

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: 2009-9603
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 25, 2009
Wayne 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 38 year-old male. Claimant is 6'tall and weighs approximately 220 pounds. Claimant's formal education consists of 12 years of school culminating in a High School Diploma.

(2) Claimant has past relevant work as a tow truck driver and automobile body repair work.

(3) Claimant last worked in December, 2008 as a tow truck driver. Claimant reports he left that employment because the effort needed to hook vehicles up to the tow truck fatigued him too much.

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

(5) On October 27, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled.

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

(7) On November 25, 2008, Claimant submitted a request for hearing.

(8) On January 9, 2009, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled.

(9) At this hearing, Claimant presented additional medical evidence. The additional evidence was forwarded to the State Hearing Review Team.

(10) On April 21, 2008, the Department of Human Services State Hearing Review Team determined that 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).

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 spends most of his days hanging around the house and does not do much. Claimant is not engaged in any substantial gainful activity.

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 Sarcoidosis, shortness of breath, and irregular heart rate. Sarcoidosis is a multisystem disorder characterized by small inflammatory nodules. The cause of the disease is still unknown. Virtually any organ can be affected; however, nodules most often appear in the lungs or the lymph nodes. The clinical course generally varies and ranges from an undetected disease to a debilitating chronic condition that may lead to death. Claimant reports his Sarcoidosis was initially diagnosed in 2001 and involved his lungs. Claimant reports he has recently been referred to a cardiologist because it appears the disease may have moved to his heart. The majority of evidence in the record from medical sources consists of ongoing monitoring and treatment by [REDACTED] since initial diagnosis of the Pulmonary Sarcoidosis in 2001. (Department Exhibit # 22-96).

On August 27, 2008, Claimant saw [REDACTED] for the first time since 2004. The narrative of that visit notes Claimant had not been taking his prescribed medication for 4 years. [REDACTED] noted a worsening of the Pulmonary Sarcoidosis along with cardiac irregularities. (Department Exhibit # 18-21).

On September 4, 2008, Claimant was examined by [REDACTED]. The Doctor completed a Medical Examination Report (form DHS-49) Department Exhibit # 14 & 15. The Doctor placed a complete limitation on Claimant doing any lifting or carrying and a complete restriction on Claimant using his hands/arms and feet/legs for any repetitive actions. However, the Doctor marked every box in section 9B for standing/walking and sitting. Information in this form is contradictory. In the box asking what medical findings supported the limitations, the Doctor wrote "cannot work @ present." The accompanying narrative states "I do not think the patient is capable of working at this time until his cardiac and pulmonary issues are more stable." This

Medical Examination Report (form DHS-49) is not sufficiently consistent or reliable for use in determining whether Claimant is disabled.

Based on the examination, [REDACTED] has the impression there is probable Cardiac Sarcoidosis. [REDACTED] referred Claimant to a cardiologist.

On [REDACTED], [REDACTED], classified Claimant as Class II with regard to the American Heart Association Functional Capacity. Class II is cardiac disease resulting in slight limitation of physical activity, comfortable at rest, and ordinary physical activities result in fatigue. [REDACTED] limited Claimant's lifting and carrying to no more than 20 pounds. (Department Exhibit # A4 & A5).

Claimant saw [REDACTED] again on March 20, 2009. The check out sheet from that appointment shows a diagnosis with persistent atrial fibrillation and a right bundle branch block.

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 pulmonary sarcoidosis was compared to Social Security Administration impairment listing 3.02 Chronic pulmonary insufficiency. The values on Claimant's spirometry report dated August 27, 2008, did not meet or equal the listing.

Claimant's diagnosed atrial fibrillation and right bundle branch block were compared to Social Security Administration impairment listing 4.05 Recurrent arrhythmias. Claimant's medically determined condition did not meet or equal the listing.

STEP 4

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 12 years of past relevant work as a tow truck driver. At this hearing Claimant specifically testified he can no longer do that work because hooking up a vehicle to the tow truck is strenuous and exhausts him. Claimant has a medically determined physical restriction to never lift more than 20 pounds. The exertion required manipulating and connecting the straps and chains of a tow truck vary and can easily exceed 20 pounds. Claimant does not have the residual functional capacity to perform his past relevant work.

STEP 5

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 38 years-old. In accordance with 20 CFR 416.963, Claimant falls within the category of a younger person. If you are a younger person we generally do not consider that your age will seriously affect your ability to adjust to other work.

Claimant has a High School education. In accordance with 20 CFR 416.964 a High School education means abilities in reasoning, arithmetic, and language skills acquired through

formal schooling at a 12th grade level. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

Claimant has a history of unskilled work. In accordance with 20 CFR 416.968 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 Social Security Administration Medical-Vocational Guidelines are divided into categories based on the maximum sustained work capability a person still has. Those categories 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.

Claimant is 38 years-old, has a high school education, and a history of unskilled work. The medically determined physical restriction from [REDACTED] classifies Claimant as capable of doing light work. Under Social Security Administration Medical-Vocational Guidelines rule 202.20 directs a conclusion that 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 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 21, 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]