

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: 2008-31420  
Issue No: 2009; 4031  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
April 7, 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 7, 2009. Claimant appeared and testified.

ISSUES

- (1) 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?
- (2) Did the Department of Human Services properly determine that Claimant is not disabled and deny Claimant's application for State Disability Assistance (SDA)?

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 68 inches tall and weighs approximately 150 pounds. Claimant's formal education consists of 12 years of school.

(2) Claimant has past relevant work as an unskilled factory worker and a laborer in concrete work.

(3) Claimant last worked in October, 2007 as a laborer doing concrete work. Claimant reports he left that employment because the season ended.

(4) On July 1, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On August 19, 2008, the Department of Human Services Medical Review Team approved Claimant for State Disability Assistance (SDA) but determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA). Claimant's SDA was due for medical review in November, 2008.

(6) On August 22, 2008, Claimant was sent notice that the Department had denied his application for Medical Assistance (MA) based on disability.

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

(8) On September 29, 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) based on disability.

(9) In November, 2008 Claimant did not successfully complete the medical review process and his State Disability Assistance (SDA) case was closed.

(10) On January 28, 2009, a hearing was scheduled on the denial of Claimant's Medical Assistance (MA) application. The hearing was adjourned because there was no Administrative Law Judge available to conduct the hearing.

(11) On February 4, 2009, Claimant submitted a new application for State Disability Assistance (SDA).

(12) On April 3, 2009, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for State Disability Assistance (SDA).

(13) On April 29, 2009, 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).

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. 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.

Disability determinations done by the State of Michigan, for State Disability Assistance (SDA), use the same standards with one minor difference. For State Disability Assistance (SDA) the medically determinable physical or mental impairments that prevent substantial gainful activity must result in death or last at least 90 days.

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 sever your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant testified that he currently lives with his mother and just stays around the house all day. Claimant testified that he thinks he could do some kind of light work but that he cannot walk very well. Claimant is not currently engaged in substantial gainful activity because he does not get any pay or profit for his activities.

### **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). In addition to the limiting effect of the impairments they must also meet durational requirements, 90 days for State Disability Assistance (SDA) and 12 months for Medical Assistance (MA) based on disability. If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon damage to his right leg resulting from an accident. Relevant evidence in the record from medical sources includes: documentation of Claimant's hospitalization and surgery at Spectrum Health following the accident in June, 2008 including establishment of pain management for post-operative recuperation; documentation of establishment of post-operative care at Saint Mary's Healthlink with [REDACTED] on [REDACTED]; a [REDACTED] documentation of a follow up appointment with the surgeon on [REDACTED]; a Medical Examination Report DHS-49 form filled out by [REDACTED] on [REDACTED]; documentation of a consult at [REDACTED] for pain on [REDACTED]; and documentation from [REDACTED] dated [REDACTED], discharging Claimant from care for violating a narcotic agreement.

On [REDACTED], Claimant was admitted to the [REDACTED] following an accident where Claimant was standing on an a fish tank in order to reach something and the tank smashing causing a deep laceration to Claimant's lower right leg. Surgery was performed in order to repair tendons. The surgeon noted "there was nice restoration of the

patient's anatomy." The documentation includes consultation and recommendations for Claimant's post-operative pain management in light of his history of substance abuse and addiction. (Pages 12-18)

On [REDACTED], Claimant met with [REDACTED] to establish care for post-operative care and pain management. The Doctor was very concerned about Claimant's history of substance abuse and questionable history of previous chronic pain. (Pages A25 & A20)

On [REDACTED], Claimant had a follow up visit with [REDACTED], the surgeon. The Doctor noted that Claimant's incision was well healed. The Doctor also noted that Claimant: was not using a proscribed protective boot; was using a walker for ambulation; reported having aches and soreness; was evasive regarding questions about pain medication and follow up care; and reported he was out of Norco. [REDACTED] reported that attempts to contact Claimant's primary physician were unsuccessful and that Claimant's Norco prescription was refilled one time. (Page A41)

On [REDACTED], a Medical Examination Report DHS-49 form was completed by [REDACTED]. The Doctor did not identify any limitations in lifting and carrying or repetitive actions of the hands and arms. The Doctor indicated Claimant has a limited range of motion in the right ankle and foot and would be unable to operate foot/leg controls. The Doctor also limited Claimant to sit less than 6 hours in an 8 hour day. The Doctor noted that during the interview Claimant showed a limitation in sustained concentration. (Pages A7 & A8)

On [REDACTED], Claimant had a consultation with a PAC at [REDACTED]. The PAC's name is not legible. The PAC recorded that Claimant reported having fallen while ice skating and having constant pain in the ankle that had been operated on. Claimant requested oxycontin or duragesic. Claimant's Norco prescription was refilled. (Page A15)

On [REDACTED], [REDACTED] sent Claimant a letter via Certified Mail with Return Receipt to inform Claimant that he (Claimant) was discharged from the Doctor's practice for violating their narcotic agreement. (Page A14)

Claimant's medically determined impairment is a limited range of motion in his right foot. This impairment limits some basic work activities like walking, standing, and operating any foot/leg controls. On the date of this hearing 12 months had not passed since Claimant's accident and surgery. The 90 day durational requirement for State Disability Assistance has passed but the 12 month duration for Medical Assistance due to disability has not been established.

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6<sup>th</sup> Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

### **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's impairment was compared with the Social Security Administration impairment listing 1.02. That listing is:

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, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Claimant's impairment does not meet or equal this listing because he is able to ambulate effectively.

#### **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 reports past relevant work in unskilled factory work in quality control and painting and as a laborer in concrete work. At this hearing Claimant stated he thinks he can do light work and added that he just still does not walk very well.

On [REDACTED], a Medical Examination Report DHS-49 form was completed by [REDACTED]. The Doctor did not identify any limitations in lifting and carrying or repetitive actions of the hands and arms. The Doctor indicated Claimant has a limited range of motion in the right ankle and foot and would be unable to operate foot/leg controls. The Doctor also

limited Claimant to sit less than 6 hours in an 8 hour day. The Doctor noted that during the interview Claimant showed a limitation in sustained concentration. (Pages A7 & A8)

Your residual functional capacity is your remaining physical, mental, and other abilities. Those abilities are outlined in 20 CFR 416.945.

**Physical abilities.** When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

**Mental abilities.** When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting, may reduce your ability to do past work and other work.

Classifications of work based on physical exertion requirements are defined in 20 CFR 416.967 and include:

(a) *Sedentary work.* 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.

(b) *Light work.* 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. To be considered

capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* 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.

(d) *Heavy work.* 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.

Claimant has the residual functional capacity to do a full range of sedentary work and a wide range of light work. Claimant's work as a laborer in concrete work requires physical exertion above the level of light work so Claimant is unable to do that past relevant work. Quality control and painting in a factory setting would be within Claimant's residual functional capacity. Claimant is not disabled because he is capable of performing some of his past relevant work.

#### **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. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled.

Claimant is a 27 year-old with a High School education, unskilled work history and the residual functional capacity to do light work. Using the Social Security Administrations Medical-Vocational Guidelines rule 202.20 as a guide, 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 and State Disability Assistance (SDA).

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

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

Date Signed: September 22, 2009

Date Mailed: September 22, 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.

SLK 

cc:

