

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: 2009-16507

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 19, 2009

Allegan 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 19, 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 29 year old female. Claimant is 57 inches tall and weighs approximately 102 pounds. Claimant's formal education consists of 9 years of school.

(2) Claimant has past relevant work experience in janitorial work and restaurant work.

(3) Claimant has a history of diabetes and stomach pain. Claimant asserts disability based on these ailments.

(4) Claimant last worked in December 2008, as a restaurant prep cook. Claimant reports she left that employment because she was unable to lift things and was nauseas all the time.

(5) On December 4, 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 determined that Claimant was not disabled in accordance with the standards for Medical Assistance (MA) or State Disability Assistance (SDA).

(7) On February 2, 2009, Claimant was sent notice of the Department's determination.

(8) On February 10, 2009, Claimant submitted a request for hearing.

(9) On April 8, 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).

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

There is documentation from a hospital admission between January 29, 2008 and February 2, 2008. (Pages 19-46) Claimant was admitted for persistent abdominal pain. Following myriad testing and an upper endoscopy examination Claimant was diagnosed with mild reactive gastropathy, type 2 diabetes mellitus, and hypokalemia.

There is documentation from a hospital admission on April 18, 2008. (Pages 60-69) Claimant was again admitted for persistent abdominal pain. Claimant's primary discharge diagnosis was diabetes mellitus uncontrolled with hyperglycemia. During the admission Claimant reported she had not had any insulin therapy for more than 2 weeks.

There is documentation from a hospital admission on June 1, 2008. (Pages 70-82) Claimant was again admitted for persistent abdominal pain. During this admission staff became suspicious that Claimant was just seeking pain medications. ██████████ recorded that Claimant requested IV pain medications even though she did not show overt signs of being in pain. When the IV pain medications were refused, Claimant left the facility against medical advice. Claimant's primary discharge diagnosis was diabetes mellitus uncontrolled secondary to poor medication compliance.

There is documentation from a hospital admission on June 17 2008. (Pages 89-106) Claimant was again admitted for persistent abdominal pain. A urine drug screen on June 18, 2008 showed positive for [REDACTED] [REDACTED] and [REDACTED]. Claimant elected not to stay for further evaluation. Claimant's primary discharge diagnosis was diabetic gastroparesis.

The record contains documentation from numerous visits to the hospital. Claimant went to the hospital every few days. The reports are all extremely similar and contain no diagnosis indicating Claimant is impaired by anything other than her poor compliance with required medication for diabetes. The last recorded observations by a Doctor were during a hospital stay of November 28-29, 2008. (Pages 171-173) [REDACTED] recorded "she is constantly requesting for pain medication. Because of her dependency to narcotic, I did not honor her request." The Doctor also recorded "My observation in the emergency room is that when we are near her, she would cry and beg for abdominal pain, but when we are not around, I observed her and she is watching TV comfortably with no evidence of abdominal pain. She is very dramatic."

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. For purposes of a complete 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 medical conditions, as established by objective medical evidence, were compared with the Social Security Administration impairment listing 9.08. That listing is:

9.08 Diabetes mellitus. With:

A. Neuropathy demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or

B. Acidosis occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or PCO₂ or bicarbonate levels); or

C. Retinitis proliferans; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

Claimant's medical conditions, as established by objective medical evidence, did not meet or equal these listings because her diabetes has not caused any of the listed conditions.

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 in janitorial services and restaurant work. At this hearing Claimant specifically asserted she cannot work because of the effects of her blood sugar levels and the pain she has.

Your residual functional capacity is your remaining physical, mental, and other abilities. 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.

In this case there is no objective medical evidence to support the severe pain Claimant asserts. Since the pain is not established by objective medical evidence, it is not a valid impairment to work. There are medical tests which show that when Claimant does not comply with the medication regimen for her diabetes, her blood chemistry becomes irregular. However, the irregular blood chemistry does not prevent her from performing work activities.

Claimant has the residual functional capacity to perform all levels of work. Claimant can still do her past relevant work and 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.

Claimant is 29 years old, has a limited education, unskilled work history, and the residual functional capacity to perform any level of 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 04, 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

cc:

