

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: 2009-10431
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2009
Gogebic 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 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 48 year-old male. Claimant is 66 inches tall and weighs approximately 180 pounds. Claimant's formal education consists of 12 years of school culminating in a High School diploma.

(2) Claimant has past relevant work as a masonry laborer, a construction laborer, an assembly worker, a truck loader, and a boiler tender.

(3) Claimant last worked in October 2007 in construction. Claimant reports he was laid off due to lack of work.

(4) On October 20, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On November 17, 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) On December 5, 2008, Claimant was sent notice of the Department's determination.

(7) On December 11, 2008, Claimant submitted a request for hearing.

(8) On January 22, 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 was last employed in October, 2007 doing construction work. Claimant testified that he currently spends his days at home reading, listening to the radio and puttering around. Claimant is not engaged 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). 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 gastrointestinal bleeding and cirrhosis of the liver. Relevant evidence in the record from medical sources includes: [REDACTED] records from December 2006 and January 2007 (Evidence pages 39-50 & 91-93); [REDACTED] and [REDACTED] records from June, 2008 (Evidence pages 13-26 & 51-72); and a Medical Examination Report (DHS-49) dated [REDACTED] (Evidence pages 1 & 2).

In December, 2006 Claimant was admitted to [REDACTED] with gastrointestinal bleeding. The source of the bleeding was determined to be esophageal varices. On January 31, 2007, [REDACTED] performed esophageal banding to resolve the bleeding. There are no specific records describing any follow up or specific results. Page 44 indicates that Claimant had previous variceal banding in 2005.

On June 21, 2008, Claimant was admitted to [REDACTED] for gastrointestinal blood loss and subsequently transferred to St. Mary's Medical Center. On June 21, 2008, [REDACTED] recorded that Claimant has known cirrhosis from alcohol and continues his active drinking (Page 19). [REDACTED] recorded that Claimant continues to drink alcohol and noted that Claimant had elevated bilirubin suggestive of alcoholic hepatitis. The source of the bleeding was determined to be esophageal varices. On [REDACTED], [REDACTED] performed esophageal banding to resolve the bleeding.

On [REDACTED], [REDACTED] filled out a Medical Examination Report (DHS-49) on Claimant. [REDACTED] specializes in internal medicine and has been Claimant's treating physician since 2006. [REDACTED] listed Claimant's impairments and current diagnoses as: gastrointestinal bleeding; portal hypertension; esophageal varices; GERD; Fe deficiency anemia; diarrhea; and low back pain. [REDACTED] applied physical limitations for Claimant to never lift more than 20 pounds and only occasionally lift 10 pounds or less. Claimant is to stand or walk at

least 2 hours in an 8 hour day and sit less than 6 hours in an 8 hour day. Claimant is able to do repetitive simple grasping with both hands but is restricted from reaching, pushing, pulling, or fine manipulation with either hand or arm. Claimant is restricted from operating foot or leg controls with either foot or leg. [REDACTED] indicated Claimant had no mental limitations and that the physical limitations would last more than 90 days.

Medical information consulted during research of this case indicates that portal hypertension, esophageal varices, ascites - fluid leaks through the vasculature into the abdominal cavity, weakness, and fatigue are some of the signs and symptoms which may occur in the presence of cirrhosis or as a result of the complications of cirrhosis. Cirrhosis is generally irreversible once it occurs, and treatment generally focuses on preventing progression and complications.

Claimant testified that he has regular occurrences of abdominal swelling followed by weakness and abdominal pain when he moves around very much. Claimant testified that he has regular occurrences of swelling in his legs and feet followed by pain in those extremities. Claimant testified that when he exerts himself physically he gets fatigued quickly and it usually causes blood spotting in his stool. Claimant's medically determined impairments are severe because they limit his ability to do basic work activities and have persisted for more than 12 months.

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 listings. Those listing are:

5.01 Category of Impairments, Digestive System

5.02 Gastrointestinal hemorrhaging from any cause, requiring blood transfusion (with or without hospitalization) of at least 2 units of blood per transfusion, and occurring at least three times during a consecutive 6-month period. The transfusions must be at least 30 days apart within the 6-month period. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

5.03-5.04 [Reserved]

5.05 Chronic liver disease, with:

A. Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under a disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least two evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:

1. Paracentesis or thoracentesis; or
2. Appropriate medically acceptable imaging or physical examination and one of the following:
 - a. Serum albumin of 3.0 g/dL or less; or
 - b. International Normalized Ratio (INR) of at least 1.5.

Claimant does not meet or equal these listings because he has not required blood transfusions. Neither does the medical evidence show that Claimant's abdominal swelling rises to the level of 505 B.

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 as a masonry laborer, a construction laborer, an assembly worker, a truck loader, and a boiler tender. At this hearing Claimant specifically asserted he cannot work because of abdominal swelling followed by weakness and abdominal pain, swelling in his legs and feet followed by pain in those extremities, and when he exerts himself physically he gets fatigued quickly and it usually causes blood spotting in his stool.

On [REDACTED] [REDACTED] filled out a Medical Examination Report (DHS-49) on Claimant. [REDACTED] specializes in internal medicine and has been Claimant's treating physician since 2006. [REDACTED] listed Claimant's impairments and current diagnoses as: gastrointestinal bleeding; portal hypertension; esophageal varices; GERD; Fe deficiency anemia; diarrhea; and low back pain. [REDACTED] applied physical limitations for Claimant to never lift more than 20 pounds and only occasionally lift 10 pounds or less. Claimant is to stand or walk at least 2 hours in an 8 hour day and sit less than 6 hours in an 8 hour day. Claimant is able to do repetitive simple grasping with both hands but is restricted from reaching, pushing, pulling, or fine manipulation with either hand or arm. Claimant is restricted from operating foot or leg controls with either foot or leg. [REDACTED] indicated Claimant had no mental limitations and that the physical limitations would last more than 90 days.

In accordance with 20 CFR 416.967 Claimant has the RFC to perform 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.

All of Claimant's past relevant work (a masonry laborer, a construction laborer, an assembly worker, a truck loader, and a boiler tender) would require a capacity for at least light work or more. Claimant does not have the RFC to perform any 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 48 years-old and will turn 49 in August 2009. In accordance with 20 CFR 416.963 Claimant is classified as a "younger person". A younger person is under age 50. If you are a younger person we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45.

Education is another aspects of your vocational profile considered in this step. Claimant obtained a High School education. In accordance with 20 CFR 416.964 a High School education and above means abilities in reasoning, arithmetic, and language skills acquired through formal

schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

Work skills are another aspects of your vocational profile considered in this step. Claimant's past relevant work was all of an unskilled nature. In accordance with 20 CFR 416.968 unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and off bearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

The Social Security Administration Medical-Vocational Guidelines are contained in Appendix 2 of Subpart B of 20 CFR 404. They are divided into categories based on the maximum sustained work capability a person still has. In the previous step it was determined that Claimant has the residual functional capacity (RFC) to perform sedentary work. Section 201 of the Medical-Vocational Guidelines covers persons with the ability to perform sedentary work. In accordance with Rule 201.21 a younger individual age 45-49 with a High School education and unskilled work experience 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/


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

Date Signed: July 21, 2009

Date Mailed: July 21, 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:

