

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.: 2010-16946

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

June 2, 2010

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 hearing was held in Warren, Michigan on Wednesday, June 2, 2010. The Claimant appeared and testified. The Claimant was represented by [REDACTED] of [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") and State Disability Assistance ("SDA") benefit 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 March 17, 2009.

2. On June 2, 2009, the Medical Review Team approved SDA benefits but found the Claimant not disabled based on duration. (Exhibit 1, p. 19)
3. This decision was not appealed.
4. On October 22, 2009, the Claimant submitted another application for assistance seeking MA-P and SDA benefits.
5. On October 27, 2009, the Medical Review Team (“MRT”) determined that the Claimant was not disabled finding the Claimant’s impairment(s) lacked duration of 12 months or longer. (Exhibit 1, pp. 1, 2)
6. The Department notified the Claimant of the determination.
7. On November 20, 2009, the Department received the Claimant’s timely written request for hearing. (Exhibit 2)
8. On February 9, 2010, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 5)
9. The Claimant’s alleged physical disabling impairments are due to fractured tibia/fibula requiring surgical intervention with evidence of non-union.
10. The Claimant’s alleged mental disability impairment(s) are due to depression and anxiety.
11. At the time of hearing, the Claimant was 42 years old with a [REDACTED] birth date; was 5’11” in height; and weighed 180 pounds.
12. The Claimant graduated from high school and has a work history as a general laborer and journeyman.
13. 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”), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual (“BAM”), the Bridges Eligibility Manual (“BEM”), and the Bridges Reference Manual (“BRM”).

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 416.927

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 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 is made. 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)

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) 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)

In this case, the Claimant is not involved in substantial gainful activity thus is not ineligible for 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 tibia/fibula fracture requiring surgical intervention, depression, and anxiety.

In support of this claim, disability notes from the Claimant's treating physician were submitted covering the period from the [REDACTED] surgery through [REDACTED].

On [REDACTED], the Claimant presented to the hospital with leg pain. The Claimant was splinted and discharged. On [REDACTED] [REDACTED], the Claimant returned with complaints of continued pain. The Claimant underwent right tibial open reduction-internal fixation surgery without complication on [REDACTED] [REDACTED]

On [REDACTED], a Psychiatric/Psychological Evaluation was completed on behalf of the Claimant. The diagnoses were alcohol dependence in remission, hyperactive disorder, with bipolar disorder not ruled out. The Global Assessment Functioning ("GAF") was 40. The Mental Residual Functional Capacity Assessment found the Claimant markedly limited in 18 of the 20 factors.

On [REDACTED], the Claimant attended a follow-up appointment. There were not significant interval changes and his bone stimulator was to continue for another six weeks.

On [REDACTED], the Claimant attended a follow-up appointment. There was no change and the Claimant was found to be presently disabled.

On [REDACTED], a medication review was performed. The Claimant's mood was depressed and his medication was changed.

On [REDACTED], the Claimant's therapist authored a letter stating that the Claimant began treatment in [REDACTED]. The Claimant was compliant with his medication and with his participation in therapy.

On [REDACTED], the Claimant attended a follow-up appointment of his right tibia fracture. Multiple views of the right tibia/fibula were reviewed showing no significant interval change. The bone's non-union was documented.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were right tibia fracture status post open reduction internal fixation in [REDACTED]. The Claimant was restricted to occasionally lifting/carrying of 10 pounds; standing and/or walking less than 2 hours during an 8 hour workday with sitting at less than 2 hours during this same time period; but was able to perform repetitive actions with both upper extremities but not his lower. The Claimant's need for an assistive device was noted and the limitations were expected to last approximately 12 months.

On [REDACTED], a Mental Status Examination was performed. The Psychologist opined that the Claimant would be able to return to work-related activities at a sustained pace provided he remains sober and compliant with his psychiatric medication and outpatient therapy. The Claimant was diagnosed with alcohol abuse dependence, severe, recurrent early partial

remission, personality disorder, and a GAF of 50. The prognosis was guarded and the Claimant was found unable to manage benefit funds.

On [REDACTED], the Claimant attended a follow-up appointment of his right tibia/fibula non-union- 14 months status post open reduction internal fixations. There was no improvement at all even with cutting back on smoking and weight bearing as tolerated. Multiple x-rays confirmed “absolutely no interval change in the fracture” therefore a revision procedure was recommended.

On [REDACTED], a letter was authored on behalf of the Claimant stating that the Claimant is enrolled in substance abuse and psychiatric treatment (since 2008).

On [REDACTED], the Claimant underwent further surgical intervention to include a right tibia rod and open reduction internal fixation without complication due to the bone not healing from the previous procedure.

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 he does have physical limitations on his 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.*

- 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 the Claimant's tibia fracture requiring surgical intervention in [REDACTED]. Throughout the following year, x-rays establish that solid union is not present which results in the Claimant's inability to ambulate effectively. In [REDACTED], the Claimant underwent a second open reduction-internal fixation procedure. 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.

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 BAM, BEM, and BRM. 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. 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.

In this case, the Claimant is found disabled for purposes of the Medical Assistance (“MA-P”) program, therefore the Claimant’s is found disabled for purposes of the SDA benefit program.

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 and State Disability Assistance programs.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the October 2009 application to determine if all other non-medical criteria are met and inform the Claimant and his representative of the determination.
3. The Department shall, in light of the Claimant’s history of alcohol abuse, evaluate the need for a protective payee in accordance with department policy.
4. The Department shall supplement for any lost benefits that the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
5. The Department shall review the Claimant’s continued eligibility in accordance department policy in July of 2011.

Colleen M. Mamelka

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

Date Signed: 6/15/2010

Date Mailed: 6/15/2010

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.

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