

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

IN THE MATTER OF:



Reg. No.: 2015-48
Old Reg No: 2014-29628
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 9, 2014
County: Cass

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Claimant's Authorized Hearing Representative's (AHR) timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on July 9, 2014, and mailed on September 4, 2014, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs that is the basis for the claimant's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on November 20, 2014.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit programs?

FINDINGS OF FACT

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

1. Findings of Fact No. 1 through 11 under Registration Number 2014-29628 are incorporated by reference.
2. On July 9, 2014, a hearing was held resulting in a Hearing Decision mailed on September 4, 2014, finding Claimant was not disabled.

3. On September 8, 2014, Claimant requested reconsideration/rehearing.
4. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant requested rehearing/reconsideration asserting misapplication of policy that would impact the outcome of the original hearing decision.

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 413.913. 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 applicant 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 (e.g., 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 to 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 3 to Step 4. 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 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 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).

Step 1 is incorporated by reference from page 5 of the Hearing Decision Registration No. 2014-36137, dated July 9, 2014. The remaining issues are under review in this Reconsideration.

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 916.920(a)(4)(ii); 20 CFR 916.920(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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(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, Claimant alleges disability due to anterior spinal fusion, status post L3 corpectomy, scoliosis, reconstructive left knee surgery, back pain, arthralgias, kidney stones, memory problems, shortness of breath and migraines.

On [REDACTED], Claimant's surgeon reviewed Claimant's x-ray and MRI results which showed a complex injury to the left knee including complete tears of his ACL, PCL, LCL, popliteal fibular ligament, as well as tearing of the distal biceps. A CT of the lumbar spine revealed a nondisplaced fracture of the left L5 transverse process, mildly displaced fracture of the left L4, L3, L2, and L1 transverse process and a mildly displaced fracture of the right L1 transverse process. There is a burst-type fracture of the L3 vertebral body with bony retropulsion of 8mm and severe associated spinal stenosis. The fracture extends into the right pedicle and right superior articulating facet of L3, extending into the right L2-L3 facet joint. There is slight widening of the facet joint. There is also a nondisplaced fracture component extending into the L3 spinous process. The vertebral body height loss measures up to 50%. The fracture is associated with a paraspinous hematoma extending adjacent to the aorta and into the psoas musculature.

On [REDACTED], Claimant underwent stabilization of the L3 vertebral body fracture with a strut in the region of the L3 vertebral body extending from the L2-L3 disc space to the L3-L4 disc space. There is a side plate on the left with screws fixed into the L2 and L4 vertebral bodies. A comparison CT was performed and compared with the 8/16/13 CT. Impression: L3 corpectomy change with hardware placement. Removal of retropulsed bone so there is no significant residual spinal stenosis from retropulsed bone. There are left transverse process fractures at each level of L1-L5. There is a posterior left 12th rib fracture deformity. There is a right L2 transverse process fracture. There is a fracture deformity extending through the right pedicle and pars interarticularis at L3. AP dimension of the lumbar canal appears developmentally small. At L4-L5 there is a small broad based disc protrusion which causes narrowing of the lateral recesses. At L5-S1, there is vacuum disc phenomenon with broad-based disc protrusion at the small caudally extruded component with some marginal calcification and narrowing of the right lateral recess with subtle posterior deviation of the right S1 root sleeve but no definite root compression.

On [REDACTED], Claimant's surgeon noted the multi-ligamentous knee reconstruction on 9/5/13, will require him to be incapacitated for a period of 8 weeks. He will be non-weightbearing during this time and after that period will have significant restrictions for an additional 3 months.

On [REDACTED], Claimant saw his neurosurgeon for follow-up of his L3 anterior corpectomy. Claimant denied numbness, tingling or weakness in his legs. He did state he had back pain at night. Claimant was told he could begin to resume normal activities.

On [REDACTED], Claimant underwent left knee anterior cruciate ligament and posterior cruciate ligament reconstruction with chondroplasty of the medial femoral condyle, lateral fibular collateral ligament revision reconstruction and peroneal nerve neurolysis.

On [REDACTED], Claimant's orthopedic surgeon completed a Medical Examination Report on behalf of the Department. Claimant is diagnosed with a left knee multiligament injury status post staged reconstruction. The surgeon opined Claimant's condition was improving, with limitations expecting to last more than 90 days. Claimant is limited to no lifting, standing/walking less than 2 hours in an 8-hour workday and sitting about 6 hours in an 8-hour workday. The surgeon based the limitations on Claimant's continued recovery from two knee surgeries with extensive ligament reconstruction.

On [REDACTED], Claimant followed-up with his surgeon for combined instability strapping. He states that occasionally he does have some sensation of instability with walking. On exam, he does have a little laxity to varus stress in full extension and a little bit more in 30 degrees of flexion, but again, he has an endpoint there. With ambulation, he does walk in a relatively in-toed fashion. He overall appears to be in a little bit of varus alignment bilaterally. The surgeon discussed removing the tibial nail, which would be problematic for extraction and basically precludes a high tibial osteotomy.

On [REDACTED], Claimant returned to the clinic for follow-up status post L3 corpectomy and anterior spinal fusion. He reports he has back pain when he is on his feet for prolonged periods. Equally painful is the distal aspect of his fibula. He denies radicular pain and weakness of his legs. His symptoms are improved with sitting. X-rays of his spine and right tibia-fibula were reviewed. Spine imaging is stable. His tibia is well healed, but his segmental fibula fracture appears to have a nonunion at the proximal aspect.

On [REDACTED], the CT lumbar spine revealed that since August, 2013, the metallic strut graft within the L3 corpectomy site has decreased in height and there is a new mild levoconvex scoliosis here due to some remodeling of the right L4 and right L2 inferior endplates. The metal is remodeling of bone, but no acute fracture seen. The lateral fenestrated plate is not fractured or loose, although the anterior right L2 screw is mildly bending and delineating due to the change in alignment of the right L4 and right L2 inferior endplates. L4-L5 has undergone slight interval disc degeneration with some further loss of disc height. There is also an L4-L5 disc protrusion, causing mild stenosis. There is also mild foraminal stenosis at L3-L4.

On [REDACTED], Claimant returned to his orthopedic surgeon for follow-up on his left knee surgery. The surgeon instructed Claimant to persistently use his brace for the next 6 months and then with activities thereafter, especially given his lateral and posterolateral corner injury, and the fact that he has varus alignment that is going to be difficult to correct both now and in the future because of his retained hardware.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). Claimant has presented medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. The medical evidence has established that 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, Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the ALJ erred in finding otherwise. Accordingly, Step 3 of the sequential analysis is required.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. Claimant has alleged physical disabling impairments due to anterior spinal fusion, status post L3 corpectomy, scoliosis, reconstructive left knee surgery, back pain, arthralgias, kidney stones, memory problems, shortness of breath and migraines.

Claimant has shown, by clear and convincing documentary evidence and credible testimony, his physical impairments meet or equal Listing 1.02 and 1.04:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine).

and

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 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;

Claimant was injured on [REDACTED]. Since the accident, Claimant has undergone two knee surgeries and two back surgeries. As of June, 2014, Claimant has new mild levoconvex scoliosis, the anterior right L2 screw is mildly bending and delineating due to

the change in alignment of the right L4 and right L2 inferior endplates, the L4-L5 has undergone slight interval disc degeneration with some further loss of disc height, there is also an L4-L5 disc protrusion causing mild stenosis and mild foraminal stenosis at L3-L4. Moreover, eleven months after Claimant's reconstructive knee surgery, the fibula has still not healed.

In this case, this Administrative Law Judge finds that Claimant may be considered presently disabled at the third step. Claimant appears to meet listing 1.02 and 1.04 or the equivalent. This Administrative Law Judge will not continue through the remaining steps of the assessment. Claimant's testimony and the medical documentation support the finding that Claimant meets the requirements of the listings. Accordingly, Claimant is found disabled at Step 3.

As a result, the ALJ's determination which found Claimant not disabled at Step 2 (non-severe impairment), Step 3 (listing of impairments), Step 4 (substantial gainful activity), and Step 5 (residual functional capacity) are VACATED and the Department's determination which found Claimant is not disabled is REVERSED.

DECISION AND ORDER

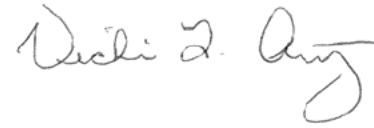
Based on the above findings of fact and conclusions of law, it is determined that the Administrative Law Judge erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on September 4, 2014, under registration Number 2014-29628 which found Claimant not disabled is VACATED.
2. The Department's determination which found Claimant not disabled is **REVERSED**.
3. The Department shall initiate processing of the August 27, 2013, application to include any applicable requested retroactive months, to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
4. The Department shall supplement for any lost benefits (if any) that Claimant was entitled to receive if otherwise eligible and qualified in accordance with Department policy.
5. The Department shall review Claimant's continued eligibility in December, 2015, in accordance with Department policy.

2015-48/VLA

IT IS SO ORDERED.



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

Date Signed: December 19, 2014

Date Mailed: December 19, 2014

NOTICE OF APPEAL: The law provides that within 30 days of receipt of this decision, the Claimant may appeal this decision to the circuit court for the county in which he/she lives.

VLA/las

cc:

