

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: 2009-14737

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 12, 2009

Jackson 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 May 12, 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 42 year old male. Claimant is 67 inches tall and weighs

approximately 170 pounds. Claimant's formal education consists of 11 years of school and a GED.

(2) Claimant has past relevant work experience in construction, automobile lot management and delivery driving.

(3) Claimant has a history of degenerative disc disease and spinal problems. Claimant asserts disability based on back, neck, and shoulder pain.

(4) Claimant last worked in construction in September 2005. Claimant reports he left that employment because he was laid off.

(5) On November 14, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(6) On December 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).

(7) On December 23, 2008, Claimant was sent notice of the Department's determination.

(8) On February 8, 2009, Claimant submitted a request for hearing.

(9) On March 11, 2009, 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).

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 that he spends his time mostly around the house doing household chores as his back pain allows. Claimant is not engaged in substantial gainful activity.

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 back, neck, and shoulder pain. Current evidence in the record from medical sources includes:

There is a Medical Examination Report (form DHS-49) dated November 20, 2008 from [REDACTED] (Pages 12 & 13) The Doctor marked that he first saw Claimant on September 17, 2008 and the examination was conducted November 18, 2008. The Doctor restricted Claimant to occasional lifting of less than 10 pounds and no lifting of 10 pounds or more. The Doctor marked that Claimant should stand and/or walk less than 2 hours in an 8-hour day and sit less than 6 hours in an 8-hour day. The Doctor restricted Claimant from any repetitive actions of the hands, arms, legs, or feet. The Doctor noted that Claimant does not require any devices for ambulation.

There is a medical examination done on November 3, 2008 by [REDACTED] The chief complaint listed for the examination was that his lower back pain was getting worse. Claimant reported he was experiencing decreased mobility, numbness, and tenderness. During the examination the Doctor found Claimant was well nourished and developed and showed no apparent distress. At this exam the Doctor's comment under musculoskeletal was that Claimant had normal musculature and no skeletal tenderness or joint deformity. There is no record of a straight leg raise test being done and neither is there any range of motion measurements.

There is a medical examination done on October 22, 2008 by [REDACTED]. The chief complaint listed for the examination was lower back pain. Claimant reported he had pain radiating down to the ankle in both legs and was experiencing decreased mobility, numbness, tenderness, and spasms. During the examination the Doctor found Claimant was well nourished and developed and showed no apparent distress. The only abnormality found in the exam was listed under musculoskeletal, that Claimant's lumbar spine was tender and there was moderately reduced range of motion. There is no record of a straight leg raise test being done and neither is there any range of motion measurements.

There is also an MRI study of Claimant's lumbar and thoracic spine dated September 22, 2008 done by [REDACTED] referred by [REDACTED] (Pages 14-22). The lumbar study showed: broad based protrusion of degenerative L2-L3 disc with indentation over the thecal sac; moderately large herniation of degenerative L4-L5 disc with compression of right L4 nerve root; and central canal type spinal stenosis at L2-L3 level. The thoracic study showed only mild bulging of degenerative T5-T6 and the T7-T8 discs.

There is also an MRI study of Claimant's cervical spine and left shoulder which was done on September 25, 2007. (Pages 26-28). Interpretations of the MRIs were done by [REDACTED]. In the cervical spine the Doctor found: degenerative disc disease of C5-C6 and C6-C7 with end plate changes; spurring and marrow edema of C6-C7; and moderately severe left neural foraminal encroachment at C5-C6 and C6-C7. In Claimant's left shoulder the Doctor found mild tendinopathy of the supra and infraspinatus tendons with a partial tear of the infraspinatus tendon.

The MRI studies of Claimant's spine establish that Claimant has a severe physical impairment that meets the duration standard for Medical Assistance (MA) based on disability and State Disability Assistance (SDA). Therefore the analysis will continue.

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 (repeat the alleged impairments) impairment was compared with the Social Security Administration impairment listing 1.04. That listing is:

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);

Claimant's impairment does not meet or equal this listing because the objective medical evidence in the record does not show that Claimant has motor loss, reflex loss, or positive straight-leg raising tests. The analysis will continue.

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.

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.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

Classifications of work based on physical exertion requirements are defined in 20 CFR

416.967.

(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.

Statements about your pain or other symptoms will not alone establish that you are disabled, there must be medical signs and laboratory findings which show that you have a medical impairment(s) which could reasonably be expected to produce the pain or other symptoms alleged. (20 CFR 416.929)

Claimant reports past relevant work in construction, automobile lot management, and delivery driving. At this hearing, Claimant testified that he did not know if he could work because of the constant pain in his right leg. In this case there is only one medical opinion in the record addressing the limitation of Claimant's impairment on his ability to do basic work activities. [REDACTED] has given Claimant work restrictions that are less than sedentary work. On the Medical Examination Report (form DHS-49), [REDACTED] noted the MRI study of Claimant's spine, but did not indicate any medical findings that support the physical limitation. The record contains two examination reports done by [REDACTED] on October 22, 2008 and

November 3, 2008. The information that is reported from those examinations is inconsistent with the limitations given on November 20, 2008. In addition there are no test results and no other objective medical evidence to support the Doctor's opinion of Claimant's residual functional capacity caused by an abnormal spinal condition. Appendix 1 to Subpart P of Part 404—Listing of Impairments 1.00(E)(1) provides recommendations for examination of the spine as follows.

Examination of the spine should include a detailed description of gait, range of motion of the spine given quantitatively in degrees from the vertical position (zero degrees) or, for straight-leg raising from the sitting and supine position (zero degrees), any other appropriate tension signs, motor and sensory abnormalities, muscle spasm, when present, and deep tendon reflexes. Observations of the individual during the examination should be reported; e.g., how he or she gets on and off the examination table. Inability to walk on the heels or toes, to squat, or to arise from a squatting position, when appropriate, may be considered evidence of significant motor loss.

Guidance on how opinion evidence is evaluated is contained in 20 CFR 416.927(d) and is listed here.

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports

of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because non-examining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

██████████ opinion of Claimant's residual functional capacity cannot be given controlling weight. An in depth review of the objective medical evidence does not support it. The objective medical evidence in the record shows that Claimant has the residual functional capacity to perform light work.

Claimant's past relevant work in construction would exceed light work. Claimant's past relevant work in car lot management and delivery driving would fall within the physical requirements of light work. Claimant is found ineligible at this step because he is capable of performing past relevant work. However, for purposes of a thorough analysis the evaluation will continue.

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 42 years old, with a high school education or more, an unskilled work history, and he has the residual functional capacity to do light work. In accordance with the Social Security Administration Medical-Vocational Guidelines Rule 202.20, 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: April 13, 2010

Date Mailed: April 13, 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.

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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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