

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.: 2009-4084
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 18, 2009
Wayne County DHS (49)

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 Detroit, Michigan on March 18, 2009. The Claimant appeared and testified along with

[REDACTED] The Claimant was represented by [REDACTED]

[REDACTED] [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") 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 February 2008 on April 15, 2008. (Exhibit 1, pp. 5, 7, 8)

2. On July 16, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment(s) lacked duration of 12 months. (Exhibit 1, pp. 9, 10)
3. On July 23, 2008, the Department sent the Claimant an eligibility notice informing the Claimant that MA-P and Retro MA-P were denied. (Exhibit 1, p. 4)
4. On October 14, 2008, the Department received the Claimant’s Request for Hearing protesting the determination that he was not disabled. (Exhibit 1, p. 1)
5. On November 19, 2008, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairments are due to multiple leg fractures requiring surgery as well as a Staph infection.
7. At the time of hearing, the Claimant was 31 years old with an [REDACTED] birth date; was 6’ 0” and weighed 205 pounds.
8. The Claimant completed through the 11th grade and subsequently obtained a GED.
9. The Claimant’s work history consist of buying, repairing, and selling investment properties.
10. The Claimant’s impairment(s) has lasted, or is expected to last continuously for a period of 12 months.

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 February 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 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 multiple fractures requiring surgery as well as a Staph Infection.

██████████, the Claimant was admitted to ██████████ after falling from a two-story structure. As a result of the fall, the Claimant sustained a left calcaneus (heel) fracture which required a short leg cast, and a right tibial plafond fracture complicated by compartment syndrome which required external fixation, fasciotomies, I&Ds, and skin grafting. The Claimant was discharged on ██████████ via a wheelchair.

On ██████████, the Claimant was admitted to ██████████ for surgery to remove the right ankle external fixation and open reduction internal fixation of his right tibia. The Claimant tolerated the procedure well and was discharged on ██████████ with several pain medication prescriptions.

On May 13th, the Claimant's right distal tibia fractured was examined. The healing was complicated by a wound infection, with drainage noted.

On June 12th, the Claimant's cast was removed. No drainage was found however the Claimant was instructed to remain on Keflex.

██████████, the Claimant's surgeon submitted a Medical Examination Report on the Claimant's behalf. The Claimant was found unable to lift less than 10 pounds; unable to stand; unable to sit for less than 6 hours in an 8-hour work day; and unable to operate foot/leg controls. The Claimant remained in partial weight-bearing status.

On ██████████, the Claimant attended a follow-up appointment regarding his right distal tibia fracture status post ORIF. The Claimant's history of infection was noted as well as the irrigation and debridement of his left tibia. X-rays documented some evidence of osteopenia and delay in bone healing.

On ██████████, the Claimant was examined and found to have site drainage. The wounds were dressed and the Claimant was prescribed Keflex and Tylenol 3.

On ██████████, x-rays of the right lower extremity showed gross healing however some rotation of the internal fixation plate and screws appeared to be backing out. Considerable soft tissue swellings about the medial aspects of the right lower extremity were noted. The physical examination documented two ulcerated lesions; one located in the distal tibia and one located near the medial malleolus. The Claimant's range of motion was limited due to pain.

On ██████████ ██████████ the Claimant was admitted to ██████████ for the removal of a loose medial screw. Irrigation and debridement of the anterior tibial sinus tracts was also performed.

On ██████████ ██████████, x-rays documented the delayed healing of the comminuted distal right tibial fracture as well as significant and persistent soft tissue swelling circumferentially about the ankle. Infection was not ruled out.

On [REDACTED], an x-ray of the Claimant's right ankle documented the Claimant's internal fixation. The ORIF (open reduction with internal fixation) of the right distal tibia and fibula fractures were not completely healed and the narrowing of the ankle mortise as well as degenerative changes at the right tibiotalar joint was noted.

On [REDACTED] [REDACTED] the Claimant underwent surgery for the removal of the internal hardware as well as irrigation and debridement. The hardware was infected. A cement PMMA with antibiotics was placed in the medial side. The Claimant was put in a cast and discharged on [REDACTED]

On [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], the Claimant attended follow-up appointments from his [REDACTED] [REDACTED] surgery. The Claimant was placed in a cast and prescribed Vicodin for pain.

On [REDACTED], an x-ray of the Claimant's right ankle documented a comminuted right distal tibial fracture with extension into the tibiotalar joint along with the fracture of the distal right fibula with internal fixation with side plate and screws. Extensive sclerosis and abnormal and exuberant periosteal bone formation was noted as well as a delayed union. Subchondral sclerosis of the tibia at the tibiotalar joint suggested early posttraumatic osteoarthritis and extension of fracture. The foot demonstrated disuse osteopenia.

On [REDACTED] the Claimant attended a follow-up appointment. Antibiotics were continued and the Claimant's need for a cane was noted. A plan for removal of the antibiotic space and bone grafting was tentatively scheduled for [REDACTED].

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 she does have physical

limitations on her 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

* * *

- 1.06 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.

The medical records document several surgical procedures as a result of the Claimant's [REDACTED] fall. X-rays document the need for continued surgical intervention which is further complicated by tissue swelling and infection. In addition, the record documents the Claimant's need for assistive device in order for effective ambulation. The Claimant's impairment has lasted for a period of more than 12 months. Ultimately, based upon the submitted medical documentation, it is found that the Claimant's physical disabling impairment meets the severity requirements of Listing 1.06. Accordingly, the Claimant is found disabled at Step 3 therefore subsequent steps in the sequential evaluation process are not necessary.

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.

It is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the April 15, 2008 application which included Retro MA-P for February 2008 to determine if all other non-medical criteria are met and inform the Claimant and his representative 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 accordance department policy in April of 2010.

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

Date Signed: 03/31/09

Date Mailed: 04/03/09

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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