

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: 2009-11536

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 29, 2009

Newaygo 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 29, 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 42 year old male. Claimant is 69 inches tall and weighs approximately 200 pounds. Claimant's formal education consists of 12 years of school.

(2) Claimant has past relevant work in construction, roofing, and as a cashier.

(3) Claimant has been diagnosed with diabetes and glaucoma and asserts disability based on the complications from these diseases.

(4) On November 6, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On December 9, 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 December 15, 2008, Claimant was sent notice of the Department's determination.

(7) On December 29, 2008, Claimant submitted a request for hearing.

(8) On February 9, 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.

At step 1, a determination is made on whether Claimant's 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.

Claimant testified that he spends most of his time sitting with his feet elevated to combat swelling. Claimant is not engaged in substantial gainful activity. The analysis of Claimant's disability assertion will continue.

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 glaucoma, neuropathy, and complications caused by diabetes. Claimant specifically asserts he cannot work because of the lack of feeling below his knees in both legs. Claimant asserts he cannot stand or walk and can only sit with his feet elevated. Recent evidence in the record from medical sources includes:

There is a January 10, 2009 physical examination done by [REDACTED]. (pages A1-A3) The Doctor found Claimant had visual acuity of 20/50 in the right eye and 20/50 in the left eye without glasses. The Doctor found that Claimant had a deformity of the right fifth toe and amputation of the right fourth toe. Claimant had lack of sensation to light touch and pinprick below the knees bilaterally. The Doctor also found that Claimant had intact motor strength at 5/5 throughout, had full range of motion of all joints, full dexterity of the hands, and was able to ambulate normally.

There is a report dated November 10, 2008 by [REDACTED] which states Claimant had undergone another panretinal photocoagulation on his right eye. (page A4)

There is an eye examination by [REDACTED] done October 20, 2008. (pages A5 & A6) The examination was a follow up after additional panretinal photocoagulation and tube shunt procedures. The Doctor recorded that Claimant said his eyes were more comfortable and that vision had improved in both eyes. Claimant's uncorrected vision measured 20/20 in the right eye and 20/50 in the left eye. Claimant had full visual fields in both eyes.

There is a report from [REDACTED] dated September 17, 2008 describing the excellent results obtained from panretinal photocoagulation and tube shunt procedures done on Claimant's left eye. (page 26)

Reports and documentation for a hospital stay between December 27, 2007 and January 2, 2008. (pages 36- 42) During this hospitalization Claimant's fourth toe on the right foot was further amputated. The further amputation was done to deal with osteomyelitis at the point of previous amputation. The surgery was done by [REDACTED]

There are also sporadic hospitalization and treatment records between April 2003 and May 2005. (pages 43-57) Review of these documents shows that Claimant has repeatedly been hospitalized and treated for cellulitis, osteomyelitis, and gangrene of the right foot caused by uncontrolled diabetes. All the reports state that Claimant does not follow any diet, does not take medications, and does not see a Doctor regularly.

Objective medical evidence in the record shows that Claimant currently has some neuropathy in his lower legs as a result of his uncontrolled diabetes. Complications from Claimant's diabetes, affecting his lower legs has persisted for more than 12 months. Some of the complications Claimant has suffered could significantly limit his physical ability to do basic work activities. The analysis of Claimant's disability assertion will continue.

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 visual impairment was compared with the Social Security Administration impairment listing 2.02. That listing is: 2.02 Loss of visual acuity. Remaining vision in the better eye after best correction is 20/200 or less.

Claimant's visual impairment does not meet or equal this listing because the most recent visual acuity test shows Claimant had visual acuity of 20/50 in the right eye and 20/50 in the left eye without glasses.

The current objective medical evidence regarding the reduced sensation in Claimant's lower legs is insufficient for comparison to any Social Security Administration impairment listing.

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 construction, roofing, and work as a cashier for past relevant work.

At this hearing Claimant specifically asserted he cannot work because of the lack of feeling below his knees in both legs. Claimant asserts he cannot stand or walk and can only sit with his feet elevated. Claimant testified that his vision has improved from when he first started having problems.

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.

At the medical examination of January 10, 2009 [REDACTED] found that Claimant had a lack of sensation to light touch below the knees bilaterally and diminished pulses in both feet. The

Doctor also found that Claimant had intact motor strength at 5/5 throughout, full range of motion of all joints, full dexterity of the hands, and was able to ambulate normally.

Claimant has the RFC to perform sedentary and light work. Claimant would be able to perform his past work as a cashier because that work does not exceed light work. Claimant is found ineligible at this step. For purposes of a complete evaluation the analysis of Claimant's disability assertion will continue.

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 42 years old, with a High School education or more, an unskilled work history, and the residual functional capacity to do light work. In accordance with the Social Security Administration Medical-Vocational Guidelines Rule 202.20 Claimant is not disabled because he could transition to other work. Claimant is found ineligible again at this step.

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

Date Signed: April 13, 2010

Date Mailed: April 13, 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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