

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: 2009-11108
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 15, 2009
Macomb 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 April 15, 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?

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 43 year-old male. Claimant is 70 inches tall and weighs approximately 180 pounds. Claimant's formal education consists of 12 years of High School and then trade school training as a diesel mechanic.
- (2) Claimant has past relevant work as a diesel mechanic.

(3) Claimant last worked in February, 2003 as a diesel mechanic. Claimant reports he left that employment because he was involved in an industrial accident.

(4) On March 26, 2008, Claimant applied for Medical Assistance (MA) based on disability.

(5) On November 7, 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).

(6) On November 19, 2008, Claimant was sent notice of the Department's determination.

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

(8) On May 4, 2009, the Department of Human Services 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.

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 time at home doing household chores, watching TV, reading, and napping. Claimant is not engaged in substantial gainful activity because he does not derive pay or profit for his activities. 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). 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 your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon chronic obstructive pulmonary disease (COPD), heart problems, acute demyelinating inflammatory neuropathy (dementia related to neurotoxicity), and depression. Claimant reports that he was exposed to dangerous and toxic chemicals as the result of an industrial accident in 2003. Current, relevant evidence in the record from medical sources is discussed below.

On [REDACTED], Claimant had an echocardiograph. The report (pages A6 & A7) indicate Claimant had a mild mitral regurgitation.

On [REDACTED], Claimant underwent a right heart catheterization (pages A8 & A9). The report summary stated that Claimant had normal filling pressures and cardiac output.

On [REDACTED], [REDACTED] completed a Medical Examination Report (form DHS-49) on Claimant (pages 11 & 12). [REDACTED] specializes in neurology and has been treating Claimant since February, 2003. The Doctor indicated that Claimant is stable and indicated physical limitations of: restricted to lifting less than 10 pounds occasionally and never more than 10 pounds; 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 did not cite any medical findings to support the physical limitations he gave. The Doctor also listed Claimant as having mental limitations in comprehension, sustained concentration, reading/writing, and memory. The Doctor referred to a neuropsychological evaluation as the basis of the limitations.

On [REDACTED], [REDACTED] completed a Medical Examination Report (form DHS-49) on Claimant (pages 13 & 14). The Doctor listed his specialty as occupational and environmental, noted that he has been treating Claimant since March, 2003, and listed asthma and Interstitial lung disease (ILD) as the current diagnosis. The Doctor did not indicate any physical or mental limitations writing that it was beyond the scope of his practice.

On [REDACTED] conducted a neuropsychological evaluation of Claimant (pages 3-7). The Doctor had conducted two prior neuropsychological evaluations of Claimant in 2003 and 2004. The Doctor reported that Claimant's cognitive symptoms include slowed thinking, memory problems, difficulty thinking clearly, distractibility, concentration problems, and word-finding problems. Claimant reported that he forgets intended actions and recent conversations. Specific findings relevant to criteria used in this disability determination

include: ability to pay attention to more than one thing at a time was in the average range at the 42nd percentile; focused auditory concentration was above average at the 82nd percentile; sustained auditory attention was below average at the 24th percentile; selective concentration was in the average range at the 58th percentile; visual concentration was impaired on 5 of 12 indicators of attentional concentration; visual scanning speed was in the average range at the 66th percentile; reaction time was atypically slow at approximately the 1st percentile; psychomotor speed was below average for written and in the mildly decreased range for oral; ability to learn and remember new verbal information was above average at the 76th percentile; ability to retain previously learned verbal information was below average at the 18th percentile; ability to learn and remember visuospatial information was below the 1st percentile and delayed recall of it was at the 3rd percentile. The Doctor summarized that Claimant has mild deficits in areas of cognition such as novel problem solving, abstract reasoning, the ability to inhibit irrelevant information, and the ability to think in a focused manner. The Doctor also summarized that Claimant's scores on visual attention range from a mildly impaired range to the severely impaired range. [REDACTED], specifically commented that Claimant continues to demonstrate deficits that would make his return to work as a diesel mechanic unlikely and potentially dangerous. The Doctor also commented that Claimant's cognitive deficits may make it difficult for him to acquire new marketable skills.

CFR 416.921 defines a non-severe impairment. 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. 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.

Claimant has an impairment or combination of impairments which limit his ability to perform some basic work activities. Claimant's impairment or combination of impairments has lasted more than 12 months. Claimant is found neither disabled nor ineligible at this step.

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 asserts disability based upon chronic obstructive pulmonary disease (COPD), heart problems, acute demyelinating inflammatory neuropathy (dementia related to neurotoxicity), and depression. Claimant's asserted chronic obstructive pulmonary disease (COPD) could not be evaluated under the listings because no spirometer test results were submitted. Claimant's mild mitral regurgitation with normal filling pressures and cardiac output is not a serious enough cardiovascular impairment to be included in the Social Security Administration impairment listings.

Claimant's acute demyelinating inflammatory neuropathy was compared with the Social Security Administration impairment listing 12.02.

12.02 Organic Mental Disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the

presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.

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

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., the Luria-Nebraska, Halstead-Reitan, etc.;

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. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with

symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Claimant's acute demyelinating inflammatory neuropathy did not meet or equal these listings because Claimant does not have "marked" restrictions or difficulties at the level required in the listing.

Claimant's depression was compared to Social Security Administration impairment listing 12.04 Affective Disorders.

12.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

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

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or

- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking;

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. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Claimant's depression did not meet or equal these listings because Claimant does not have "marked" restrictions or difficulties at the level required in the listing.

Claimant is found neither disabled nor ineligible at this step.

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 past relevant work as a diesel mechanic. Claimant reports he left that work due to an industrial accident. At this hearing Claimant specifically asserted he cannot work because he has: short term memory problems; pain in his feet, legs, and arms; and gets tired easily because of his lung problems.

The only medical source evidence defining physical limitations is from [REDACTED]. On [REDACTED], [REDACTED] completed a Medical Examination Report (form DHS-49) on Claimant (pages 11 & 12). [REDACTED] specializes in neurology and has been treating Claimant since February, 2003. The Doctor indicated that Claimant is stable and indicated physical limitations of: restricted to lifting less than 10 pounds occasionally and never more than 10 pounds; 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 did not cite any medical findings to support the physical limitations he gave. This record contains no medically determined physical limitations due to Claimant's asserted COPD and heart trouble. The record contains no medical source evidence to support [REDACTED] assessment of physical limitations. However, [REDACTED] has a treating relationship with Claimant and there is no medical source evidence in the record that contradicts his assessment of physical limitations. Under CFR 416.927, [REDACTED] assessments of physical limitations have controlling weight.

In accordance with CFR 416.967 Claimant has the RFC to perform sedentary work. Claimant's past relevant work as a diesel mechanic would require standing and or walking in excess of 2 hours in an 8 hour day and occasional or more lifting in excess of 10 pounds.

Claimant's past relevant work as a diesel mechanic is medium work. Claimant is unable to perform his past relevant work. Claimant is found neither disabled nor ineligible at this step.

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 44 years old, has more than a high school education and has a skilled/semi-skilled work history as a diesel mechanic. The neuropsychological evaluation done by [REDACTED], [REDACTED], on [REDACTED], shows that Claimant has cognitive deficits. [REDACTED] specifically wrote that Claimant's cognitive deficits "may make it difficult for him to acquire new marketable skills." This medically determined limitation is taken into consideration in determining if Claimant can learn new skills based on his educational level. However, Claimant's acquired work knowledge and skills are transferable. In accordance with CFR 416.967, and as determined in Step 4, Claimant has the residual functional capacity to perform sedentary work.

Using Social Security Administration Medical-Vocational Guidelines rule 201.20 as a guide Claimant is found 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.

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: September 21, 2009

Date Mailed: September 23, 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 

cc:

