

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.: 2009-29393  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date:  
September 9, 2009  
Macomb County DHS (20)

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 telephone hearing was conducted from Detroit, Michigan on Wednesday, September 9, 2009. The Claimant appeared and testified, along with [REDACTED], who also translated/interpreted the Claimant's testimony. [REDACTED] appeared on behalf of the Department.

Upon the Claimant's request, the record was extended to allow for the submission of additional medical documentation. The medical records were received, reviewed, and entered as Exhibit 3. 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 the Medical Assistance ("MA-P") 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 an application for public assistance seeking Medical Assistance (“MA-P”) benefits on January 12, 2009.
2. On February 19, 2009, the Medical Review Team (“MRT”) deferred the disability determination in order for the Claimant to attend a department ordered consultation. (Exhibit 1, pp. 13)
3. On March 20, 2009, the Claimant attended the consultative examination. (Exhibit 1, pp. 3 – 12)
4. On April 1, 2009, the MRT determined the Claimant was not disabled finding the Claimant capable of performing other work. (Exhibit 1, pp. 1, 2)
5. The Department sent the Claimant notification of the determination which the Claimant timely appealed on April 16, 2009.
6. On July 23, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant was not disabled. (Exhibit 2)
7. The Claimant’s alleged physical disabling impairment(s) are due to chronic joint pain, high blood pressure, and gouty arthritis.
8. The Claimant has not alleged any mental disabling impairment(s).
9. At the time of hearing, the Claimant was 32 years old with an [REDACTED] birth date; was 5’3” in height; and weighed approximately 200 pounds.
10. The Claimant has a limited education with an employment history as a machine operator.
11. The Claimant’s impairment(s) have lasted, or are expected to last, 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)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation

in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

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) In the record presented, the Claimant is not involved in substantial gainful activity therefore the Claimant is not ineligible for disability 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 chronic joint pain, high blood pressure, and gouty arthritis.

On [REDACTED], the Claimant was seen by a specialist referred to by his primary care physician. The Claimant was found to have gouty arthritis with a pantalar effusion in his left foot. The right knee showed marked arthritic change noting the Claimant was "miserable with the symptoms." The arthritis was "very advanced" indicating the Claimant was a candidate for a total knee replacement but for his age (younger individual). Cortisone injections did not offer relief.

On [REDACTED], the Claimant returned to the specialist who opined that the Claimant was permanently disabled.

On [REDACTED], the Claimant attended a department ordered examination. The Claimant's gait and stance was normal, and he was able to get on and off the examination table

without difficulty. The Claimant was found to have had arthrodesis of his left ankle resulting in a limited range of motion with pain noting the Claimant was able walk ½ block and stand for 15-30 minutes. An x-ray of the right knee revealed severe joint space narrowing and spur formation noting severe degenerative changes. In addition, the Claimant was found to have gout and arthritis with no effusion, deformity, and full range of motion.

In July, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as gouty arthritis affecting multiple joints. The Claimant's condition was deteriorating finding him able to occasionally lift/carry 10 pounds with standing and/or walking limited to less than 2 hours in an 8 hour day with sitting at less than 6 hours during this same time frame. The 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 hypertension, left shoulder pain, right foot cyst, and knee nodules. The musculoskeletal examination was abnormal and his condition was listed as deteriorating. The Claimant was restricted to occasionally lift/carry less than 10 pounds; stand and/or sit less than 2 hours in an 8 hour workday with sitting at less than 6 hours during this same time. The Claimant was found able to perform reaching, pushing, pulling with his right hand/arm, and was able to perform simple grasping and fine manipulation with both upper extremities.

On [REDACTED], the Claimant attended a department ordered consultative examination. The physical examination documented pain in the Claimant's hands and knees. The range of motion in his right shoulder was mildly restricted however his left shoulder was severely restricted. Moderate to severe deformity of the Claimant's left hand with diffuse swelling in almost all joints was noted as well as nodules at the intermediate DIP joints of both

hands. The Claimant's grip was poor noting poor dexterity with both hands. Flexion deformity of the left ring finger and the right middle finger flexion deformity was documented as well as the Claimant's inability to straighten either finger. Moderate restriction of range of motion of both knees noting nodules at the kneecap was found. The Claimant limped and had difficulty getting on and off the table. Bony nodules on the dorsum of the left foot appeared to be calcified bony nodules with diffuse swelling of both ankles. The Claimant was unable to stoop, carry, push, pull, button clothes, tie shoes, pick up coin/pencil, write, squat, and climb stairs. The Claimant's clinical need for a walking aid was documented to reduce pain and to prevent from falling. Ultimately, the Claimant was found to have gouty arthritis of multiple joints, mild to moderate intensity with gouty calcification; chronic, moderate osteoarthritis of multiple joints; chronic left shoulder pain; uncontrolled hypertension; and probable rheumatoid arthritis.

On [REDACTED], the Claimant was evaluated by an osteopathic physician. The physician opined that the Claimant suffered from a form of dwarfism that causes chondrodysplasia which results in a rapid destruction of his joint. This in turn, has led to a loss of function of his joints.

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 some medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. The medical evidence has established that 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 has alleged physical disabling impairments due to chronic joint pain, high blood pressure, and gouty 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

Listing 14.00 discusses Adult Immune System Disorders. These disorders are evaluated based on the dysfunction in one or more components of the immune system. 1.00A1a Immune system disorders may result in recurrent and unusual infections, or inflammation and dysfunction of the body's own tissues and may result in extreme loss of function, severe fatigue, fever, malaise, diffuse musculoskeletal pain, or involuntary weight loss. 14.00A1b Inflammatory arthritis includes a vast array of disorders that differ in cause, course, and outcome. 14.00D6a Clinically, inflammation of major peripheral joints may be the dominant manifestation causing difficulties with ambulation or fine and gross movements; there may be pain, swelling, and tenderness. *Id.* Listing level severity is shown by an impairment that results in an extreme

limitation which is satisfied with persistent inflammation or deformity in one major peripheral weight-bearing joint resulting in the inability to ambulate effectively or one major peripheral joint in each upper extremity resulting in the inability to perform fine and gross movements effectively. 14.00D6e(i)

Listing 14.09 defines inflammatory arthritis as detailed above with:

- A. Persistent inflammation or persistent deformity of:
  - 1. One or more major peripheral weight-bearing joints resulting in the inability to ambulate effectively (as defined in 14.00C6); or
  - 2. One or more major peripheral joints in each upper extremity resulting in the inability to perform fine and gross movements effectively (as defined in 14.00C7).

OR

- B. Inflammation or deformity in one or more major peripheral joints with:
  - 1. Involvement of two or more organs/body systems with one of the organs/body systems involved at least to a moderate level of severity; and
  - 2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).

OR

- C. Ankylosing spondylitis or other spondyloarthropathies, with:
  - 1. Ankylosis (fixation) of the dorsolumbar or cervical spine as shown by appropriate medically acceptable imaging and measured on physical examination at 45° or more of flexion from the vertical position (zero degrees); or
  - 2. Ankylosis (fixation) of the dorsolumbar or cervical spine as shown by appropriate medically acceptable imaging and measured on physical examination at 30° or more of flexion (but less than 45°) measured from the vertical position (zero degrees), and involvement of two or more

organs/body systems with one of the organs/body systems involved to at least a moderate level of severity.

OR

- D. Repeated manifestations of inflammatory arthritis, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:
1. Limitation of activities of daily living.
  2. Limitation in maintaining social functioning.
  3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

In this case, the objective medical evidence establishes the Claimant's joints are rapidly deteriorating documenting nodules, pain, deformity, and swelling in the Claimant's knee, hands, foot, and ankles. X-rays of the right knee reveal severe joint spacing and spur formation. Further, the Claimant's clinical need for a cane for ambulation is also found. In addition, the Claimant's limitations in performing fine and gross movements are also established. In light of the foregoing, it is found that the Claimant's impairment(s) meets, or is the equivalent thereof, the intent and severity requirement of a listed impairment(s) as detailed above. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

#### 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.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the January 12, 2009 application to determine if all other non-medical criteria are met and inform the Claimant 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 November of 2010 in accordance with department policy.

*Colleen M. Mamelka*

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

Date Signed: 10/21/09


Date Mailed: 10/21/09

**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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