

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: 2009-24659
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 27, 2009
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 filed on April 27, 2009. After due notice, a hearing was held on July 27, 2009. The Claimant appeared by telephone and testified. Renee Jones, ES, MCW appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") 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. Claimant applied for SDA and MA as of February 18, 2009.
2. Claimant is 5'9" tall and weighs 215 pounds.
3. Claimant is right handed.
4. Claimant is 30 years of age.

5. Claimant's impairments have been medically diagnosed as bilateral heel fractures, degenerative arthrosis and osteochondritis.
6. Claimant's physical symptoms are sharp pain in heels b/c screw tips are hanging out, limping, limited range of motion, limitation of ambulation, and difficulty sleeping.
7. Claimant takes the following prescriptions:
 - a) Oxycotin
 - b) Celebrex
 - c) Ibuprofen
 - d) Lyrica
8. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
9. Claimant has a college education resulting in a BA in 2006 from [REDACTED] with a concentration in psychology and social work.
10. Claimant is able to read, write and perform basic math skills.
11. Claimant last worked from [REDACTED] as a student assistant and weight room facilitator. Claimant's job duties included showing new students around campus. The job required a significant amount of walking to show the new recruits around campus. In addition, Claimant was required to pick up weights weighing up to 45 lbs. after cleaning up the weight room. Bending and stooping were also required.
12. Claimant has prior employment experience as a machine operator which required lifting 10 lbs., bending and stooping. This job required standing for long hours. Claimant was also a recruiter for [REDACTED] for a summer. The job required sitting all day and making phone calls. Claimant was a professional football player from [REDACTED] up until he underwent ankle surgery.
13. Claimant testified to the following physical limitations:
 - Sitting: no problems sitting
 - Standing: 10-12 minutes before feet start to burn
 - Walking: 15 yards and then stop to rest. Pain level goes up, but could do it.
 - Bend/stoop: only when lower left back starts to burn up.
 - Lifting: Can still do pushups and little things around house. 25 lbs.
 - Grip/grasp: No
14. Claimant testified that he takes care of his grandfather. Claimant gets him dressed, but Claimant's brother bathes the grandfather. Claimant is able to get his grandfather food, clothes, and hand meds to him. Claimant cannot pick grandfather all the way up.

15. Claimant can do dishes and vacuums every now and then. Claimant avoids laundry because of steps going into basement.
16. Claimant testified that he has a cane, but he uses it only in a.m. when it's time to go to the bathroom.
17. The Department denied Claimant's request for benefits on April 15, 2009.
18. Medical records were reviewed as follows, in part:

██████████ Orthopedic Medical Exam (Exhibit 2)

DX: Degenerative arthrosis, osteochondritis, dessican bilateral ankles & feet

MUSCULOSKELETAL EXAM: Decreased range of motion, tenderness & swelling, limited motion, crepitus

PHYSICAL LIMITATIONS: Lifting less than 10 lbs occasionally, stand/walk less than 2 hrs in 8 hour day, sit less than 6 hours in 8 hour day – “No prolonged standing, walking or sitting, limited motion, limps, uses cane.” Needs housekeeper in home.

ASSISTIVE DEVICES: Cane is medically required and needed for ambulation

██████████ Internal Medicine IME (Exhibit 1, pp. 5-10)

HISTORY: Pt presents with a history of bilateral foot injury status post multiple orthopedic procedures on both ankles, both subtalar joints, as well as first metatarsal phalangeal joint, calcaneal osteotomy, and pins in both ankles, toes and heels.

PHYSICAL EXAMINATION: He walked into the examination room with a limp on the left. He has a very stiff and slow gait.

ASSESSMENT: The patient suffers from arthritis in both ankles and painful feet with stiffness in both ankle joints. He has difficulty walking and he has a limp. He has had these problems for two years post surgery. Although he can work with his upper extremities which are completely normal and all his other systems are normal. He has the bilateral feet problems for which he cannot do his profession. He needs further rehabilitation and treatment for his painful and stiff feet and ankles so that he can start doing some normal activities with his lower extremities. At this time, he cannot ambulate very much and cannot do thins that will make his feet pain worse.

