

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.: 201019666
Issue No.: 2009
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 25, 2010
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was held on March 25, 2009. The Claimant was present and testified. [REDACTED], Claimant's mother, also testified on behalf of Claimant. Claimant was represented by [REDACTED] of [REDACTED]. [REDACTED], from [REDACTED] was observing. [REDACTED], Assistant Payment Worker, appeared on behalf of the Department.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of 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 July 23, 2009. Claimant requested MA retroactive for the month of July.

2. Claimant is 5'5" tall and weighs 180 pounds.
3. Claimant is 33 years of age.
4. Claimant's impairments have been medically diagnosed as gunshot wounds to the abdomen and leg with multiple small bowel injuries including duodenal injury and superior femoral artery transection, requiring 7 ½ months hospitalization and nine separate surgeries. Claimant was unconscious for the first 45 days. Claimant's injuries also resulted in chronic abdominal pain and oral methadone therapy. Claimant will be required to undergo two separate future surgeries for removal of the bullets.
5. Claimant's physical symptoms are pain in bottom of foot (dull and aching, 6-8/10), no feeling in right leg from the knee down, stomach pain (more than two hours per day), difficulty walking, and unable to drive.
6. Claimant takes the following prescriptions:
 1. Methadone 5 mg – pain
 2. Muscle relaxer – Robaxin
 3. No over the counter pain meds.Side effects include addiction.
7. Claimant's impairments will last or have lasted for a continuous period of not less than 12 months.
8. Claimant has a HS degree and 2 years of college education. Claimant is certified in computer programming.
9. Claimant is able to read, write and perform basic math.
10. Claimant last worked as cashier at party store. The job required standing on his feet, bending and stooping but no lifting.
11. Claimant has prior employment experience as party store clerk. Job duties included lifting and filling coolers (50 lbs). Claimant also did data entry in 2002, which was a sitting job.
12. Claimant testified to the following physical limitations:
 - Sitting: can sit for two hours. Then gets pain in stomach. Nerve damage from blood retained in body. Had to cut stomach and leg to drain blood. Drs said that it will be a year at least until see what result is. Claimant often needs to take a muscle relaxer and lie down.
 - Stand: 15-20 minutes
 - Walk: less than a block

- bend/stoop: no muscle control in leg so can't bend without sticking leg way out.
 - Lifting: No allowed to lift anything.
13. Claimant does not perform any type of household chores. Claimant is able to make his bed and clear dishes. Sometimes Claimant will wash the dishes. He is able to put things in microwave, but his mom generally cooks everything.
 14. The Department found that Claimant was not disabled and denied Claimant's application on January 7, 2010.
 15. Medical records examined are as follows, in part:

7/29/09 General Surgery/Trauma Medical Exam Report

Gunshot to the abdomen and thigh with multiple small bowel injuries including duodenal injury and superior femoral artery transection.

PHYS LIMITATIONS: No lifting, less than 2 hrs stand/walk, wheelchair bound, no motor movement of right leg, multiple debridements of calf

Will need acute rehab before returning home.

12/1/09 Medical Exam Report (Exhibit A1)

HX: Gunshot wound to right leg and abdomen.

PHYSICAL LIMITATIONS: Stand/walk less than 2 hours in 8 hour work day. Using wheeled walker, foot drop, no right operation of foot/leg controls. Not able to use abdominal muscle for moving objects.

2/4/09 Operations (Exhibit B2)

1. Lysis of adhesions
2. Explorator laparotomy
3. Closure of gastrocutaneous fistula
4. Close of enterocutaneous fistula
5. Small bowel resection x2 with primary anastomosis
6. Closure of complex ventral incisional hernia with 16x20 cm piece of AlloDerm and separation of components

3/12/10 Dr. Report (Exhibit C)

PROBLEM LIST: 1. Status post gunshot wound on 7/22/09 with trauma to the right superficial femoral artery and abdominal trauma; 2. Status post extensive surgical repair of the above injuries with ultimate resolution of surgical problems and discharge on 3/1/10; 3. Chronic abdominal pain syndrome post trauma requiring oral methadone therapy.

HX: Following gunshot wound, Claimant was admitted to hospital and had series of re-explorations dated on July 24th, July 27th, July 30th, August 1st, August 3rd, August 5th, August 13th and August 29th primarily for re-exploration and cleansing of the abdominal wounds. Split thickness skin graft to abdominal wound on August 13th and also

tracheostomy on August 13th. Monitored for six months to allow “maturation” of the fistulae.

