

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2008-28696
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 9, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on April 9, 2009. Claimant appeared and testified.

ISSUES

Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for Medical Assistance (MA) based on disability?

FINDINGS OF FACT

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

- (1) Claimant is a 27 year- old male. Claimant is 70 inches tall and weighs approximately 140 pounds. Claimant's formal education consists of a GED.
- (2) Claimant has past relevant work in landscaping, food preparation, janitorial, and factory work.

(3) Claimant last worked in the summer of 2008, after submitting this application, in landscaping.

(4) On February 29, 2008, Claimant applied for Medical Assistance (MA) based on disability.

(5) On April 23, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA).

(6) On May 9, 2008, Claimant was sent notice of the Department's determination.

(7) On August 6, 2008, Claimant submitted a request for hearing.

(7) On August 28, 2008, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by 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 (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Disability determinations done by the State of Michigan for Medical Assistance (MA) based on disability use the Social Security Administration standards found in United States Code of Federal Regulations (CFR) at Title 20, Part 416. The law defines disability 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 at least 12 months. To meet this definition, you must have severe impairments that make you unable to do your past relevant work or any other substantial gainful work that exists in the national economy.

In accordance with the Federal Regulations an initial disability determination is a sequential evaluation process. The evaluation consists of five steps that are followed in a set order.

STEP 1

At this step, a determination is made on whether Claimant's is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work activity that involves doing significant physical or mental activities. Gainful work activity is work activity that you do for pay or profit (20 CFR 416.972). If you are engaged in SGA, you are not disabled regardless of how severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant testified that he is not currently engaged in any activity for pay or profit. Claimant is not engaged in substantial gainful activity.

However, after Claimant applied for Medical Assistance (MA) based on disability he was employed in landscaping. The work that you have done during any period in which you believe you are disabled may show that you are able to work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find that you are not disabled. We

will consider all of the medical and vocational evidence in your file to decide whether or not you have the ability to engage in substantial gainful activity (20 CFR 416.971).

Claimant testified that he cannot work due to his stomach problems. Claimant states his stomach problems are random and that he has a bout of stomach problems approximately once a month. Claimant testified that when he is having stomach problems it lasts two to three days and he has to stay close to the toilet due to almost constant vomiting. Claimant testified that he has had this problem for about ten years. Through verbal testimony and on a DHS-49-F form Claimant indicates that he has had held numerous jobs for periods of several months, over the last decade. Claimant indicates he lost most of the jobs because he was fired for calling in sick.

The evaluation of Claimant's medical evidence (detailed in Step 2) shows that Claimant does not have a severe medically determined impairment or combination of impairments which significantly limits his physical or mental ability to do basic work activities. In accordance with 20 CFR 419.971 Claimant is not disabled because he is capable of engaging in substantial gainful activity.

STEP 2

At the second step, it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). An impairment or combination of impairments is severe within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is not severe when medical and other evidence establishes only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 416.921). If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon stomach pain. Relevant evidence in the record from medical sources includes approximately 200 pages documenting continual presentations at 3 different hospital emergency rooms between September 2006 and February 2008. In every case Claimant complained of severe stomach pain and constant vomiting. In spite of many CT scans, diagnostic tests, laboratory tests, and examinations there is no medically determined reason for the symptoms Claimant asserts. In the vast majority of cases Claimant was provided pain medication and his symptoms quickly resolved. On March [REDACTED] [REDACTED] recorded that other hospital staff told him Claimant had just been there the night before and exhibited drug seeking behavior. Doctor VanDePol recorded that when Claimant specifically requested opiate based pain medications and was refused, Claimant became angry and left without receiving any treatment (Page 169).

Your symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect your ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. 20 CFR 416.929 (b)

The record contains no medical source evidence of a diagnosed or medically determined impairment. The record contains no medical source evidence of limitations on Claimant's ability to perform basic work activities. In accordance with 20 CFR 416.920(c) Claimant is not disabled because he does not have a severe medically determined impairment or combination of impairments which significantly limits his physical or mental ability to do basic work activities for the necessary duration.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of an impairment listed in a Social Security Administration impairment listing 20 CFR Part 404, Subpart P, Appendix 1. If your impairment meets or equals the criteria of a listing and meets the duration requirement, you are disabled.

Claimant has no medically determined impairment to compare with the Social Security Administration impairment listings.

STEP 4

At the fourth step, we assess your residual functional capacity (RFC) to determine if you are still able to perform work you have done in the past. Your RFC is your ability to do physical and mental work activities on a sustained basis despite limitations from your impairments. Your RFC is assessed using all the relevant evidence in the record. If you can still do your past relevant work you are not disabled under these standards.

Claimant has no medically determined impairment and no medically determined strength limitations. In the absence of any medically determined strength limitations, Claimant is determined to have a residual functional capacity to perform heavy work as defined in 20 CFR 416.967. Claimants past relevant work in landscaping, food preparation, janitorial, and factory work would all be heavy work or less. Claimant is able to perform his past relevant work. Claimant is not disabled.

STEP 5

At the fifth step, your residual functional capacity (RFC) is considered along with your age, education, and work experience to see if you can make an adjustment to other work you

have not previously done. If you have a combination of sufficient remaining abilities and transferable skills to adjust to other work, you are not disabled.

Claimant is 27 years-old with a High School equivalent education and unskilled work history. Because Claimant has no medically determined strength limitations he has the residual functional capacity to perform heavy work. In accordance with the Social Security Administration Medical-Vocational Guidelines Section 402.00 Claimant is not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined that Claimant is not disabled and denied Claimant's application for Medical Assistance (MA) based on disability.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 14, 2009

Date Mailed: August 18, 2009

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.

GFH 

cc:

