

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: 2009-13425

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

April 30, 2009

Oscoda 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 30, 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 38 year old male. Claimant is 64 inches tall and weighs approximately 183 pounds. Claimant's formal education consists of 12 years of school.

(2) Claimant has past relevant work experience as a service writer at a car dealership, as a detailer at a car dealership, and restaurant work.

(3) Claimant has a history of seizure disorder and asserts disability based on seizures, brain tumor, and stroke.

(4) Claimant last worked in 2001 as a car detailer. Claimant reports he left that employment because he was incarcerated.

(5) On October 13, 2008, Claimant was released from prison onto parole.

(6) On October 16, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(7) On December 29, 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).

(8) On January 7, 2009, Claimant was sent notice of the Department's determination.

(9) On January 22, 2009, Claimant submitted a request for hearing.

(10) On March 4, 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).

(11) At this hearing Claimant waived time limits and requested the record stay open so he could submit additional medical evidence. No additional medical evidence has been received.

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 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 activity.

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 seizures, brain tumor, and stroke. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is Medical Examination Report (form DHS-49) dated December 8, 2008. (Pages 321 & 322) The report was completed by [REDACTED] The report lists Claimant's current diagnosis as CVA, CAD, seizure disorder, and migraine. The report recommends that Claimant's lifting be restricted to less than 10 pounds frequently, 10 pounds occasionally, and never 20 pounds or more. The report recommends that Claimant sit about 6 hours of an 8 hour workday, not use his feet or legs to operate any controls and not use his right hand for repetitive actions of fine manipulation. No information was provided by [REDACTED] in the section asking what medical findings support the physical limitations. [REDACTED] also indicated that Claimant is limited in memory, sustained concentration, and reading/writing. FNP Ross relied on his personal observations for the mental limitations.

There is a progress note from [REDACTED] dated August 26, 2008. (Page 66) The Doctor recorded, that Claimant reported not having a seizure for several months even though he misses medication doses now and then.

There is a therapy termination report done by [REDACTED] on August 11, 2008, while Claimant was incarcerated. (Pages 68-73) The Doctor found that Claimant was oriented in all psychological spheres with no evidence of gross psychopathology noted. [REDACTED] recorded that Claimant's speech was clear and coherent, that Claimant was able to articulate his ideas with ease and his thoughts were well organized with no evidence of perceptual disturbance, preoccupations or bizarreness in his thinking. Claimant showed no evidence of delusions, hallucinations, obsessions, or phobias and he demonstrated an appropriate range of emotional expression.

There is documentation from a hospital visit Claimant made on May 12, 2008. (Pages 285-292) Claimant had been hit in the eye with a softball. During examination Claimant denied any neurological symptoms such as weakness or numbness. Claimant was closely examined and monitored for any signs or symptoms of neurological damage or injury. Absolutely none were recorded.

There is documentation from a visit to [REDACTED] while Claimant was incarcerated, on April 2, 2008. (Pages 271-282) Claimant was having mild dizziness, nausea and a headache. The discharge diagnosis was tegretol toxicity. Claimant was being treated with tegretol for seizure disorder.

The Code of Federal Regulations provides guidance for evaluation of medical opinions at 20 CFR 416.927:

How we weigh medical opinions. Regardless of its source, we will evaluate every medical opinion we receive. Unless we give a treating source's opinion controlling weight under paragraph (d)(2) of this section, we consider all of the following factors in deciding the weight we give to any medical opinion.

Examining relationship. Generally, we give more weight to the opinion of a source who has examined you than to the opinion of a source who has not examined you.

Treatment relationship. Generally, we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations.

Supportability. The more a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings, the more weight we will give that opinion. The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we will give their opinions will depend on the degree to which they provide supporting explanations for their opinions.

Consistency. Generally, the more consistent an opinion is with the record as a whole, the more weight we will give to that opinion.

Specialization. We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist.

In this case Claimant asserts that while he was incarcerated he had a stroke caused by multiple seizures and had a brain tumor removed. On the Social Summary (form DHS 49-B) (Pages 308 & 309) Claimant indicated he had a stroke in 7/07 at [REDACTED] and a brain tumor in 2/08 at [REDACTED]. At this hearing Claimant testified that he had a stroke in 2008. Claimant asserted that he had medical evidence about the stroke and the record was left open in order for Claimant to submit that evidence. Follow up was done to find out why no additional evidence had been submitted to this record. The local DHS office reported Claimant told them the records had been mailed to his local physician but the physician refused to release the records because they were not produced by the physician. Claimant signed release forms for all the facilities he was treated at during his incarceration. This record contains considerable documentation (over 300 pages) sent from all those facilities. It is not credible that

the facilities would send documentation to his personal physician that was not sent for inclusion in this record. There is no objective medical evidence of a stroke or a brain tumor.

On November 21, 2008 Claimant presented to his current treating source as having left side hand and lower leg numbness, weakness in his left leg, and walking with a limp. Claimant's current treating source also indicated Claimant has mental impairments. Claimant asserts these problems are the result of his asserted, but undocumented, stroke. The current treating source does not describe any medical findings to support Claimant's asserted problems.

After his asserted stroke Claimant visited the hospital on May 12, 2008 with a head injury. Absolutely no medical signs or symptoms of neurological damage were recorded during his examinations done specifically for neurological injury or damage. On August 11, 2008, after the asserted stroke Claimant was examined by [REDACTED] No mental deficiencies were noted. During this hearing Claimant was articulate, well organized in his presentation of information, and displayed no signs of memory loss or impairment. The veracity of Claimant's asserted impairments is highly suspect.

The objective medical evidence of record is not sufficient to establish that claimant has severe impairments that have lasted or are expected to last 12 months or more and prevent employment at any job for 12 months or more. Therefore, claimant is disqualified from receiving disability at this step. In order to perform a complete evaluation of Claimant's disability assertion, the analysis 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.

In this case the objective medical evidence does not establish severe impairments for comparison with the Social Security Administration impairment listings.

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 service writer at a car dealership, as a detailer at a car dealership, and in restaurant work. At this hearing Claimant specifically asserted he cannot work because of memory problems.

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.

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 only evidence in the record describing physical or mental limitations is the Medical Examination Report (form DHS-49) from [REDACTED]. The restrictions recommended by [REDACTED] [REDACTED] are not supported by any objective medical evidence in the record and will not be given controlling weight.

In the absence of any objective medical evidence of physical or mental impairments, Claimant has the residual functional capacity (RFC) to perform any level of work. Claimant's RFC includes all of his past relevant work, so he would be able to perform past relevant work. Claimant is found ineligible at this step also.

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 with a high school education, unskilled work history, and the residual functional capacity to do any level work. In accordance with 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 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: August 11, 2010

Date Mailed: August 12, 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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