

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: 2009-5093

Issue No: 2009

Case No:

[REDACTED]

Load No:

Hearing Date:

March 12, 2009

Gratiot 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 March 12, 2009. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly deny claimant's application for Medical Assistance (MA) based on disability?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On September 19, 2008, claimant applied for Medical Assistance (MA) and retroactive Medical Assistance (MA), based on disability.
- (2) On October 31, 2008, claimant was sent notice that his application was denied.
- (3) On November 9, 2009, claimant submitted a request for hearing.

(4) On December 4, 2008, the State Hearing Review Team determined claimant was not disabled.

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).

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 Federal Regulations define 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 not less than 12 months.

Disability determinations done by the State of Michigan for State Disability Assistance (SDA), use the Social Security Administration 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 a disability determination is a sequential evaluation process of five steps which are followed in a set order. These are the five steps in the process:

(1) At the first step, your work activity, if any, is considered. If you are doing substantial gainful activity, you are not disabled under these standards.

(2) At the second step, your impairments are considered. Your impairments must be medically determinable physical or mental impairments. At this step, the severities of the impairments are evaluated with regard to both the seriousness of the medical conditions and the duration of the conditions. A severe impairment, or combination of impairments, limits your physical or mental ability to do basic work activities. If your medically determinable impairments are not severe, or do not last long enough, you are not disabled under these standards.

(3) At the third step, the severity of your impairments are considered again and compared to the Social Security Administration listings of impairments. If your impairments meet the applicable duration requirement, and meet or equal a Social Security Administration impairment listing, you are disabled under these standards. If you are not determined disabled at this step, the evaluation goes on to the next step.

(4) At the fourth step, we assess your residual functional capacity (RFC) using all the relevant evidence in your case record. Residual functional capacity is the most you can still do despite your limitations. Your residual functional capacity is your remaining physical, mental, and other abilities. At this step your residual functional capacity is compared with your past relevant work. If you can still do your past relevant work you are not disabled under these standards.

(5) At the fifth and last step, your residual functional capacity 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 under these standards. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled under these standards.

STEP 1

At this step claimant's work activity is considered to determine if it is substantial gainful activity. The Federal Regulations define substantial gainful activity as:

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before.

(b) *Gainful work activity.* Gainful work activity is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

During the hearing claimant testified that he has farmed all his life as part of a family farm. Claimant stated the family farm is dissolving and he is presently engaged in establishing a farming partnership with his oldest son. Claimant described his typical daily activities as doing paperwork involved in establishing the partnership and preparing farm equipment for sale as part of the liquidation of the family farm. Claimant testified that he does all light physical work and stays away from operating heavy machinery.

Claimant's daily work activity is substantial gainful activity. Claimant is not disabled under the Social Security Administration standard. The Federal Regulations do not require

further analysis if a claimant can be determined disabled or not disabled at a step in the process. In spite of this, all five steps of the analysis will be done.

STEP 2

At this step we consider the severity of claimant's limitation. In this case claimant's limitation is due to a rare disease called acquired factor VIII inhibitors, also called acquired hemophilia A. The factor VIII inhibitors interfere with coagulation of the blood and symptoms of the disease include easy bruising and acute hemorrhages into body tissues. Claimant reports he first started having problems with bruising in July, 2008 and on July 29, 2008, he was admitted to the hospital due to having blood in his urine. Claimant then spent 10 days at the [REDACTED] where the diagnoses of the acquired factor VIII inhibitors was made. Claimant has been treated with steroids (prednisone), chemotherapy (rituximab), and pain killers as needed. The most recent medical information in this record is from [REDACTED] claimant's hematologist. The Medical Examination Report from [REDACTED] is dated October 29, 2008, and reflects an examination on October 28, 2008 (Department Exhibit #3 & 4).

The examination on October 28, 2008, showed that three months after initial serious symptoms appeared, claimant is responding to treatment and improving. Information on the treatment of the disease (Department Exhibit #20-25) states that steroid treatments have been helpful "for the management of" the disorder and the chemotherapy (rituximab) "is a promising alternative option for the eradication of the autoantibody and restoration of normal hemostasis." However, none of the medical documentation states that claimant has or will be completely cured of this disease by [REDACTED]. At the hearing claimant testified that he: had to be treated for a lung infection in December, 2008; is off the prednisone now; still has to have insulin shots to combat the effects of the steroid treatment; is still doing the chemotherapy treatments; and is still experiencing fatigue frequently and extreme fatigue occasionally.

In *Higgs V Bowen* 880 F2d 860, 862 (6th Cir, 1998) the Court found that at Step 2, the Department may only screen out claims which are totally groundless from a medical standpoint. The Court in *Higgs* further found that the severity requirement at Step 2 is a “de minimus” hurdle meant only to rule out frivolous claims. Claimant would not be considered ineligible at Step 2.

STEP 3

At this step we consider the severity of the impairment in comparison to the Social Security Administration listing of impairments. The appropriate listing is in part 7 Hemic and Lymphatic Systems. The specific relevant listing section is 7.08 which requires coagulation defects (hemophilia or a similar disorder) with spontaneous hemorrhage requiring transfusion at least three times during the 5 months prior to adjudication.

While claimant’s impairment did involve spontaneous hemorrhage, he did not required transfusions as a result of the disease. Therefore, his impairment does not meet or equal the Social Security Administration listing of impairments. Claimant would not be considered eligible at Step 3.

STEP 4

At this step we consider claimant’s residual functional capacity to determine if he can do his past relevant work. Claimant testified that he has farmed all his adult life. Claimant testified that farming is a very rigorous and physical occupation which involves long hours. Claimant testified that he is no longer able to do the full range of activities required in farming because of the exertion required. In the Medical Examination Report submitted by [REDACTED] on [REDACTED] claimant was given some physical limitations which the doctor expected to last more than 90 days. The exertional limitations given by D [REDACTED] on the Medical

Examination Report (form DHS-49) would allow medium work and are tied to concerns that excess physical activity or exertion could result in spontaneous bleeding.

Claimant is not presently able to perform his past relevant work of the full range of farming activities. Claimant would not be considered ineligible at Step 4.

STEP 5

At this step we consider claimant's residual functional capacity and vocational profile to determine if he is capable of adjusting to other work. Claimant is 53 years old, has more than a high school education, and an unskilled work history. With regard to the Social Security Administration Medical-Vocational Guidelines Claimant's exertional limitations allow him to do medium work. According to the Medical-Vocational Guidelines Rule 203.14 Claimant is not disabled because he can adjust to other work. Claimant would be considered ineligible at Step 5.

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 denied claimant's application for Medical Assistance (MA) based on disability.

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 16, 2009

Date Mailed: April 17, 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.

GFB [REDACTED]

cc: [REDACTED]