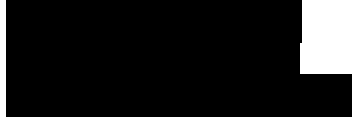


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-018412-R
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 4, 2014
County: Oakland-District 4

ADMINISTRATIVE LAW JUDGE: Vicki 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 June 4, 2014, and mailed on August 22, 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 September 10, 2014.

ISSUE

Whether the Administrative Law Judge (ALJ) erred in finding Claimant not disabled for purposes of the Medical Assistance (MA-P) benefit program.

FINDINGS OF FACT

Based upon the competent, material, and substantial evidence on the whole record, the following are findings as material fact:

1. Findings of Fact No. 1 through 19 under Registration Number 2014-16672 are incorporated by reference.
2. On June 4, 2014, a hearing was held resulting in a Hearing Decision mailed on August 22, 2014, which found Claimant not disabled.
3. On September 10, 2014, Claimant requested reconsideration/rehearing.

4. The Request for Rehearing/Reconsideration was GRANTED.

CONCLUSIONS OF LAW

In the instant case, Claimant's Authorized Hearing Representative (AHR) requested rehearing/reconsideration asserting misapplication of policy as well as newly discovered evidence 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 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, are 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 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 416.945(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).

An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i). Substantial gainful activity means work that involves doing significant and productive physical or mental duties and is done (or intended) for pay or profit. 20 CFR 416.910(a)(b). Substantial gainful activity is work activity that is both substantial and gainful. 20 CFR 416.972. Work may be substantial even if it is done on a part-time basis or if an individual does less, with less responsibility, and gets paid less than prior employment. 20 CFR 416.972(a). Gainful work activity is work activity that is done for pay or profit. 20 CFR 416.972(b).

As outlined above, the first step looks at the individual's current work activity. In the record presented, Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of Claimant's alleged impairment(s) is considered under Step 2. 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 traumatic brain injury, hypertension, chronic osteomyelitis, obstructive sleep apnea, left mandibular fracture, left pneumothorax, bilateral rib fractures, left dislocated hip, left open tibia fracture, and left fibula fracture.

On [REDACTED], Claimant was admitted to the hospital after a motorcycle accident. He was discharged on [REDACTED], with a diagnosis of a traumatic brain injury; respiratory failure secondary to bilateral pneumothorax; left rib fractures; comminute left acetabular fracture dislocation with partial closed reduction and open reduction and internal fixation on [REDACTED]; open left tibia-fibular fracture with incision and drainage and open reduction and internal fixation on [REDACTED]; right thumb fracture that is nonsurgical; fracture of left mandible with closed reduction and mandibulomaxillary fixation on [REDACTED]; acute kidney injury secondary to rhabdomyolysis; traumatic hematuria; acidosis, metabolic; hypertension; non-sustained ventricular tachycardia; electrolyte imbalance; tracheostomy on [REDACTED]; anemia of blood loss type; thrombocytosis, reactive; IVC filter; 3-cm left tibia laceration and acute alcohol intoxication. At discharge, Claimant was on thickened Ensure. He had a tracheostomy in place. He was transferred to inpatient rehabilitation. He was to continue with his tracheostomy until his oral hardware was removed. He will need orthopedic and oral/maxillofacial surgery once he completes his rehabilitation.

On [REDACTED], Claimant was admitted to the hospital for dyspnea status post tracheostomy and intractable pain, status post recent motor vehicle accident. He was started on a nebulizer and his pain medications were adjusted. Claimant was discharged on [REDACTED], with home physical therapy recommended.

On [REDACTED], Claimant underwent surgery for removal of the mandibular and maxillary arch bars. The tracheostomy tube was then subsequently removed.

On [REDACTED], Claimant's primary care physician completed a Medical Examination Report on behalf of the Department. Claimant was diagnosed with a fracture of the left tibia/fibula; multiple fractured ribs, fractured left hip and a fractured mandible. Claimant was unable to process memory, an unable to move the entire left lower extremity. The physician noted Claimant's short term memory had decreased. The physician indicated Claimant was limited to never lifting/carrying less than 10 pounds, no pushing/pulling, fine manipulation, able to stand/walk less than 2 hours in an 8-hour workday, and sit less than 6 hours in an 8-hour workday. The physician noted Claimant could only use his right leg to operate foot/leg controls. The physician indicated Claimant was unable to meet his own needs in the home and required assistance with bathing, dressing, preparing meals and toileting. The physician opined Claimant's condition was stable.

On [REDACTED], Claimant met with his surgeon. Claimant was alert and oriented but a little slow to answer. The left ankle was stiff and there was no appreciable range of motion in the left hip. Claimant was told he would regain range of motion in his ankle, but the long term prognosis of his hip was guarded. X-rays of the left hip showed apparent healed fractures of the acetabulum with surgical plate and screw in place. There is also extensive periarticular myositis ossificans.

In July, 2013, a physical examination noted Claimant is ambulating with a crutch, complaining of left hip pain and left lower extremity pain. His neurological examination is normal and he is expected to gradually improve with some deficits.

On [REDACTED], Claimant saw his treating physician complaining of chronic pain. Claimant was assessed with chronic left leg pain, insomnia, left hip fusion osteoarthritis calcinosis, obstructive sleep apnea and anxiety.

On [REDACTED], Claimant met with a new physician complaining of left leg pain. Claimant stated the pain is aggravated by walking. Associated symptoms included decreased mobility, numbness, swelling, tingling in legs, tenderness, and weakness. His left hip was fused and immobile, but he had swelling in the left knee. Claimant was swimming a mile daily, and had been ambulating without difficulty up to a month ago. His whole body has been numb since the accident. He is beginning to feel tingling. He ambulated using crutches.

On [REDACTED] Claimant was admitted to the hospital for infection of the left knee. He underwent excisional debridement for effusion, cellulitis and abscess of the left knee, with debridement all the way down to the bone. He also had a negative pressure VAC system placed. Impression was osteomyelitis of the knee evidenced by abscess all the way to the bone, gram-positive cocci indicative of staphylococcus or streptococcus species, post trauma patient, and status post surgery and rod placement, and if rods are still present and further management based on identification of organisms and susceptibility, may mandate the removal of hardware. Claimant was placed on IV-antibiotics.

On [REDACTED], Claimant followed up with his treating physician after surgery on his left knee for osteomyelitis. He had a wound vacuum assisted closure in place.

On [REDACTED], Claimant followed up with his surgeon. Surgical debridement was performed on the non-healing wound and wound VAC therapy continued. Claimant was instructed to change the dressing 2-3 times a week. The surgeon noted Claimant's left leg was limited due to motorcycle accident.

On [REDACTED], Claimant followed up with his surgeon regarding his left leg wound. No debridement was needed. He was instructed to change the dressing daily as needed and was given a break from wound VAC.

On [REDACTED], Claimant saw his surgeon and a surgical debridement of the open wound on his left knee was performed. His upper thigh was prepared for epidermal harvesting and the epidermal skin graft was applied to the non-healing wound. Claimant was instructed to keep the dressing clean and dry until next appointment.

On [REDACTED], Claimant returned to his surgeon and had a large amount of drainage from the wound. No debridement needed. Claimant was instructed to change dressing every other day. Claimant was seen on [REDACTED] and the perforated tegaderm was covered by non-perforated tegaderm, drainage not allowed and tegaderm with cellulome graft had to be removed. Donor site healed well. Oral antibiotics started.

On [REDACTED], a surgical debridement was performed on Claimant's knee.

On [REDACTED], Claimant presented for his follow-up appointment. No debridement was needed. Claimant was to continue antibiotics. A bone scan was negative for osteomyelitis.

On [REDACTED], no debridement was needed. There was a moderate amount of drainage noted.

On [REDACTED], Claimant underwent surgical debridement.

On [REDACTED], Claimant had a limited range of motion in his left leg. The wound was cleaned and dressed and no debridement was needed.

On [REDACTED], Claimant was discharged from outpatient services regarding his left knee wound.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, Claimant has presented medical evidence establishing that he does have physical limitations on his ability to perform basic work activities. The ALJ found Claimant's impairment(s) were not severe; however, the medical evidence has established that Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on Claimant's basic work activities. Further, the impairments have lasted, or are expected to last, continuously for twelve months or longer; therefore, Claimant is not disqualified from receipt of MA-P benefits under Step 2 and the ALJ erred in finding otherwise.

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 traumatic brain injury, hypertension, chronic osteomyelitis, obstructive sleep apnea, left mandibular fracture, left pneumothorax, bilateral rib fractures, left dislocated hip, left open tibia fracture, and left fibula fracture.

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. 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;

In this case, the objective medical evidence confirms involvement of two major peripheral weight-bearing joint (left knee and hip) resulting in pain, limitation of motion, muscle weakness, numbness, and tingling (sensory loss). Claimant's condition is noted as stable in April, 2013, when he was unable to manage his own needs in the home and required assistance with bathing, dressing, preparing meals and toileting. Then from [REDACTED], through [REDACTED] Claimant was treated for chronic osteomyelitis, which included IV antibiotics, numerous debridements and two skin grafts. The surgeons have also indicated the prognosis for Claimant's hip to regain range of motion is guarded and he walks with an antalgic gait.

In light of the foregoing, Claimant's impairments meet, or are the medical equivalent, of a Listing within Listing 1.00, specifically, 1.02(A). Accordingly, Claimant is found disabled at Step 3 with no further analysis required.

Accordingly, the ALJ's determination which found Claimant not disabled at Step 5 (substantial gainful activity) is VACATED and the Department's determination which found Claimant not disabled is REVERSED.

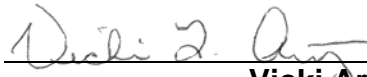
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the ALJ erred in affirming the Department's determination which found Claimant not disabled.

Accordingly, it is ORDERED:

1. The ALJ's Hearing Decision mailed on August 22, 2014, under Registration Number 2014-16672 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 April 5, 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 January, 2016, in accordance with Department policy.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/13/2015**

Date Mailed: **1/13/2015**

VLA/las

NOTICE: 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.

cc:

