

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.: 201017263

Issue No.: 2009

Case No.:

Load No.:

Hearing Date:

March 8, 2010

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter was conducted by in person hearing pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing received by the Department on December 29, 2009. At the hearing, the Claimant was present and testified along with his parents, [REDACTED] and [REDACTED]. Claimant was represented by [REDACTED]. [REDACTED], ES appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA") 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. Claimant filed for MA on October 26, 2009 and SDA in December 2009. Claimant requested MA retroactive to July, 2009. Claimant's SDA was approved by MRT.

2. Claimant is 6'5 " tall and weighs 320 pounds.
3. Claimant is right handed.
4. Claimant is 40 years of age.
5. Claimant's impairments have been medically diagnosed as depression, anxiety, insomnia, knee problems, high cholesterol, obesity, Deep Vein Thrombosis in both legs and hypertension.
6. Claimant's physical symptoms are right knee constant pain (sometimes sharp, sometimes dull, sometimes has to lie down), frozen knee – can't bend more than 25%, most of tissue removed from knee (no further option for surgery), swollen lower legs, left leg hurts b/c favors left side, lower back pain due to shifting with walker, pain in lung, shortness of breath 1x/week based on exertion, floaters in eyes, and swelling of legs.
7. Claimant's mental symptoms are some difficulty concentrating, anxiety attacks (sweating, heart beats really fast), crying spells, fear of future, nervousness, sleep disturbances (sometimes up all night) and fatigue.
8. Claimant takes the following prescriptions:
 - a) Xanax – started 2-3 months ago
 - b) Coumadin
 - c) Zocor – cholesterol
 - d) Wellbutrin SR – antidepressant (since a month ago)
 - e) Loratabs (Vicodin) – needs more if up more on leg (tries to limit)
 - f) Sinaro – blood pressure
 - g) Ambien – sleep medicine
 - h) HTZ – under lasiks water pill
10. Claimant testified to the following side effects: dizziness, upset stomach, sometimes quick to snap on Wellbutrin, sometimes does things he doesn't remember when he gets up due to Ambien, and has to be careful not to get cut because of the blood thinners.
9. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
10. Claimant has a HS grade education and one year of college.
11. Claimant is able to read, write, and perform basic math skills.

12. Claimant last worked doing landscaping from 2004 until 2008. The job required a lot of walking, riding mowers, manual labor, laying dirt and rocks, and lifting up to 50 lbs. Claimant left this job because the company went out of business.
13. Claimant has prior employment experience working at [REDACTED] restaurant as a prep cook and dishwasher. The job required that Claimant lift up to 50 lbs, stand on his feet all day, bending and stooping. Claimant also worked as a sub-custodian in 2003 for [REDACTED] – sweeping floors, taking out trash, washing boards, polishing, and lifting up to 50 lbs. From 9/88 – 12/21/01, Claimant worked at [REDACTED] as a pipefitter where he built the semi line for [REDACTED]. This job required lifting up 100 lbs., on feet and knees all day, bending and stooping.
14. Claimant testified to the following physical limitations:
 - Sitting: Claimant can sit for 1-2 hours and then gets up to walk around (back hurts). Sometimes will lie down b/c legs starts swelling and will elevate (a couple times per week will have to elevate for a couple hours). For example, Claimant went to store to get groceries with sister and was in a long line.
 - Stand: 1 hr, then sits or lies. Uses a cane in house. Claimant can only stand with an aid as his knee is instable and does not feel like it will hold him
 - Walk: 100 feet
 - Bend/stoop: none, cannot pick up anything off floor
 - Lift: 15 lbs.
 - Grip/grasp: no problems
15. Claimant performs household chores such as helping with the dishes, wiping the counters, helping fold the laundry (generally sitting). Claimant lives on first floor of his parents home. Claimant is unable to go up and down stairs.
16. Claimant testified that his hobbies have changed since his injury. Claimant now plays Scrabble, cards, and builds models with kids.
17. Claimant uses the following assistive devices
 - Rolling walker for ambulation
 - Seat extension in bathroom b/c cannot lower himself to toilet.
18. Claimant's mother testified that Claimant tries to help with household chores and then will end up paying for it because he tries to do too much. Further, because Claimant is so tall and cannot bend his leg, when he is sitting in the living room, his leg always extends into the middle of the room. Claimant also cannot drive, but will transport in a car by lying across the back seat with his leg extended.
19. The Department found that Claimant was not disabled and denied Claimant's application on November 30, 2009

20. Medical records examined are as follows:

2/26/2010 Internal Medical Exam Report (Exhibit A, pp. 1-2)

HX: Poor mobility due to frozen right knee status post arthroplasty and complication of septic joint with multiple incision & drainage procedures. Continues to have extreme pain with little to no mobility or knee stability. Multiple deep vein thromboses and pulmonary embolism status pos IVC filter and chronic anti-coagulation therapy but in a hypercoaguable state.

CURRENT DX:

1. Right frozen knee
2. Deep vein thrombosis
3. Depression
4. Hyperlipdemia
5. Hypertension
6. R/O pulmonary embolism
7. Obesity
8. R/O left knee arth.
9. Insomnia

MUSCULOSKELETAL: Limited rt knee ROM (10-15 degrees) with pain upon weight bearing and lateral instability. Frozen knee. Left knee limited ROM r/o arthroplasty – 30 degrees.

PHYSICAL LIMITATIONS: Lifting 10 lbs occasionally, Standing/walking less than 2 hours per day, sitting 6 hours per day. Needs rolling walker with ambulation

12/30/09 Internal Medical Exam Report (Exhibit 1A)

9/22/09 X-ray right knee (Exhibit A, p. 4)

Irregular calcification of the soft tissue surrounding the knee joint likely relating to remote history of right knee wound infection requiring debridement.

9/19/09 Lower Extremity Venous Duplex Bilateral (Exhibit A, p. 9)

IMPRESSION: Acute DVT noted in the right gastronemius vein. Acute DVT noted in the right soleal veins.

9/14/09 – 9/27/09 Hospital Admission (Exhibit 2)

DX: Right lower lobe pulmonary embolism, left lower extremity DVT, status post IVC filter, hypertension, lightheadedness, hyperlipidemia, bilateral knee surgery, depression, external hemorrhoids.

8/25/09 – 8/31/09 Hospital Admission (Exhibit 1, p. 98)

Admitted from clinic for right leg swelling due to DVT – given Coumadin therapy.

7/6/09 Orthopaedic Surgery (Exhibit 1, p. 10-11)

DX: Right knee wound infection

OPERATION: Irrigation and debridement, right knee wound

7/31/09 Ortho Consult (Exhibit 1, p. 165)

Pt presents complaining of right calf swelling and increased tenderness in knee.

6/20/09 Hospital Admission (Exhibit 1, p. 19)

HX: Pt fell fractured patella and subsequent repair. Pt presents with septic arthritis of knee and cultures show growth of staphylococcus aureus.

PROCEDURE: Right knee irrigation and debridement

6/5/09 – 6/10/09 Hospital Admission

DX: Patellar fracture

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.1 *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

. . . the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.”

20 CFR 416.905.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made

at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

1. Current Substantial Gainful Activity

Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. “Substantial work activity” is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). “Gainful work activity” is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In the subject case, the Claimant has not worked since 2008. Therefore, he is not disqualified at the first step.

2. Medically Determinable Impairment – 12 Months

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

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing and speaking;

- (3) Understanding, carrying out, and remembering simple instructions.
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting.

20 CFR 416.921(b).

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

In this case, the Claimant has presented medical evidence of hypertension, depression, anxiety, frozen right knee post arthroplasty, obesity, and deep vein thromboses with Coumadin therapy. In addition, Claimant can only ambulate with a rolling walker. Claimant has been placed on physical restrictions by his physician. The medical evidence has established that Claimant has physical impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments have or are expected to last continuously for more than twelve months.

3. Listed Impairment

After reviewing the criteria of listings 1.02 *Major dysfunction of a joint (due to any cause)*, the undersigned finds the Claimant’s medical records substantiate that the Claimant’s

mental impairments meets or is medically equivalent to the listing requirements. 20 CFR 404, Appendix 1 to Subpart P, § 1.02 describes how the how a major dysfunction of a joint is assessed:

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 finding 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 inability to ambulate effectively, as defined in 1.00B2b.

20 CFR 404, Appendix 1 to Subpart P, § 1.00B2b describes what it means to Ambulate Effectively:

(2) *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. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities such as shopping and banking and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The inability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

In the present case, Claimant has a medically documented frozen knee which causes him extreme pain and little to no mobility or knee stability. The knee is a weight bearing joint and the instability affects Claimant's ability to ambulate effectively as he can only move with a walker. Claimant would be unable to utilize public transportation in his current state as he has extreme difficulty with steps and needs to extend his leg on his 6'5" frame out at all times. The Administrative Law Judge finds that Claimant is not ambulating effectively and, therefore, his

medical condition meets or is substantially equivalent to the requirements of Rule 1.02 *Major dysfunction of a joint..* 20 CFR 404, Appendix 1 to Subpart P, Rule 1.02.

Considering all of the above, the undersigned finds the Claimant's medical records substantiate that the Claimant's mental impairments meets or are medically equivalent to the listing requirements of 1.04(A). In this case, this Administrative Law Judge finds the Claimant is presently disabled at the third step for purposes of the Medical Assistance (MA) program. As claimant is disabled, there is no need to evaluate Claimant with regards to the fourth or fifth steps.

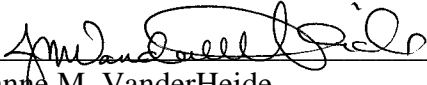
In this case, there is sufficient evidence to support a finding that Claimant's impairment has disabled him under SSI disability standards. This Administrative Law Judge finds the Claimant is "disabled" for purposes of the MA and SDA programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is medically disabled under the MA program as of October 26, 2009 including any retroactive benefits applied for.

Therefore, the department is ordered to initiate a review of the application of October 26, 2009, if not done previously, to determine claimant's non-medical eligibility.

The department shall inform the claimant of the determination in writing. The case shall be reviewed in April, 2011.

/s/ 
Jeanné M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 1, 2010

Date Mailed: April 1, 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 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court 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.

JV/hw

cc:

