

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg No.: 2012-62097
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 24, 2012
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

AMENDED HEARING DECISION

This decision is amended to correct a clerical error contained in the Decision and Order.

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 Taylor, Michigan on Monday, September 24, 2012. The Claimant appeared and testified. The Claimant was represented by [REDACTED] Inc. Participating on behalf of the Department of Human Services ("Department") was [REDACTED]

During the hearing, the Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On November 5, 2012, this office received the SHRT determination which found the Claimant not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit 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 an application for public assistance seeking MA-P benefits, retroactive to October 2011, on January 30, 2012.

2. On April 2, 2012, the Medical Review Team ("MRT") found the Claimant not disabled. (Exhibit 1, pp. 2, 3) written request for hearing.
3. On August 15th and October 20, 2012, the SHRT found the Claimant not disabled. (Exhibit 4)
4. The Claimant alleged physical disabling impairments due to ankle/foot pain status post surgery with hardware, arthritis, emphysema, high blood pressure, diabetes, and gout.
5. The Claimant has not alleged any mental disabling impairment(s).
6. At the time of hearing, the Claimant was 60 years old with an [REDACTED], birth date; was 5'11½" in height; and weighed 245 pounds.
7. The Claimant is a college graduate with vocational training and an employment history chef, carver, and assistant manager.
8. The Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance 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, 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 Tables ("RFT").

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 416.913. 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 416.945(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 outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, 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 416.920(a)(4)(ii); 20 CFR 416.920(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 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(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 non-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 ankle/foot pain status post surgery with hardware, arthritis, emphysema, high blood pressure, diabetes, and gout.

On September 22, 2011, the Claimant presented to the emergency room with right ankle injury with deformity.

On September 29, 2011, the Claimant sought treatment for right ankle pain after a fall. The Claimant underwent a closed reduction for a fracture dislocation and was unable to ambulate. A open reduction internal fixation ("ORIF") was recommended.

On October 5, 2011, the Claimant underwent an ORIF of his right ankle due to a trimalleolar fracture and syndesmotic injury without complication.

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On October 25, 2011, the Claimant attended a follow-up appointment for his right ankle. The cast was removed; the incision healed, and mild swelling was noted. The Claimant was placed in a short-leg cast and was instructed not to put any weight on the ankle/foot.

On December 2, 2011, the Claimant attended a follow-up appointment for his right ankle. The Claimant was progressing well noting he may be weight-bearing as tolerated. Limited ankle motion was documented.

On December 22, 2011, the Claimant attended a follow-up treatment for his right ankle. The Claimant was healing well; however required a wheelchair. Moderate swelling was noted.

On January 11, 2012, the Claimant underwent removal of right ankle syndesmotic screw without complication.

On January 12, 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnosis was right ankle trimalleolar fracture. The Claimant was non-weight bearing and in a wheelchair. The Claimant's condition was improving; however, he required assistance with activities of daily living.

On January 24, 2012, the Claimant attended a follow-up visit for his right ankle. Mild swelling was noted.

On February 7, 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were right ankle trimalleolar fracture and syndesmotic injury. The Claimant was non-weight bearing and he required assistance with transportation.

On February 16, 2012, a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were right ankle trimalleolar fracture and syndesmotic injury. The Claimant was non-weight bearing; however the clinical impressions were improving. The Claimant required assistance with transportation.

On March 6, 2012, the Claimant sought treatment for his right ankle status post ORIF fracture. Swelling of the ankle and foot was moderate to severe with tenderness to palpitation. X-rays showed mild widening of the medial clear space with increased widening of the syndesmosis. The impressions were failure of syndesmotic healing and surgical intervention was recommended for stabilization of syndesmosis.

On March 11, 2012, the Claimant presented to the hospital with complaints of right ankle pain and swelling after having x-rays on March 6th. The Claimant was unable to

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put any weight on his foot. The Claimant was treated (with surgery scheduled) and instructed to elevate leg when sitting.

On March 14th, the Claimant underwent ORIF of the right ankle due to a failed healing of the right syndesmosis injury without complication.

On March 26, 2012, the Claimant attended a follow-up appointment for his right ankle. The incisions were clean and dry and the staples were removed. Mild swelling of the foot and ankle was noted. The Claimant was placed in a short-leg cast and was instructed to not put any weight on the foot/ankle.

On April 23, 2012, the Claimant attended a follow-up appointment for his right ankle. X-rays showed hardware intact. The Claimant was to continue to be non-weight bearing for another week.

On May 14, 2012, the Claimant attended a follow-up appointment for ORIF of the right ankle syndesmosis. The Claimant was weight-bearing as tolerated.

On May 16, 2012, the Claimant attended a consultative physical evaluation. The physical examination revealed severe swelling of the right foot and ankle with moderate tenderness at the foot /ankle along with very limited range of motion. Severe edema was also present. The impressions were history of trimalleolar fracture to the right ankle, ORIF, chronic right foot pain and severe swelling, chronic low back pain (non-radiating), diabetes mellitus (controlled), history of gout and asthma, borderline hypertension, and wheelchair bound. The Claimant required assistance with personal care issues such as dressing and getting out of the tub. The Claimant was found, at this point, significantly limited in what he can do. The ability to perform work-related activities such as bending, stooping, lifting, walking, crawling, squatting, carrying traveling, and push/pull heavy objects was significantly impaired. The Claimant was unable to bear weight on his right leg.

On this same date, a Medical Source Statement of Ability to do Work-Related Activities was completed on behalf of the Claimant. The Claimant was found able to lift/carry less than 10 pounds; sit for 8 hours (due to wheelchair confinement), able to perform repetitive actions with his upper extremities with the exception of pushing/pulling.

On June 7, 2012, the Claimant attended a follow-up appointment. The physical examination revealed moderate swelling about the right ankle. X-rays showed intact hardware about the lateral malleolus. The Claimant was instructed to wear compression stocking and elevate as needed. The Claimant was weight-bearing as tolerated.

On July 5, 2012, the Claimant attended a follow-up appointment for his right ankle. X-rays showed mild lucency about the syndesmotic screws. The physical examination noted moderate swelling of the ankle with tenderness to palpitation.

On August 6, 2012, the Claimant attended a follow-up appointment for his right ankle. Right ankle swelling was noted albeit improved from prior visit. X-rays revealed no significant change in position of the hardware. The Claimant's hardware was to be removed in 4 weeks.

On September 4, 2012, the Claimant attended a follow-up appointment for his right ankle with complaints of pain and swelling. The physical examination documented mild to moderate swelling over the medial aspect of the ankle along with tenderness to palpitation over the mediolateral aspect. X-rays revealed loosening around the syndesmotic screws. Removal of the screws was recommended.

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 some medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that 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 evidence confirms treatment/diagnoses of trimalleolar fracture to the right ankle, ORIF, chronic right foot pain and severe swelling, chronic low back pain (non-radiating), diabetes mellitus (controlled), history of gout and asthma, and borderline hypertension.

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. 1.00B2a The inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities. 1.00 B2c In other words, an impairment(s) that interferes very seriously

with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use the upper extremities effectively, an individual must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. 1.00B2c Examples include the inability to prepare a simple meal, feed oneself, take care of personal hygiene, sort/handle papers/files, or place items in a cabinet at or about the waist level. 1.00B2c Pain or other symptoms are also considered. 1.00B2d

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

In this case, the evidence shows that the Claimant suffered a right ankle syndesmotic injury and trimalleolar fracture in September 2011. The first ORIF failed, resulting in a second ORIF in March. In May, the Claimant remained non-weight bearing. The evidence confirms limited range of motion and joint stiffness resulting in the inability to ambulate effectively a year after the initial injury. The most recent x-rays (September 2012) revealed loosening around the syndesmotic screws with the recommendation for removal. In light of the foregoing, it is found that Claimant's impairments meet, or are the medical equivalent thereof, a Listed impairment within 1.00, specifically 1.02A. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds the Claimant disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

1. The Department's determination is **REVERSED**.
2. The Department shall initiate processing of the January 30, 2012 application, retroactive to October 2011, to determine if all other non-medical criteria are met and inform the Claimant and his Authorized Hearing Representative of the determination in accordance with Department policy.
3. The Department shall supplement for lost benefits (if any) that the Claimant 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 December 2013, in accordance with Department policy.

Colleen M. Mamelka

Colleen M. Mamelka
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: February 27, 2013

Date Mailed: February 27, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

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Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

