

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: 2009-3243

Issue No: 2009, 4031

Case No:

Load No:

Hearing Date:

February 2, 2009

Wayne County DHS

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 conducted from Redford Township, Michigan on February 2, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department. The 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-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 and SDA benefits on June 24, 2008.
2. The Claimant did not request Retro-MA benefits.

3. On July 10, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant lacked duration of 12 months for MA-P purposes. (Exhibits 1, 2)

4. On July 24, 2008 the Department sent the Claimant an eligibility notice informing the Claimant that her MA-P benefits were denied.

5. On October 21, 2008, the Department received the Claimant’s Request for Hearing protesting the determination that she was not disabled.

6. On November 6, 2008, the State Hearing Review Team (“SHRT”) found the Claimant not disabled.

7. The Claimant’s alleged disabling impairments are due to spinal injury and right leg and heel fractures.

8. At the time of hearing, the Claimant was [REDACTED] with a [REDACTED] birth date; was [REDACTED].

9. The Claimant completed through the 10th grade in high school with an employment history consisting of unskilled light work.

10. The Claimant’s impairment(s) has lasted, or is expected to last, for a continuous 12 months or more.

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) Unless an impairment(s) is expected to result in death, the impairment(s) must have lasted, or must be expected to last, for a continuous period of at least twelve months. 20 CFR 416.909

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 2005. 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 asserts physical disabling impairments due to a spinal injury as well as right leg/ankle and heel fracture and pain. On [REDACTED], the Claimant was injured when a second-story porch collapsed beneath her. As a result, the Claimant was hospitalized on [REDACTED]. During the stay, several tests and procedures were performed on the Claimant to include x-rays of the spine which showed a compressions fracture of T-12; a MRI revealed "burst fracture of L1 with non-displaced fracture of bilateral lamina, retropulsion of the posterior cortex into the spinal canal causing mild spinal canal stenosis at this level,"; a CT scan (and a foot x-ray) of the lower extremity which revealed a comminuted fracture of the calcaneous with mild displacement of the medial and lateral fracture fragments; a CT scan of the lumbar spine revealed a burst fracture of T12 vertebral body. The Claimant's discharge diagnoses were right calcaneal fracture, L1 burst fracture of the spine, left lesser trochanter partial avulsion fracture, secondary to hypertension. The Claimant was fitted with a thoracolumbar spine orthotic ("TLSO" brace) and was instructed to not put any weight on the right lower extremity.

On [REDACTED], the Claimant was transferred to [REDACTED]. The Claimant was discharged on [REDACTED] and instructed to wear the TLSO when out of bed and to use a walker for ambulation. The Claimant

was to maintain the non-weightbearing status. Discharge medications were Remeron (for depression), atenolol, Xanax, Zantac, Norco, and Colace. Additionally, the Claimant was found to be disabled and unable to return until cleared by orthopedics and neurosurgery.

On [REDACTED], the Claimant was examined at the [REDACTED] [REDACTED] as a result of the right calcaneous. X-ray examination revealed an overall acceptable alignment of the Claimant's calcaneous. The Claimant was placed in a CAM walking fracture boot.

On [REDACTED] [REDACTED] the Claimant was examined at [REDACTED]. The Claimant was instructed to remain in protective weight bearing with a CAM boot and instructed to continue to wear the torso brace for approximately 6 more months. Possible future surgeries were noted.

On [REDACTED], the Claimant presented at [REDACTED] for a follow-up examination. Subtalar joint ("STJ") range of motion ("ROM") was decreased with pain noted. X-rays revealed a healed comminuted calcaneal fracture with early STJ arthritis. Surgery, to include a STJ fusion, may be needed in the future however no surgical intervention would be considered until at least 8 to 12 months post injury. The Claimant was informed that the surgery may help decrease the pain, but may not nor may there be any improvement.

On [REDACTED], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The Claimant's impairment was expected to last more than 90-days and assistive devices were medically required for ambulation.

On [REDACTED], the Claimant attended a follow-up appointment at [REDACTED] [REDACTED] Pain on range of motion of the right foot and ankle joint was noted as well as a decrease in the ROM from the previous month. Steroid injections were given.

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 she does have some physical limitations on her 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, or 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 has alleged disabling physical impairments due to spinal injury and right leg and ankle pain due to fracture. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment.

The Claimant asserts impairments due to spinal cord injury and right leg and ankle 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.*

Major joints refers to the major peripheral joints. 1.00F The ankle and foot are considered separately in evaluating weight bearing. *Id.* When an individual's impairment involves a lower extremity and requires the use of 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:

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

* * *

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
- B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or
- C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic non-radicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b. (see above definition)

* * *

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.

* * *

1.08 Soft tissue injury (e.g., burns) of an upper or lower extremity, trunk or face and head, under continuing surgical management, as defined in 1.00M, directed toward the salvage or restoration of major function, and such major function was not restored or expected to be restored within 12 months of onset. Major function of the face and head is described in 1.00.

As stated, the Claimant asserts impairments due to spinal injury and right leg and ankle fracture. The medical evidence presented documents that the Claimant had a heel and leg fracture requiring the Claimant to use an assistive device to ambulate affectively. The medical records also document a burst fracture of T12 vertebral body requiring the Claimant to wear a body cast. Surgery has been discussed but will not be scheduled until at least 8 to 12 months post accident. In order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. As noted above, the Claimant is required to wear a body cast; walk with a cane; and wear a CAM boot to limit weight on her right leg and ankle. The medical records establish that the Claimant is unable without assistive devices to ambulate effectively. The Claimant's medical records establish that her impairments may meet the Listings within 1.00 as set forth above, however there was insufficient medical evidence presented to support a finding of a listed impairment. According to the medical evidence alone, the Claimant's physical impairments do not meet or equal the intent or severity of the listing requirements thus she cannot be found to be disabled for purposes of the Medical Assistance program at Step 3. 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.*

Over the past 15 years, the Claimant worked as a care provider, factory worker, and waitress whose responsibilities included lifting/carrying less than 10 pounds; walking, standing, bending, and stooping. Given these facts, the Claimant's past work history is classified as unskilled, light work.

The Claimant testified that she can lift/carry approximately 5 pounds; sit for approximately one hour and stand for approximately 20 minutes; cannot walk unassisted; and is able to grip and grasp with her right hand only. 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 care provider, factory worker, and/or waitress 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 48 years old thus considered a "younger individual" for MA-P purposes and has a limited education. 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 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. The Claimant is in a body cast and requires assistive devices to walk. The Claimant's ability to ambulate effectively is expected to last for a continuous period of at least 12 months. 20 CFR 416.909 After review of the entire record, it is found that the Claimant is disabled for purposes of the MA-P program as she is unable to perform less than sedentary work.

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, since the Claimant was found disabled for the purposes of the MA program for the period, the Claimant is found disabled for SDA purposes.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the June 24, 2007 application to determine if all other non-medical criteria are met and inform the Claimant and her representative of the determination.
3. The Department shall supplement the Claimant any lost benefits she 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 accordance department policy in February of 2010.

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

Date Signed: February 3, 2009

Date Mailed: February 6, 2009

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

cc:

A large black rectangular redaction box covers the names and contact information of the individuals listed in the 'cc:' field.