

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: 2009-1184
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 11, 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 telephone hearing was held on March 11, 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?

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 53 year old male. Claimant is 73 inches tall and weighs approximately 215 pounds. Claimant's formal education consists of 9 years of school.

- (2) Claimant has past relevant work experience as an electrician.
- (3) Claimant has been diagnosed with depression, MS, renal failure, and has had fusions in his cervical spine.
- (4) Claimant last worked in October 1998, as an electrician. Claimant reports he left that employment because he was injured.
- (5) On July 7, 2008, Claimant again applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
- (6) On September 8, 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).
- (7) On September 11, 2008, Claimant was sent notice of the Department's determination.
- (8) On September 26, 2008, Claimant submitted a request for hearing.
- (9) On October 20, 2008, the State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).
- (10) Following this hearing the record was kept open in order for Claimant to submit additional medical evidence. That evidence was submitted to the State Hearing Review Team.
- (11) On April 3, 2009, the State Hearing Review Team again 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.

At step 1, a determination is made on whether Claimant is engaging in substantial gainful activity (20 CFR 416.920(b)). If you are performing activities for pay or profit, we will use 20 CFR 416.971 through 416.975 to evaluate the activities to determine if they are substantial gainful activity. Substantial gainful activity is defined as work activity: that is both substantial and gainful; and 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 substantial gainful activity, 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 he is not engaged in any substantial gainful activity. The analysis of Claimant's disability assertion will continue.

At the second step it is determined whether you have a severe physical or mental impairment that meets the duration requirement or a combination of impairments that is severe and meets the duration requirement (20CFR 416.920). 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. When we talk about basic work activities, we mean 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.

An impairment or combination of impairments is not severe if it does not significantly limit your physical or mental ability to do basic work activities (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 we determine that your impairments are not severe, you are not disabled.

Claimant asserts disability based upon Multiple Sclerosis (MS), depression, neck and back pain, and renal failure. Evidence in the record from medical sources includes:

There is a medication follow up evaluation from Community Mental Health dated October 31, 2008. Claimant was seen by Psychiatrist [REDACTED] who found: Claimant was experiencing some sedation due to medication which was reduced; Claimant reported some racing thoughts, paranoid delusions, and occasional auditory hallucinations but no suicidal or homicidal ideations; Claimant's updated diagnosis was Depressive Disorder, Polysubstance Dependence, and Generalized Anxiety Disorder.

There is a physical examination done by [REDACTED] on September 8, 2008 of Muskegon Family Care. (Pages 590 & 591) Claimant went to the Doctor complaining of mouth sores. On examination [REDACTED] found Claimant had an ulcer/laceration on the left side inside his mouth. Claimant was referred to an ear, nose, and throat specialist for treatment. The rest of the examination showed Claimant was alert, anxious, not in pain or acute distress, and had

normal posture and gait. During the examination Claimant reported he had stopped cocaine use 2 years ago. [REDACTED] specifically recorder “UDS (urine drug screen) demonstrates different however.”

There is a physical examination done by [REDACTED] on August 8, 2008 of [REDACTED] [REDACTED] (Pages 541 & 542) Claimant went to the Doctor complaining of neck pain. On examination [REDACTED] found Claimant’s cervical spine was tender, had a reduced range of motion and movement was painful. The rest of the examination showed Claimant was well, not anxious or in acute distress, and had no loss of muscle strength or tone bilaterally. Under drug use the Doctor recorded “uses cocaine and pain killers, failed rehab 3/06”.

There is a Psychiatric Evaluation done by Psychiatrist [REDACTED] of Community Mental Health on July 28, 2008. (Pages 567-569) [REDACTED] diagnosed Claimant with Depressive Disorder, Polysubstance Dependence, and Generalized Anxiety. Claimant scored 29 out of 30 on a mini-mental status examination. The score shows Claimant had no cognitive impairments.

There is a report from an emergency room visit on July 17, 2008. Paramedics were called to the mission Claimant was staying at because Claimant was staggering and mission staff thought his MS was acting up. Claimant was disoriented and appeared intoxicated but did not smell of alcohol. After administration of an antibiotic and a liter of intravenous saline solution, Claimant became significantly more responsive and was discharged shortly thereafter. [REDACTED] [REDACTED] assessed that Claimant likely had an acute reaction to methadone which Claimant is regularly administered by the [REDACTED] [REDACTED]

There are records from a hospitalization between June 13 and 16, 2008. (Pages 582-589) Claimant came to the emergency room with discomfort and significant jerking and uncontrollable movement of his lower extremities. Claimant passed out in the emergency room.

Claimant was admitted to the hospital. Claimant's drug screen was positive for cocaine and THC. Claimant's discharge diagnosis was resolved acute renal failure secondary to dehydration, polysubstance abuse, depression, and multiple sclerosis.

There is a MRI study of Claimant's cervical spine done on May 7, 2008. (Pages 558 & 559) [REDACTED] did the study and found Claimant had: stable fusion of C4, C5, and C6; a mild protrusion of the C3-C4 disc; and focus of signal hyperintensity in the upper cervical spinal cord compatible with multiple sclerosis.

There is a report by [REDACTED] to [REDACTED] dated April 17, 2008. (Page 556) [REDACTED] [REDACTED] has been treating Claimant's MS since 2005. Claimant went to the Doctor complaining of visual, balance, speech, and memory problems. The Doctor reported:

"An MR scan done shortly after his visit in January did not show any new lesions or actually any active lesions. I am not sure how much of this man's complaints are MS related versus the fact that he is applying for disability. . . . overall he seems to have difficulties and it is a little hard to be sure how much of them are prompting his disability interest versus how much his interest in disability is prompting these complaints."

There is a report by [REDACTED] to [REDACTED] dated January 28, 2008. (Page 555) Claimant went to the Doctor complaining of vision, balance, speech, memory, and bowel problems. Claimant also complained of pain in his arms and legs. On examination the Doctor found Claimant: had no involuntary eye movements; had no cranial nerve, motor, sensory, or reflex deficits; and walks pretty good. The Doctor specifically wrote:

"He would like another MR scan, and I think that is reasonable given his progression of symptomatology although I am loathe to attribute all of it to MS. It does seem like he self medicates with alcohol and sleeps poorly. He wanted me to give him an Ultram prescription which I would not do, but it is okay if you do it."

Claimant has physical and mental impairments that have persisted for at least 12 months.

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's were compared with the Social Security Administration impairment listing 11.09. That listing is:

11.09 Multiple sclerosis. With:

- A. Disorganization of motor function as described in 11.04B;
or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Review of the objective medical evidence shows that Claimant's MS does not meet or equal this listing.

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 an electrician doing wiring. At this hearing Claimant specifically asserted he cannot work because his back pain prevents bending and his depression causes memory loss.

Examination of the objective medical evidence and other information in the record shows that Claimant has the RFC to perform light work. Claimant's previous work as an electrician would exceed the exertion functions of light work. Claimant is unable to perform his past relevant work.

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.

Age is one of the aspects of your vocational profile considered in this step. The following age categories are established in 20 CFR 416.963 for use in the Social Security Administration Medical-Vocational Guidelines.

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.

A person closely approaching advanced age is 50-54 years old. If you are closely approaching advanced age, we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

A person of advanced age is over 55. We consider that at advanced age, age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64).

Education is another aspects of your vocational profile considered in this step. The following categories of education are established in 20 CFR 416.964 for use in the Social Security Administration Medical-Vocational Guidelines.

- (1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.
- (2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.
- (3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.
- (4) *High school education and above.* 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.
- (5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

Work skills are another aspects of your vocational profile considered in this step. The following categories of work skills are established in 20 CFR 416.968 for use in the Social Security Administration Medical-Vocational Guidelines.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

- (a) *Unskilled work.* 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 offbearing (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.
- (b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
- (c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

Claimant is closely approaching advanced age, has a limited education, has the capacity to do unskilled light work. In accordance with Social Security Administration Medical-Vocational Guidelines rule 201.11, 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/

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

Date Signed: July 28, 2010

Date Mailed: July 29, 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/alc

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