

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: 2009-11745
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 28, 2009
Tuscola 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 28, 2009. Claimant appeared and testified. The record was left open and Claimant submitted additional medical evidence.

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 38 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 as a machine operator, in both building and road construction, and holds a CDL.
- (3) Claimant last worked in May, 2008 as a machine operator. Claimant reports he left that employment because of his heart problems.
- (4) On May 19, 2008, Claimant was diagnosed with nonischemic dilated cardiomyopathy. A biventricular implantable cardioverter-defibrillator (ICD) was placed on October 3, 2008. Claimant asserts disability based on his assertion he gets fatigued easily and the Doctors say the performance of his ICD has topped out and will not get any better.
- (5) On October 1, 2008, Claimant applied for Medical Assistance (MA) based on disability.
- (6) On November 3, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA).
- (7) On November 7, 2008, Claimant was sent notice of the Department's determination.
- (8) On December 30, 2008, Claimant submitted a request for hearing.
- (9) On February 17, 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).
- (10) Following this hearing the record was left open and Claimant submitted additional medical evidence which was sent to the State Hearing Review Team for review.

(11) On July 23, 2009, after reviewing the additional medical evidence, the Department of Human Services State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA).

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 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.

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)). 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 reports that he spends most of his time doing household chores for his family. Claimant is not engaged in substantial gainful activity because he does not receive pay or profit for the activity.

STEP 2

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, 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 the fact that he gets easily fatigued because of his heart condition. Relevant objective medical evidence since placement of the biventricular implantable cardioverter-defibrillator (ICD) includes:

A Medical Examination Report (form DHS-49) done by [REDACTED] on [REDACTED] (Exhibit 1 pages 18 & 19). The Doctor listed Claimant as temporarily disabled and restricted from any work until approximately [REDACTED]. The Doctor noted that Claimant was scheduled for the defibrillator implant on 10/3/08.

A functional capacity classification done on Claimant, dated [REDACTED] (Exhibit 1 page 20). On that date Claimant was determined to be Class III. "Patients with cardiac disease resulting in marked limitation of physical activity."

A Medical Examination Report (form DHS-49) done by [REDACTED] on [REDACTED] (pages A3 & A4). The Doctor recorded that Claimant was last seen on [REDACTED]. The Doctor indicated that Claimant had no physical limitations.

In this case, Claimant had a serious impairment which improved due to medical treatment. There is no objective medical evidence in the record showing that Claimant's

previous impairment lasted for 12 months. Neither is there any objective medical evidence in the record showing that Claimant has any new severe impairment that has lasted or is expected to last 12 months or more and prevents employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at this step. In order to perform a thorough analysis of Claimant's disability allegation the sequential evaluation will continue.

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.

There is insufficient object medical evidence post placement of the biventricular implantable cardioverter-defibrillator (ICD) to evaluate under the Social Security Administration impairment listings.

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 machine operator, in both building and road construction, and holds a CDL. At this hearing Claimant specifically asserted he cannot work because he becomes fatigued easily. The only objective medical evidence post placement of the

biventricular implantable cardioverter-defibrillator (ICD) indicates that Claimant has no physical limitations. 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.

The objective medical evidence shows that Claimant has the residual functional capacity to perform any level of work. Since Claimant has no medically proven physical limitations Claimant would be able to perform any of his past relevant work. Claimant is found ineligible at this step also.

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.

As determined in Step 4 Claimant has the residual functional capacity to perform any level of work. In accordance with the Social Security Administration Medical-Vocational Guidelines Rule 204.00 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 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: March 12, 2010

Date Mailed: March 25, 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/ 

cc:

