

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

IN THE MATTER:



Reg No. 2012-8215
Issue No. 2009
Case No. [REDACTED]
Hearing Date: February 9, 2012
DHS Special Processing

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 9, 2012. Claimant personally appeared and testified.

ISSUE

Did the department properly determine Claimant is not disabled by Medicaid (MA) eligibility standards?

FINDINGS OF FACT

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

- (1) On May 27, 2011, Claimant filed an application for MA benefits alleging disability.
- (2) On September 15, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P indicating that Claimant's physical impairment lacked duration of 12 months, pursuant to 20 CFR 416.909.
- (3) On October 20, 2011, the department caseworker sent Claimant notice that his application was denied.
- (4) On October 31, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On November 8, 2011, the State Hearing Review Team (SHRT) also denied Claimant's MA due to lack of duration pursuant to 20 CFR 416.909. (Department Exhibit B, p 1).

- (6) Claimant has a history of knee problems, and bipolar disorder.
- (7) On June 3, 2011, saw his family physician and was diagnosed with skin lesions. Associated symptoms included erythema and a purulent lesion discharge. Claimant was prescribed Tramadol and Keflex. His associated musculoskeletal exam was normal, no joint deformities or abnormalities with normal range of motion for all four extremities for his age. (Department Exhibit A, pp 23-24).
- (8) On June 18, 2011, Claimant was brought into the emergency department by ambulance after running into a dog on his motorcycle. Claimant had acute onset of bilateral leg pain and once at Munson Medical Center, level I trauma activation began. The on-call orthopedic surgeon consulted assessed Claimant post motorcycle crash with open right proximal tibia fracture and left avulsion of the fibular head with suggestion of possible severe ligamentous injury, left knee. The x-ray of Claimant's left knee revealed an acute, displaced avulsion-type fracture involving the superolateral aspect of the fibular head with a few distracted fracture fragments seen along the lateral periphery of the left knee joint. A lateral collateral ligamentous injury is suspected. There was subtle concavity seen along the medial periphery of the articular surface of the medial femoral condyle suspicious for a subtle impaction-type injury, and a small knee joint effusion. A CAT scan of Claimant's right knee revealed an acute oblique comminuted fracture of the proximal right tibia metaphyseal region without extension to the joint surface of the proximal tibia. Comminuted fracture fragments were displaced with gas projected throughout the soft tissues of the proximal right lower extremity, and an acute right proximal fibular fracture with displacement. (Department Exhibit B, pp 48-49).
- (9) On June 20, 2011, Claimant's surgeries on his right knee included: open reduction internal fixation of proximal tibial shaft fracture; 6 cm wound closure; removal of external fixation; irrigation and debridement of open tibia fracture to bone; application of uniplane external fixation, tibia; application of VAC dressing, tibia; and arthroscopy with diagnostic and operative arthroscopy with chondroplasty of the patella. The post-op x-ray showed there had been an interval open reduction and internal fixation of an acute, markedly comminuted fracture involving the proximal tibial metadiaphysis. Alignment was slightly improved when compared to the pre-op exam. The orthopedic hardware appeared uncomplicated. There was also an acute, mildly displaced oblique fracture involving the proximal fibular shaft which appeared unchanged in alignment. The x-ray of Claimant's left foot revealed acute fractures involving the distal left 2nd through 4th metatarsals. The MRI results of Claimant's left knee showed a lateral collateral ligament tear, a tear of the insertion of the iliotibial band, avulsion of the insertion of the biceps femoris tendon with a large fragment of the fibular head retracted superiorly with the biceps tendon, bucket handle tear of the medial meniscus,, ACL tear, PCL tear, popliteus muscle

tear with some attenuation of the popliteal tendon but the tendon appeared intact, and bone contusions along the medial aspect of the knee. (Department Exhibit B, pp 18, 34-37).

- (10) On June 27, 2011, Claimant's surgeries included: left knee posterior cruciate ligament reconstruction, left knee arthroscopy with anterior cruciate ligament reconstruction, left knee lateral collateral ligament reconstruction, left open reduction internal fixation of proximal fibula (fibular head) fracture, left knee arthroscopy with lateral meniscal repair, and left knee arthroscopy with medial meniscectomy. (Department Exhibit B, pp 8, 23-29).
- (11) On July 6, 2011, Claimant's left knee x-ray post-op showed stable position of the hardware. There had been no fracture. Claimant was instructed to be non-weight bearing for 6 weeks and he was allowed to open the brace to range of motion from 0-90 degrees. (Department Exhibit B, p 30).
- (12) On July 29, 2011, Claimant's orthopedic surgeon restricted Claimant's ability to drive for a period of 6 weeks following surgery. According to the restrictions, Claimant could resume driving after being cleared by his surgeon and after he had stopped taking narcotic pain medication. (Department Exhibit B, p 21).
- (13) On July 28, 2011, Claimant's physician completed a medical examination indicating Claimant was currently in a wheel chair with both legs in braces. He was also depressed with multiple injuries and continuous severe pain. Claimant's physician indicated Claimant was stable but unable to meet his own needs in his home, requiring assistance with cooking, bathing, cleaning, and toilet use. (Department Exhibit A, pp 19-20).
- (14) On August 9, 2011, Claimant saw his orthopedic surgeon, 43 days post-op. Pain was mild, he was using a wheelchair, no instability and his leg strength was improving with limited activity. Left lower extremity neurovascular status intact. An x-ray showed the proximal tibia fracture and hardware remained in stable position. There was evidence of further healing from the prior x-rays. The surgeon opined that Claimant was doing very well. On his left leg, he can bear weight as tolerate with the brace on. He can begin physical therapy focusing on range of motion and gait training. (Department Exhibit B, pp 16-17).
- (15) On August 10, 2011, Claimant's orthopedic surgeon prescribed the following physical therapy orders for right open proximal tibia fracture. Physical therapy twice a week for 6 weeks. In two weeks, Claimant was to be 50% weight bearing (approximately 8/23/11). Okay to start aqua therapy at that time. In four weeks, (approximately 9/6/11), Claimant could be weight bearing on land. Additional instructions were not to start

physical therapy on Claimant's right leg until after 8/23/11. (Department Exhibit B, p 11).

- (16) On August 30, 2011, Claimant's orthopedic surgeon prescribed Claimant crutches for 3 months to assist with gait training. (Department Exhibit B, p 8).
- (17) On October 4, 2011, Claimant's primary physician completed an assessment of Claimant's mental ability to do work-related activities. According to the assessment, Claimant was first diagnosed with bipolar disorder at the age of 17. Regarding Claimant's mental ability and aptitude to do unskilled work, his physician indicated he had poor or no abilities to respond appropriately to changes in a routine work setting or deal with normal work stress. His physician opined that Claimant feels anger and focus issues persist. Regarding Claimant's mental abilities and aptitude to do semi-skilled or skilled work, his physician indicated Claimant had poor or no ability to deal with stress of semi-skilled and skilled work, opining that Claimant has a hard time to remember work details. Regarding Claimant's abilities and aptitude needed to do particular types of jobs, his physician indicated he had poor or no ability to use public transportation because Claimant lives in a small town, Claimant does not like claustrophobic spaces and he is not used to any bus or public transportation. His physician also noted that Claimant is limited to lifting 5 pounds, and was currently walking with a cane due to multiple leg and ankle fractures. Claimant was also attending physical therapy three times a week and visiting his physician once or twice a month. (Department Exhibit B, pp 59-62).
- (18) Claimant is a [REDACTED] man whose birthday is [REDACTED]. Claimant is 5'6" tall and weighs 140 lbs. Claimant completed the eleventh grade and has a third or fourth grade reading level.
- (19) Claimant was denied Social Security disability benefits and is appealing that determination.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program 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 Reference Tables Manual (RFT).

Pursuant to Federal Rule 42 CFR 435.540, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

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 to make appropriate mental adjustments, if a mental disability is being 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. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920(c).

If the impairment or combination of impairments do not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms). 20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv). Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with

frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).
3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).
4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

Applying the sequential analysis herein, claimant is not ineligible at the first step as Claimant is not currently working. 20 CFR 416.920(b). The analysis continues.

The second step of the analysis looks at a two-fold assessment of duration and severity. 20 CFR 416.920(c). To meet the durational requirements for the MA program, the claimant's condition must last or be expected to last for a continuous period of 12 months (20 CFR 416.909). The medical records establish that Claimant's condition has improved post-operatively. The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an

applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered. Therefore, this Administrative Law Judge is unable to find Claimant has met the 12 month durational requirement for MA. No further analysis is required.

Claimant has not presented the required competent, material and substantial evidence which would support a finding that Claimant has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities for a continuous period of 12 months. 20 CFR 416.920(c). Although Claimant has cited medical problems, the clinical documentation submitted by Claimant is not sufficient to establish a finding that Claimant is disabled. There is no objective medical evidence to substantiate Claimant's claim that the alleged impairment(s) are severe enough to reach the criteria and definition of disability. Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established on the record that it was acting in compliance with department policy when it denied Claimant's application for Medical Assistance benefits.

Accordingly, the department's decision is AFFIRMED.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 3/7/12 _____

Date Mailed: 3/7/12 _____

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.

VLA/ds

■ [REDACTED]