5/9/10 Physician Documentation Sheet (Exhibit D5)

HX: Pt presents with severe abdominal pain and worsening

DX: Small bowel obstruction, admitted to hospital for surgery

5/10/10 – 5/12/10 Hospital Admission (Exhibit E1)

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

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). 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 he has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, he is not disabled regardless of how severe his physical and mental impairments are and regardless of his age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

In this case, under the first step, the Claimant last worked on the date that he was shot, July 23, 2010. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

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 voluminous medical evidence showing a 7/23/09 gunshot wound to the stomach and leg, nine surgeries and almost eight months of hospitalization. Claimant’s last abdominal surgery was on 5/10/10. Claimant is expected to undergo two additional surgeries to remove the bullets. Accordingly, the medical evidence has established that Claimant has physical and mental impairments that have more than a minimal effect on basic work activities; and Claimant’s impairments are expected to last for more than twelve months. It is necessary to continue to evaluate the Claimant’s impairments under step three.

3. Listed Impairment

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404.

Based on the hearing record, the undersigned finds that the Claimant's medical record will not support findings that the Claimant's physical and mental impairment are "listed impairment(s)" or equal to a listed impairment. 20 CFR 416.920(a) (4) (iii). According to the medical evidence, alone, the Claimant cannot be found to be disabled. Sequential evaluation under step four or five is necessary. 20 CFR 416.905.

4. Ability to Perform Past Relevant Work

In the fourth step of the sequential evaluation of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevent him/her from doing past relevant work. 20 CFR 416.920(e). Residual functional capacity (RFC) will be assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what one can do in a work setting. RFC is the most one can still do despite limitations. All the relevant medical and other evidence in the case record applies in the assessment.

Claimant has presented medical evidence supporting ongoing medical problems related to gunshot wounds sustained in July 2009. Claimant has undergone nine separate surgeries primarily for re-exploration and cleansing of the abdominal wounds. Most recently, Claimant underwent abdominal surgery for small bowel obstruction. Claimant was initially unconscious for 45 days and spent close to eight months in the hospital recovering from the gunshot wounds. Claimant testified to ongoing and significant physical limitations. Claimant's prior employment included party store cashier, party store clerk and data entry. Cashier and party store clerk both qualify as light exertional level as significant standing is required. Data entry is considered sedentary provided there is no significant lifting of large files required.

At the hearing, the Claimant testified that he is unable to stand for more than 15 to 20 minutes or sit for more than two hours in an 8 hour work day. Therefore, the undersigned finds

the Claimant currently limited to less than sedentary work. Claimant is unable to return to past relevant work in any of the above listed prior occupations. Evaluation under step five will be made according to the law.

5. Ability to Perform Other Work

In the fifth step of the sequential evaluation of a disability claim, the trier of fact must determine: if the claimant's impairment(s) prevent him/her from doing other work. 20 CFR 416.920(f). This determination is based on the claimant's:

- (1) "Residual function capacity," defined simply as "what you can still do despite your limitations," 20 CFR 416.945.
- (2) Age, education and work experience, and
- (3) The kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her impairments.

20 CFR 416.960. *Felton v. DSS*, 161 Mich. App. 690, 696-697, 411 N.W.2d 829 (1987).

It is the finding of the undersigned, based upon the medical evidence, objective physical findings, and hearing record that Claimant's RFC for work activities on a regular and continuing basis is functionally at the level of less than sedentary work as sedentary work requires sitting generally about six hours in an eight hour work day. 20 CFR 416.967, SSR 83-10 and SSR 96-8p.

Claimant at thirty-three (33) is considered a *younger individual*; a category of individuals in age group 18-44 when age is a more advantageous factor for making adjustment to other work. "It is usually not a significant factor in limiting such individual's ability to make an adjustment to other work, including an adjustment to unskilled sedentary work, even when the individuals are unable to communicate in English or are illiterate in English." 20 CFR 404, Appendix 2 to Subpart P, Rule 201.20. Claimant has a high school education plus some college

and is literate. However, at this point in Claimant's recovery, he would not be able to withstand the exertional requirements of any job as he is unable to remain sitting for any length of time.

The Administrative Law Judge finds that the Claimant's physical impairments and limitations have a major effect upon claimant's ability to perform basic work activities. Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a) because of the nature of the limitations. The total impact caused by the combination of medical problems suffered by the claimant must be considered. The combination of claimant's impairments result in a severe impairment which limits claimant's ability to work. 20 CFR 404.1529.

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

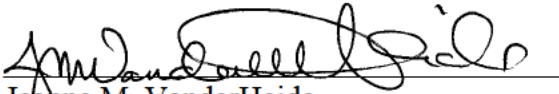
DECISION AND ORDER

The Administrative Law Judge, based on the findings of fact and conclusions of law, decides that the Claimant is "disabled" for purposes of the Medical Assistance Program including any retroactive benefits applied for.

It is ORDERED; the Department's determination in this matter is REVERSED.

Accordingly, The Department is ORDERED to initiate a review of the July 23, 2009 application to determine if all other non-medical eligibility criteria are met. The Department shall inform Claimant of its determination in writing. Assuming Claimant is otherwise eligible for program benefits, the Department shall review Claimant's continued eligibility for program

benefits in January 2011.

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

Date Signed: June 30, 2010

Date Mailed: June 30, 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 Circuit Court within 30 days of the mailing 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:

