

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: 2009-6772

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2009

Ingham 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 25, 2009. Claimant appeared and testified.

ISSUES

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

(2) Did the Department of Human Services properly 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 54 year-old male. Claimant is 5' 7" tall and weighs approximately 157 pounds. Claimant's formal education consists of 8 years of school. Claimant has obtained a GED.

(2) Claimant has past relevant work in automobile repair, building maintenance, manufacturing, and roofing.

(3) Claimant last worked in 1999 as a roofer in Gulfport Mississippi. Claimant reports he left that employment because he could no longer do the work because of pain from arthritis in his hips.

(4) On June 17, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On October 28, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled.

(6) On November 5, 2008 Claimant was sent notice of the Department's determination.

(7) On November 12, 2008 Claimant submitted a request for hearing.

(8) On January 2, 2009 the Department of Human Services State Hearing Review Team determined that Claimant was not disabled.

(9) Claimant is disabled for purposes of the Medical Assistance (MA) program because his severe medically determined impairment meets Social Security Administration impairment listing 1.02.

(10) Claimant is disabled for purposes of the State Disability Assistance (SDA) program because his severe medically determined impairment meets Social Security Administration impairment listing 1.02.

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.

Claimant testified that he lives with family and spends most of his time watching TV and talking/visiting with family. Claimant is not currently engaged in any substantial gainful activity. 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). If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon arthritis in both hips. Claimant reports he had his left hip replaced in 2000. Claimant reports he has severe problems with his right hip and still has significant pain and problems with his left hip. Relevant evidence in the record from medical sources includes: a consultation for hip pain at the Emergency Department of [REDACTED] [REDACTED] on [REDACTED]; a psychological evaluation done for disability determination by [REDACTED] on [REDACTED] and a physical examination for disability determination done by [REDACTED] on [REDACTED]

The [REDACTED] consultation included X-rays of Claimant's right hip. Radiologist [REDACTED] [REDACTED] opinion was that Claimant had severe degenerative arthritic change of the right hip. The radiologist described Claimant's right hip as having advanced degenerative arthritic change shown by severe narrowing of the hip joint space. (Department Exhibit # 26).

On [REDACTED] [REDACTED] examined Claimant. She found Claimant had significant decreased range of motion of both hips. She noted he had some decreased flexion of both knees. The Doctor reported that Claimant's replaced hip is also problematic and that Claimant moves with difficulty and obvious amounts of pain. (Department Exhibit # 8-10).

On [REDACTED], Claimant was given a psychological evaluation. The Axis I diagnosis was mood disorder with mild depression secondary to medical problems.

Claimant has a severe medically determinable physical impairment which has persisted for more than 12 months. Claimant is not considered ineligible at step 2.

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 physical impairment was compared to the following Social Security Administration impairment listing.

1.01 Category of Impairments, Musculoskeletal

1.02 *Major dysfunction of a joint(s) (due to any cause)*: Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (*i.e.*, hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

or

B. Involvement of one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Relevant sections of the listing include:

1.00 Musculoskeletal System

A. *Disorders of the musculoskeletal system*

B. *Loss of function.*

1. *General.*

2. *How We Define Loss of Function in These Listings*

a. *General.* Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability

to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. The inability to ambulate effectively or the inability to perform fine and gross movements effectively must have lasted, or be expected to last, for at least 12 months. For the purposes of these criteria, consideration of the ability to perform these activities must be from a physical standpoint alone. When there is an inability to perform these activities due to a mental impairment, the criteria in 12.00ff are to be used. We will determine whether an individual can ambulate effectively or can perform fine and gross movements effectively based on the medical and other evidence in the case record, generally without developing additional evidence about the individual's ability to perform the specific activities listed as examples in 1.00B2b(2) and 1.00B2c.

b. What We Mean by Inability To Ambulate Effectively

(1) *Definition.* Inability to ambulate effectively means an extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.)

(2) *To ambulate effectively*, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail. The ability to walk independently about one's home without the use of assistive devices does not, in and of itself, constitute effective ambulation.

c. What we mean by inability to perform fine and gross movements effectively.

d. Pain or other symptoms. Pain or other symptoms may be an important factor contributing to functional loss. In order for pain or other symptoms to be found to affect an individual's ability to perform basic work activities, medical signs or laboratory findings must show the existence of a medically determinable impairment(s) that could reasonably be expected to produce

the pain or other symptoms. The musculoskeletal listings that include pain or other symptoms among their criteria also include criteria for limitations in functioning as a result of the listed impairment, including limitations caused by pain. It is, therefore, important to evaluate the intensity and persistence of such pain or other symptoms carefully in order to determine their impact on the individual's functioning under these listings.

In this case, Claimant has bony ankylosis (the stiffening of a joint) in his right hip. This fact is established by the findings of [REDACTED] that Claimant had severe narrowing of the hip joint and [REDACTED]' finding that Claimant has significant decreased range of motion of both hips. Claimant reports severe chronic pain in his right hip which is consistent with the medical findings.

In this case, Claimant does not use a walker, two crutches, or two canes. Claimant does have chronic pain in his right hip and that pain is amplified when he ambulates. Claimant testified that he does not want to use a cane or walker because he does not want to appear weak or vulnerable. Claimant testified that when he has too he can get to special events like this hearing; he just has to leave in plenty of time so he can go slow and stop when he needs to. This hearing was conducted via telephone. The Department representative, [REDACTED], was asked to share her visual observations of Claimant. [REDACTED] testified that Claimant was obviously in pain, had to stand up and reposition frequently, and walked very slowly. [REDACTED] observations support Claimant's testimony.

Claimant is unable to ambulate effectively because he is not capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. 20 CFR Appendix 1 to Subpart B of Part 404, cited above, states that the inability to ambulate effectively on a sustained basis is for any reason, including pain associated with the underlying musculoskeletal impairment. Claimant's severe degenerative joint disease of the

right hip meets Social Security Administration impairment listing 1.02. Claimant is found disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) programs.

STEP 4

The Federal Regulations do not require further analysis if a Claimant can be determined disabled or not disabled at a step in the process.

STEP 5

The Federal Regulations do not require further analysis if a Claimant can be determined disabled or not disabled at a step in the process.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides Claimant is disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) programs because his severe medically determined impairment meets Social Security Administration impairment listing 1.02.

It is ORDERED that the actions of the Department of Human Services, in this matter, are REVERSED.

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

Date Signed: July 17, 2009

Date Mailed: July 21, 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.

GFH [REDACTED]

cc:

[REDACTED]