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 400.1 *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 for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . 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 CFR416.905

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated

ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant testified that he last worked in 2006. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

2. Medically Determinable Impairment – 12 Months

Second, in order to be considered disabled for purposes of MA, a person must have a “severe impairment” 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 20 CFR 416.921(b)

To be eligible for MA-P, claimant must have a medically determinable impairment, meaning impairment(s) that can be demonstrated by a physical or mental examination, and/or by X-rays. Findings consist of symptoms, signs and laboratory findings. Signs are anatomical, physiological or psychological abnormalities which can be observed apart from statements (or

testimony) of claimant which are considered symptoms. (20 CFR 416.928). Either claimant's or another's statements alone are not enough to establish a physical or mental impairment (20 CFR 416.929(a)) and must be supported by medically identifiable signs as explained above. The reason is because symptoms are a person's own private experience and may or may not be caused by a real physical or mental illness.

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. The court in *Salmi v Sec'y of Health and Human Servs*, 774 F.2d 685 (6th Cir 1985) held that an impairment qualifies as "non-severe" only if it "would not affect the claimant's ability to work," "regardless of the claimant's age, education, or prior work experience." *Id.* At 691-92. Only slight abnormalities that minimally affect a claimant's ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988); *Farris v Sec'y of Health & Human Servs*, 773 F.2d 85, 90 (6th Cir. 1985).

The medical evidence has established that Claimant has a medically documented physical impairment. Claimant had bilateral heel fractures with subsequent surgeries. Claimant exhibits difficulty with ambulation and has been placed on physical restrictions regarding lifting, standing, walking and sitting by his orthopedic doctor. Accordingly, the medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities; and Claimant's impairments have lasted continuously for more than twelve months. It is necessary to continue to evaluate the Claimant's impairments under step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's mental impairment are "listed impairment(s)" or equal to a

listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled.

Appendix I, Listing of Impairments discusses the analysis and criteria necessary to a finding of a listed impairment. The Listing 1.02 *Major dysfunction of a joint* was reviewed. In this case, this Administrative Law Judge finds the Claimant is not presently disabled at the third step for purposes of the Medical Assistance (MA) program because the medical evidence reviewed does not show that the physical impairments meet the intent or severity of the listings. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what you can do in a work setting. RFC is the most you can still do despite your limitations. All the relevant medical and other evidence in your case record applies in the assessment.

Claimant has presented medical evidence supporting a medical diagnosis of bilateral ankle fractures, degenerative arthrosis and osteochondritis. Claimant's prior employment included student assistant and weight room facilitator (medium exertional level, semi-skilled), CNC machine operator (light exertional level, unskilled), professional football player (heavy exertional level, semi-skilled) and telephone recruiter (sedentary exertional level, semi-skilled). Claimant has provided medical evidence of physical limitations of lifting 10 lbs occasionally and no prolonged sitting, standing or walking. Furthermore, the Claimant testified that he did not feel he had any limitations sitting. The undersigned finds the Claimant capable of sedentary

work. Claimant would, therefore, be able to return to his previous job as a telephone recruiter. This is supported by Claimant's testimony of his daily physical activity that he is able to care for his grandfather, do dishes, and vacuum.


As Claimant's impairments do not prevent him from performing past relevant work, Claimant is not considered disabled under the fourth step. It is the finding of the undersigned, based upon the medical data and hearing record that Claimant is "not disabled" at the fourth step.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 1939 PA 280, as amended. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.1 et seq., and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM). A person is considered disabled for purposes of SDA 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. Other specific financial and non-financial eligibility criteria are found in PEM 261.

In this case, there is insufficient evidence to support a finding that Claimant's impairment is disabling him under SSI disability standards. This Administrative Law Judge finds the Claimant is not "disabled" for purposes of the MA program.

DECISION AND ORDER

This Administrative Law Judge finds that the Department was correct in determining that the claimant was not disabled for the purposes of the MA / SDA program and it is ordered that the Department's decision in this regard be and is hereby AFFIRMED.



Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/25/10

Date Mailed: 01/27/10

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.

JV/dj

cc:

