

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: 2009-11681
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 23, 2009
Lapeer 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 23, 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 44 year-old male. Claimant is 72 inches tall and weighs approximately 180 pounds. Claimant's formal education consists of 9 years of school.

(2) Claimant has past relevant work as a mason tender, forklift driver, and shop laborer.

(3) Claimant last worked in September, 2006 as a mason tender. Claimant reports he left that employment because of a back injury.

(4) On September 26, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On December 2, 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 12, 2008, Claimant was sent notice of the Department's determination.

(7) On December 17, 2008, Claimant submitted a request for hearing.

(8) On February 11, 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.

At this hearing Claimant testified that he spends his days at home with his wife. Claimant testified that he does not do much activity due to his back pain and frequently has to lay down because of the pain.

Claimant is not engaged in substantial gainful activity because he is not receiving pay or profit for his daily activities. Claimant is not found ineligible at this step.

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 on pain caused by a herniated or bulging disc. Claimant also asserts he has only one eye. The record shows that Claimant lost his right eye in 1982 and has successfully held numerous work positions since. Relevant evidence in the record from medical sources is summarized below.

On [REDACTED] an MRI was done of Claimant's lumbar spine. It revealed a central disc bulge at L4-L5 which indented on the ride side of the thecal sac and displaced the transiting L5 nerve root.

On [REDACTED], Claimant was seen by [REDACTED]. [REDACTED] examination showed severe tenderness and stiffness of the lower lumbar spine to the right of midline. The Doctor also found some weakness in the right lower extremity and an independent gait with a limp on the right side. [REDACTED] performed a lumbosacral paravertebral nerve block. The Doctor also noted blindness in Claimant's right eye. [REDACTED] restricted Claimant to no lifting over 15 pounds and no excessive bending and twisting. The Doctor encouraged Claimant to wear a back brace during daily activities.

On [REDACTED] Claimant was examined by [REDACTED]. The Doctor noted Claimant's artificial right eye. Examination of Claimant's spine revealed: tenderness; severely reduced extension; moderately reduced flexion; severely reduced lateral bending to both sides; and severely reduced rotation to both sides. The Doctor also found diminished sensation and reduced strength in the right lower extremity. Claimant's straight leg raising test was positive on both the right and left. The Doctor noted that Claimant does not have health insurance or finances to treat his medical condition. [REDACTED] did not identify any specific physical restrictions for Claimant but did state his opinion that Claimant is totally disabled right now.

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

Claimant has medically determined conditions that impair his ability to do some basic work activities. Both Claimant's missing eye and back problem have persisted for more than 12 months. Claimant is found neither disabled nor ineligible at this step.

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 medical conditions were compared with the Social Security Administration impairment listings 1.04 and 2.02. Those listing are:

2.02 Loss of visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

Claimant's visual medical condition did not meet or equal Social Security Administration impairment listing 2.02. There is no evidence in the record that shows, or even suggests, Claimant has lost any visual acuity in his left eye.

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

or

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Claimant's herniated disc does meet or equal listing 1.04 A. The MRI of 11/06 shows nerve root impingement. In the examinations on 6/11/07, Claimant was receiving pain treatments and still had pain, weakness in his right lower extremity, and a limp. At the examination on 11/14/08, Claimant was receiving no treatment and had pain, limitation of motion of the spine, muscle weakness accompanied by sensory loss in his right lower extremity, and positive straight-leg raising tests.

Claimant's impairments meet or equal the criteria of Social Security Administration impairment listing 1.04. Claimant is determined disabled at this step. No further analysis is required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly determine that Claimant is not disabled and deny 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 REVERSED.

It is further ORDERED that the Department of Human Services shall process Claimant's application dated September 26, 2008 in accordance with Department policy.

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

Date Signed: January 8, 2010

Date Mailed: January 19, 2010

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 [REDACTED]

cc:

[REDACTED]