

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claim

ant

Reg. No: 2009-16490

Issue No: 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 28, 2009

Kent 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 May 28, 2009. Claimant appeared and testified.

ISSUE

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 34 year old male. Claimant is 70 inches tall and weighs approximately 175 pounds. Claimant's formal education consists of 12 years of school.
- (2) Claimant has past relevant work experience in fast food preparation, factory work, and construction.

(3) Claimant has been diagnosed with myasthenia gravis and asserts disability based on that medical condition.

(4) Claimant last worked during September 2008, in construction. Claimant reports he left that employment because of muscle weakness.

(5) On November 14, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(6) On January 2, 2009, the Department of Human Services Medical Review Team approved Claimant for State Disability Assistance (SDA) but determined that he was not disabled in accordance with the standards for Medical Assistance (MA).

(7) On January 9, 2009, Claimant was sent notice of the Department's determination.

(8) On February 12, 2009, Claimant submitted a request for hearing.

(9) On April 9, 2009, the 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).

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 his diagnosis of myasthenia gravis. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is a report from a visit to the emergency room on October 6, 2008. (Pages 10 & 11) Claimant went to the emergency room because he had been having progressively more trouble opening his eyelids. Claimant reported that he had experienced some double vision. [REDACTED] made a diagnosis of ptosis, possible myasthenia gravis. Claimant was referred to [REDACTED] a neurologist on staff at the hospital. When [REDACTED] released Claimant he was “having no vision problems and no difficulty breathing.” [REDACTED] noted Claimant’s condition on discharge to be good.

There is a report from [REDACTED] a neurologist, dated October 7, 2008. (Pages 6 & 7) At the examination Claimant reported that his eyelids had been drooping for a couple of months and he has had occasional double vision when looking to the left. Claimant denied problems with swallowing, nasal regurgitation, slurred speech, and peripheral muscle weakness. Examination of Claimant gave the Doctor an impression of bilateral ptosis with diplopia likely related to myasthenia gravis. The Doctor prescribed some medication, ordered some additional tests, and scheduled Claimant another appointment in one month.

There is a report from Claimant’s follow up visit with [REDACTED] on November 7, 2008. (Page 9) Claimant reported loss of strength in all extremities but that he still goes to the gym regularly but is easily fatigued. Based on all the medical information the Doctor had the impression that Claimant has myasthenia gravis likely affecting his entire system but not in crisis.

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 Medical Assistance (MA) based on disability at this step. In order to conduct a thorough evaluation of Claimant's disability claim 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.

Claimant's impairment was compared with the Social Security Administration impairment listing 11.12. That listing is:

11.12 Myasthenia gravis. With:

- A. Significant difficulty with speaking, swallowing, or breathing while on prescribed therapy; or
- B. Significant motor weakness of muscles of extremities on repetitive activity against resistance while on prescribed therapy.

Claimant's medical condition did not meet or equal this listing because his symptoms are not this severe.

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.

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 reports past relevant work in fast food preparation, factory work, and construction. At this hearing Claimant specifically testified that he feels he could do a full day of non-exertional work such as shoe sales or in a library. The record contains no medical source recommended physical limitations. The evidence does show that Claimant has the residual functional capacity (RFC) to perform light work. Claimant's past construction work exceeds light work. A large amount of work in fast food preparation and factory work would fall within the light work category. Claimant is able to perform some of his past relevant work so he is not disabled under these standards.

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.

Age is one of the aspects of your vocational profile considered in this step. The following age categories are established in 20 CFR 416.963 for use in the Social Security Administration Medical-Vocational Guidelines.

A younger person is under age 50. If you are a younger person we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45-49 are more limited in their ability to adjust to other work than persons who have not attained age 45.

A person closely approaching advanced age is 50-54 years old. If you are closely approaching advanced age, we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

A person of advanced age is over 55. We consider that at advanced age, age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60-64).

Education is another aspects of your vocational profile considered in this step. The following categories of education are established in 20 CFR 416.964 for use in the Social Security Administration Medical-Vocational Guidelines.

- (1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.
- (2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.
- (3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.
- (4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.
- (5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may

consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

Work skills are another aspects of your vocational profile considered in this step. The following categories of work skills are established in 20 CFR 416.968 for use in the Social Security Administration Medical-Vocational Guidelines.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

- (a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.
- (b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.
- (c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other

specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

Claimant is 34 years old, has a high school education, an unskilled work history and the residual functional capacity to do light work. In accordance with Social Security Administration Medical-Vocational Guidelines Rule 202.20 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 deny 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: August 16, 2010

Date Mailed: August 17, 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.

2009-16490/GFH

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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