

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: 2009-17146

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 14, 2009

Berrien 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 14, 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 48 year old male. Claimant is 66 inches tall and weighs approximately 145 pounds. Claimant's formal education consists of 11 years of school.

(2) Claimant has past relevant work experience as a garbage collector, truck driver, machine operator, and a dishwasher.

(3) Claimant has been diagnosed with depression, anxiety, and panic disorder. Claimant has a history of breathing difficulty. Claimant asserts disability based on all of these medical conditions.

(4) Claimant last worked in June 2008, as a dishwasher. Claimant reports he left that employment because he worked too slow and had anxiety.

(5) On October 28, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(6) On February 6, 2009, 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 February 13, 2009, Claimant was sent notice of the Department's determination.

(8) On February 19, 2009, Claimant submitted a request for hearing.

(9) On April 27, 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.

Based on the evidence in the record and Claimant's testimony, 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 depression, anxiety, panic disorder, and difficulty breathing. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is documentation and a spirometry test report during the period March 10, 2008 through April 17, 2008. (Pages 14, 15, 28, 29, & 30) On March 10, 2008, Claimant complained to [REDACTED] that he felt short of breath when he did simple tasks such as moving furniture. The Doctor noted Claimant had been a pack a day smoker for 30 years. The Doctor found Claimant's lungs clear without wheezes, rales, or retractions. On March 12, 2008, Claimant underwent spirometry testing. On April 17, 2008, Claimant met with [REDACTED] again to follow up on the spirometry test results. The Doctor noted Claimant's spirometry tests showed significant obstruction with low vital capacity. Claimant showed dramatic improvement on the second test after using albuterol. The Doctor started Claimant on prescription inhalants.

There is a Psychiatric/Psychological Medical Report done by Michigan Disability Service on January 8, 2009 (Pages 4-10). Claimant was determined to have Panic Disorder, Generalized Anxiety Disorder, and Dysthymic Disorder. Claimant was found to be capable of understanding, remembering, and carrying out instructions and making decisions regarding work-related matters. It was also noted that Claimant is likely to have moderate to marked difficulty

interacting appropriately with coworkers and supervisors due to his chronic depression, anxiety, and panic disorder.

Claimant has medical impairments that will impact his ability to work and which have persisted for more than 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 breathing impairment was compared with the Social Security Administration impairment listing 3.02 Chronic pulmonary insufficiency. That listing is:

- A. Chronic obstructive pulmonary disease, due to any cause, with the FEV₁ equal to or less than the values specified in table I corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Table I		
Height without shoes (centimeters)	Height without shoes (inches)	FEV ₁ equal to or less than (L, BTPS)
154 or less	60 or less	1.05
155-160	61-63	1.15
161-165	64-65	1.25
166-170	66-67	1.35
171-175	68-69	1.45
176-180	70-71	1.55
181 or more	72 or more	1.65

Or

- B. Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the values specified in table II corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Table II		
Height without shoes (centimeters)	Height without shoes (inches)	FVC equal to or less than (L, BTPS)
154 or less	60 or less	1.25
155-160	61-63	1.35
161-165	64-65	1.45
166-170	66-67	1.55
171-175	68-69	1.65
176-180	70-71	1.75
181 or more	72 or more	1.85

Claimant's breathing impairment did not meet or equal these listings because he is 66 inches tall and achieved an FEV1 of 1.62 and an FVC of 2.89.

Claimant's mental impairment was compared to Social Security Administration impairment listing 12.06 Anxiety Related Disorders. Those listing are:

In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders are met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

- A. Medically documented findings of at least one of the following:
1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning;

OR

2. persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

Claimant's mental impairment did not meet or equal these listings because his history and symptoms do not match the criteria.

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 garbage collector, truck driver, machine operator, and a dishwasher.

At this hearing Claimant specifically asserted he cannot work because of his anxiety and stress, his shortness of breath, and his assertion he cannot follow directions. 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.

20 CFR 416.929 says that 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. In this case Claimant asserts he cannot follow directions but the

Psychologist who examined him on January 8, 2009 determined he was capable of understanding, remembering, and carrying out instructions.

Because Claimant does have medical limitations on his physical activities his physical residual functional capacity is limited to performing light work. Based on his anxiety disorder he should not be in a job where he is required to work closely with coworkers. Claimant's previous employment as a dishwasher would fall within his residual functional capacity for work.

Claimant is found ineligible at this step because he is capable of doing past relevant work. For purposes of a complete evaluation of Claimant's disability assertion all of the steps in the analysis will be conducted.

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.

Claimant is forty-nine years old, has the residual functional capacity to do light work, a limited education and an unskilled work history. Social Security Administration Medical-Vocational Guidelines Rule 202.17 indicates a person with this vocational profile 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: May 21, 2010

Date Mailed: May 25, 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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