

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 2011-12779

Issue No: 4031

Case No: [REDACTED]

Load No:

Hearing Date:

February 22, 2011

Saginaw County DHS

ADMINISTRATIVE LAW JUDGE: Jay W. Sexton

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 February 22, 2011, in Saginaw. The claimant personally appeared and testified under oath.

The department was represented by Turkessia Bracey (ES).

The Administrative Law Judge appeared by telephone from Lansing.

ISSUE

Did DHS establish medical improvement that enables claimant to perform substantial gainful activity for SDA purposes?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) In May 2010, claimant was approved by the department for SDA benefits.
- (2) In 2010, the approval was based on claimant's combined physical impairments:
 - (a) Including osteoarthritis over the whole body,
 - (b) Torn left rotator cuff (November 2009),

- (c) Broken left wrist (November 2009), and
 - (d) Chronic fatigue.
- (3) Claimant's vocational factors are as follows: age—48; education—high school diploma, post high school education—none; work experience—dishwasher at local restaurant, infantry soldier for [REDACTED].
- (4) Claimant has not performed substantial gainful activity (SGA) since November 2009 when he worked as a dishwasher at a local restaurant.
- (5) Claimant has the following unable-to-work complaints:
- (a) Chronic osteoarthritis of the whole body;
 - (b) Torn left rotator cuff (November 2009);
 - (c) Chronic fatigue;
 - (d) Left wrist fracture (November 2009);
 - (e) Migraine headaches;
 - (f) Takes medications for chronic migraine Headaches.
- (6) A [REDACTED] consulting internal medicine report was reviewed:

The physician provided the following history:

Apparently claimant hurt his lower back in 1980. He had a bad relationship with a person; he does not want to say if it is male or female. The person pushed him down two stairs and he hurt his lower back. He went to the emergency room. They did an x-ray, and told him he might have a chipped fracture. It was treated symptomatically with pain medication. In 1990, he had a car accident where two or three cars collided with the Cadillac he was driving. He injured his lower back. At that time, x-rays did not show much and he was treated with muscle relaxant and pain medication. He says in 1998 or so he got hurt again while he was working at [REDACTED]. He was trying to lift something and hurt his lower back. He did get an injection of cortisone at that time from his family physician and also got pain medicine. He has not had any other treatment, except that he was told he may have degenerative disc disease at the time by the x-ray. He says that his back is getting worse now. The pain is aggravated by standing for a long time,

walking about half a block or bending or lifting anything over 20 pounds. He has no numbness in the legs. He has good control of the bowels and urine. He takes Meloxicam 50 mg once a day, Vicodin 500 mg once a day which relieves his pain to a great extent. It can relax him too much so that he feels like his muscles are weak.

He says he has bilateral knee pain, but the left knee does not bother him; it is the right knee that bothers him more. It has been bothering him for the last two years. An x-ray of the right knee done a few months ago showed that he has arthritis and some cartilage damage. No physical therapy was given; no injection treatment was given. He has not seen a specialist because he has [REDACTED] which does not provide specialist care, as per patient. He has been using a cane and it helps him to walk. It also helps him to balance. He fell at home a few months ago. At that time the x-ray showed early osteoarthritis, mild. He is single and lives by himself. He does his own cooking, cleaning, washing, vacuuming, etc. in the house. He does not have any help and is able to take care of himself.

Apparently, he got up at 5:30 in the morning on 11-17-2009. He was getting dressed to go to work. At that time he was working for [REDACTED]. While he was in his driveway, his knee buckled and he fell down and broke his left radius. He went to the emergency room and they did x-rays and put him in a cast for two months. After that he was told to use a brace and he has been using that. He has some pain in the left wrist when he uses it repeatedly. He does not have the same good grip he used to have before. He has not gone back to work since he broke his wrist. I asked him whether or not they released him back to work; he did not answer. His dominant hand is his right hand.

* * *

CHART REVIEW:

Claimant had a distal radial fracture for which he had splinting and casting in the past. He right knee pain due to arthritis. An x-ray of the right knee shows

minimal osteophyte lipping close to the posterior patella. Otherwise, the x-ray was normal. **An x-ray of the left wrist shows an acute radial fracture.** He had work-up for rheumatoid arthritis and it was negative.

CONCLUSION:

After examination and reviewing the chart, it appears that this patient broke his left wrist and it has healed fairly well. He still has poor grip in the left hand. He has arthritis in the right knee clinically. X-rays showed minimal osteophyte lipping. He has decreased range of motion of the right knee. He has clinical evidence of lumbosacral myofascitis with normal range of motion. No radiculopathy felt in either leg. He came into the office holding a cane in his right hand. He was asked to walk without the cane and he walked across the room with some limping. He did not need a cane for walking short distances.

* * *

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The department denied claimant's request for ongoing SDA based on the following:

Based on the following analysis provided on the FIA-282 (State Hearing Review Team decision).

MEDICAL SUMMARY:

NEWLY SUBMITTED EVIDENCE:

On 7/2010, an MRI of the left shoulder showed mild bursitis. The right knee x-ray showed mild osteophyte lipping close to the patellar. (Page 54.) The left wrist x-ray done 3/10 showed acute radial fracture. The physical examination

showed a decrease in range of motion and swelling of the wrist due to the recent fracture. He had limited range of motion of the right knee and ambulated with a cane. There were no sensory or motor deficits. (Pages 30-33.)

* * *

ANALYSIS:

Per 20 CFR 416.909, the claimant's wrist fracture is not expected to last for a continuous period of 12 months. The newly submitted evidence does not significantly or materially alter the previous recommended decision.

* * *

DHS did not meet its burden of proof to establish medical improvement that enables claimant to perform substantial gainful activity (SGA) for SDA purposes, for the following reasons:

FIRST: The medical record shows a left wrist fracture (November 2009) which is still symptomatic, and a significant debilitating factor in claimant's ability to repeatedly lift 15 pounds in a work setting. DHS did not present evidence which shows significant improvement in claimant's left wrist fracture.

SECOND: The medical record shows a left rotator cuff dysfunction due to the November 2009 fall. This injury, along with claimant's left wrist fracture, were the basis for claimant's original SDA approval in May 2010. The left rotator cuff injury, coupled with the nonunion left wrist injury, continued to inhibit claimant's ability to perform repeated lifting and carrying of 10 to 15 pounds in a work setting. DHS did not show significant improvement in claimant's left rotator cuff injury based on current medical evidence.

THIRD: The medical record shows right knee dysfunction that impairs claimant's ability to work normally and perform work which requires eight hours of constant standing. DHS did not show significant improvement in claimant's right knee dysfunction based on current medical evidence.

In summary, DHS did not provide new medical evidence to show that claimant is able to perform his former work as a dishwasher, or other similar medium level work.

The evidence of record supports the continuation of claimant's SDA benefits because it establishes that claimant's medical condition has not improved since his approval in May 2010. PEM/BEM 261.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that claimant continues to meet the SDA disability requirements under PEM/BEM 261.

Based on claimant's testimony, and the additional medical evidence noted above, the department has not established that claimant's impairments have improved to the extent that claimant is now able to work.

Accordingly, the department's decision to close claimant's SDA based on medical improvement is, hereby, REVERSED.

SO ORDERED.

/s/

Jay W. Sexton
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: May 31, 2011

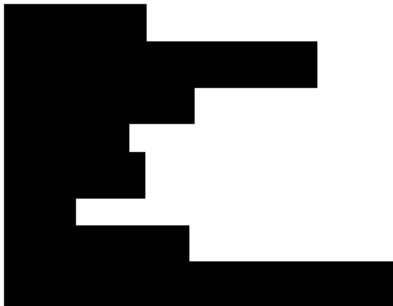
Date Mailed: June 1, 2011

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 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.

JWS/tg

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