

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: 2009-11828

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 23, 2009

Mason 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 23, 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 58 year old female. Claimant is 67 inches tall and weighs approximately 130 pounds. Claimant's formal education consists of 10 years of school.

(2) Claimant has past relevant work as a cook and as a crew member on a car ferry.

(3) Claimant has a history of reflex sympathetic dystrophy, fibromyalgia, irritable bowel syndrome, depression, and chronic fatigue syndrome. Claimant asserts disability based on all these conditions.

(4) Claimant last worked in September 2006, as a crew member on a car ferry. Claimant reports she left that employment because she was injured on the job and was never cleared to return to work.

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

(6) On December 10, 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).

(7) On December 12, 2008, Claimant was sent notice of the Department's determination.

(8) On December 26, 2008, Claimant submitted a request for hearing.

(9) On February 11, 2009, the State Hearing Review Team determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(10) On April 29, 2009, additional medical evidence was submitted to the State Hearing Review Team.

(11) On May 7, 2009, the State Hearing Review Team reviewed the additional medical evidence and again determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

heading

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 a, 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.

Based on the evidence in the record and Claimant's testimony, Claimant is not engaged in substantial gainful.

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 reflex sympathetic dystrophy, fibromyalgia, irritable bowel syndrome, depression, and chronic fatigue syndrome. Evidence in the record from medical sources includes:

On November 27, 2007 Claimant's regular physician, [REDACTED] did a residual functional capacity evaluation on Claimant. The Doctor restricted Claimant's lifting and carrying to 10 pounds occasionally. Claimant was also restricted to only occasionally stooping and reaching above shoulder level. Claimant was never to squat, kneel, climb, crouch, or crawl.

On January 29, 2008 Claimant was admitted to the [REDACTED] for emergency inpatient psychiatric treatment following an intentional car wreck. The admitting physician diagnosed Claimant with mood disorder, cognitive disorder, alcohol dependence, nicotine dependence, and personality disorder. An X-ray of Claimant's right knee showed mild spurring

with no fractures. An X-ray of Claimant's pelvis showed no fracture. A CT scan of Claimant's cervical spine showed degenerative changes with broad protrusion and right neuroforaminal stenosis at C4-C5. An X-rays of Claimant's lumbar spine showed only degenerative changes with no evidence of fracture. (Pages 224-236)

On April 10, 2008 Claimant went in for a refill of duragesic patches. When Claimant was asked to submit a urine sample for drug screening, Claimant left the facility without complying. Claimant was discharged from [REDACTED] practice. (Page 258)

On April 23, 2008 Claimant was admitted the [REDACTED] of West Michigan. (Pages 122-124) Claimant had taken an overdose of her prescription medication, Seroquel.

On May 5, 2008 the [REDACTED] system assessed Claimant's level of mental impairment. Claimant was assessed as moderately impaired in several areas but not markedly impaired in any area.

On May 22, 2008 Claimant was seen by [REDACTED] noted memory problems and cognitive impairment. No other irregularities were noted.

On October 6, 2008 Claimant was examined by [REDACTED] the medical director at West [REDACTED] (Pages 24 & 25) The Doctor noted memory problems, difficulty with cognitive skills, and that Claimant seemed sad and anxious.

The objective medical evidence of record shows that Claimant has medical impairments which have persisted for at least 12 months.

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 impairments did not meet or equal any of the 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 past relevant work as a cook and as a crew member on a car ferry. At this hearing Claimant specifically asserted she cannot work because she is unable to do any sustained activity, she gets too fatigued.

Your residual functional capacity is your remaining physical, mental, and other abilities. Those abilities are outlined in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions (including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work.

Mental abilities. When we assess your mental abilities, we first assess the nature and extent of your mental limitations and restrictions and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to carry out certain mental activities, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work

pressures in a work setting, may reduce your ability to do past work and other work.

Other abilities affected by impairment(s). Some medically determinable impairment(s), such as skin impairment(s), epilepsy, impairment(s) of vision, hearing or other senses, and impairment(s) which impose environmental restrictions, may cause limitations and restrictions which affect other work-related abilities. If you have this type of impairment(s), we consider any resulting limitations and restrictions which may reduce your ability to do past work and other work in deciding your residual functional capacity.

Classifications of work based on physical exertion requirements 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 has the RFC to perform sedentary work. Claimant's past work as a cook and crew member would exceed her RFC. Claimant cannot perform any past relevant work.

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 59 years old with a limited education, an unskilled work history, and the residual functional capacity for sedentary work. In accordance with Social Security Administration Medical-Vocational Guidelines rule 201.01, Claimant is 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 did not properly determine that Claimant is not disabled and deny 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 REVERSED.

It is further ORDERED that Claimant's September 17, 2008 application for Medical Assistance (MA) and State Disability Assistance (SDA) be processed in accordance with Department of Human Services policy.

/s/

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

Date Signed: August 3, 2010

Date Mailed: August 4, 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.

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