

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: 2009-10250
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2009
Muskegon 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 14, 2009. Claimant appeared and testified.

ISSUES

- (1) Did the Department of Human Services properly deny Claimant's application for Medical Assistance (MA) based on disability?
- (2) Did the Department of Human Services properly 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 33 year-old male. Claimant is 73 inches tall and weighs approximately 190 pounds. Claimant's formal education consists of 12 years of school culminating in a High School diploma.

(2) Claimant has past relevant work in construction labor and restaurant cooking.

(3) Claimant last worked in August, 2008 as a construction laborer. Claimant reports he left that employment because he had emergency surgery.

(4) On October 22, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

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

(6) In November, 2008 Claimant was sent notice of the Department's determination.

(7) On December 4, 2008, Claimant submitted a request for hearing.

(8) On February 2, 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 severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant last worked in August, 2008 as a construction laborer. At the time of this hearing Claimant testified he is still living at home with his mother that he is not currently employed, but he is currently seeking employment. At the time of this hearing Claimant was not engaged in substantial gainful activity because he was not receiving pay or profit for his job search 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). If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon surgery for diverticulitis and an associated surgery done in September, 2008. On December 4, 2008, when Claimant requested a hearing he wrote that: he had been off work for months; needed another surgery in December; had no idea how long his recovery would be from the second surgery; and he had no insurance, no money and no

guaranty he could go back to work anytime soon. Relevant evidence in the record from medical sources includes documentation from Claimant's hospital stay and surgery in September, 2008.

The record does not contain any evidence from medical sources later than September 15, 2008.

On August 28, 2008, Claimant was admitted to [REDACTED], through the emergency room, complaining of two to three days of lower abdominal pain. Claimant was evaluated as having diverticulitis or some form of colitis. Claimant was initially treated with bowel rest and antibiotic therapy in hopes of a non-operative resolution. On [REDACTED] Claimant's condition had worsened and a CT scan showed unfavorable changes. Subsequently a sigmoid resection operation was performed. Claimant was temporarily affixed with a colostomy bag. At this hearing Claimant testified that the colostomy bag was successfully removed in December, 2008 and he has recovered to the point he feels he can work again and is seeking employment.

There are two primary aspects to severity as used in this analysis. One aspect is the limitation placed on a person by the medically determined impairment. The other aspect is the duration of the limitation. The medical source evidence in the record shows that Claimant's limitation began on [REDACTED]. Medical Assistance (MA) based on disability requires duration of 12 months. State Disability Assistance (SDA) requires duration of 90 days. This record contains no evidence from medical sources after September 15, 2008. The evidence in this record does not show that Claimant had any medically determined limitation after [REDACTED].

[REDACTED] While it is assumed that Claimant required some period of recovery following the operation, the legal requirement to determine disability is proof of a medically determined limitation of sufficient severity. Being affixed with a colostomy bag alone is not a

sufficient medical limitation to prevent substantial gainful activity. Claimant's diverticulitis does not meet the duration requirement of disability. Claimant is not disabled.

STEP 3

At the third step, it is determined whether your impairments meet or equal the criteria of 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 diverticulitis was compared with the Social Security Administration impairment listings in 5.00 Digestive System. Claimant's medically determined impairment did not meet or equal any of those 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.

The record contains no evidence of continuing medically determined limitations. Evidence in this record indicates that Claimant has completely recovered and retains all his former capacity. Claimant has the residual functional capacity to do all exertional levels of work, sedentary through heavy. Claimants past relevant work in both construction labor and restaurant cooking would be within his residual functional capacity. Claimant is not disabled because he can perform 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.

At step four, it was determined that Claimant has the capacity to perform all exertional levels of work, sedentary through heavy. In accordance with the Social Security Administration Medical-Vocational Guidelines Claimant is a younger individual, with a High School education, and a history of unskilled work. In accordance with Social Security Administration Medical-Vocational Guidelines Rule 204.00 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 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/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 10, 2009

Date Mailed: August 11, 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 

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