his injuries prevent him from working at any of his past jobs, which all involved significant amounts of walking, lifting, and stooping, all of which would be prohibited by the objective medical evidence. Claimant would thus pass step 4.

With regard to step 5, the Administrative Law Judge would see arguments for claimant to be classified under the sedentary RFC level, as claimant has no significant problems with his upper body, and no problems with sitting for extended periods. However, as claimant has a limited education level and history of unskilled work, claimant would be considered disabled under rule 201.09 at this RFC level.

Therefore, even if claimant did not meet the listings at Step 3, claimant would be disabled under the grid rules.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA program. Therefore, the decisions to deny claimant's January 12, 2009 application for MA-P and Retro MA-P were incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P and Retro MA-P application and award required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in July, 2011.



Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/29/10

Date Mailed: 07/01/10

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.

RJC/dj

cc:

