

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: 2009-5509
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 12, 2009
Chippewa 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 March 12, 2009. Claimant appeared and testified.

ISSUES

- (1) Did the Department of Human Services properly deny claimant's application for Medical Assistance (MA) based on disability?
- (2) Did the Department of Human Services properly 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 36 year-old male. Claimant is 5'11" tall and weighs approximately 460 pounds. Claimant passed the General Educational Development (GED) test.

(2) In 2003, claimant became certified to be a truck driver. Claimant last worked in March of 2008 as a truck driver. Claimant states he stopped driving due to pain in his hands, arms, and shoulders.

(3) On August 6, 2008, claimant submitted an application for State Disability Assistance (SDA) and Medical Assistance (MA) based on disability.

(4) On October 20, 2008, the Department of Human Services Medical Review Team determined that Claimant was not disabled.

(5) On October 21, 2008, claimant was sent notice of the department's determination.

(6) On October 30, 2008, claimant submitted a request for hearing.

(7) On December 8, 2008, the Department of Human Services State Hearing Review Team determined that claimant was not disabled.

(8) Claimant is/is not disabled for purposes of the Medical Assistance (MA) and State Disability Assistance (SDA) programs because he has sufficient residual functional capacity to conduct light work as defined by the Social Security Administration Medical-Vocational Guidelines rule 202.20.

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 Federal Regulations define 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 not less than 12 months.

Disability determinations done by the State of Michigan for State Disability Assistance (SDA), use the Social Security Administration 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 a disability determination is a sequential evaluation process of five steps which are followed in a set order. These are the five steps in the process:

(1) At the first step, your work activity, if any, is considered. If you are doing substantial gainful activity, you are not disabled under these standards.

(2) At the second step, your impairments are considered. Your impairments must be medically determinable physical or mental impairments. At this step the severity

of the impairments are evaluated with regard to both the seriousness of the medical conditions and the duration of the conditions. A severe impairment, or combination of impairments, limits your physical or mental ability to do basic work activities. If your medically determinable impairments are not severe, or do not last long enough, you are not disabled under these standards.

(3) At the third step, the severity of your impairments are considered again and compared to the Social Security Administration listings of impairments. If your impairments meet the applicable duration requirement, and meet or equal a Social Security Administration impairment listing, you are disabled under these standards. If you are not determined disabled at this step, the evaluation goes on to the next step.

(4) At the fourth step, we assess your residual functional capacity (RFC) using all the relevant evidence in your case record. Residual functional capacity is the most you can still do despite your limitations. Your residual functional capacity is your remaining physical, mental, and other abilities. At this step your residual functional capacity is compared with your past relevant work. If you can still do your past relevant work you are not disabled under these standards.

(5) At the fifth and last step, your residual functional capacity 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 under these standards. If it is determined that you cannot make an adjustment to other work, we will find that you are disabled under these standards.

STEP 1

The evidence in the record shows that claimant last worked in March, 2008 for [REDACTED] as a truck driver. Claimant is not currently working or otherwise engaged in substantial gainful activity. No specific determination can be made so the evaluation continues.

STEP 2

In this case claimant asserts he is disabled due to carpal tunnel syndrome, obesity, and bipolar disorder.

Evidence in the record from medical sources consists of: a psychiatric evaluation and discharge summary from [REDACTED] for the period of September 21, 2005 through November 17, 2005; a clinical resume from [REDACTED] County covering the period February 28 through March 3, 2006; a psychological assessment by [REDACTED]. done on [REDACTED] a medical evaluation by [REDACTED] done on [REDACTED]

CARPAL TUNNEL SYNDROME: Claimant testified at the hearing that he has been suffering from carpal tunnel for the past two to three years. The only medical evaluation in the record on this issue is from September, 2008 done by Michigan Medical Consultants (evidence pages 31- 35). Claimant was examined by [REDACTED] on [REDACTED] for complaints of “ulnar nerve issues, arm pain, carpal tunnel syndrome”. [REDACTED] conducted percussion testing over claimant’s nerves at the ulnar notch and carpal sheath. The doctor’s conclusion regarding bilateral arm pain included: there was no nerve irritation because the percussion testing did not result in any tingling further down claimant’s nerves; claimant had diminished grip strength but the doctor attributed this to claimant’s “lack of effort”; and claimant’s pincher grasp

and dexterity were well preserved. The doctor attributed claimant's reported pain symptoms as "related to his mental affect and body habitus (physique) as well as a known diagnosis of sleep apnea." [REDACTED] conclusions do not constitute medically determined carpal tunnel syndrome.

OBESITY: While claimant has been described as obese in all the evidence from medical sources, the only medical evaluation in the record on this issue is from [REDACTED] done by Michigan Medical Consultants (evidence pages 31-35). Claimant was examined by [REDACTED] on [REDACTED]. During the examination the doctor observed no evidence of joint laxity (looseness) or effusion (fluid retention, swelling) and that claimant had no difficulty getting on and off the examination table. The doctor did note claimant had moderate difficulty doing a partial squat, refused to perform a heel to toe walk, and there was crepitation (clicking, rattling, or crackling noises) in both of claimant's shoulder joints. A range of motion study was conducted by the doctor and revealed only two minor abnormalities. Specifically: flexion of the dorsolumbar spine normals are 0-90 degrees, claimant was to 80 degrees; shoulder abduction normals are 0-150 degrees, claimant was to 120 degrees for both right and left shoulder. With regard to claimant's obesity, the doctor concluded that claimant would be remediable with weight reduction. The doctor gave a guarded prognosis and stated claimant is at risk for progressive physical deterioration without weight loss. [REDACTED] observations and conclusions constitute a limitation in the range of motion of claimant's shoulders. There is also slight limitation in range of motion for claimant bending over. The doctor's conclusions indicate his opinion of that limitation is a function of claimant's girth. Claimant's range of motion had not been tested previously. However, his weight has been consistent for more than two years so it is most probable that his limitation in range of motion has also been consistent for two years.

BIPOLAR DISORDER: In 2005, [REDACTED] I diagnoses of claimant was major depression of a recurrent and moderate nature. In [REDACTED] [REDACTED] I diagnoses of claimant was mood disorder not otherwise specified. In [REDACTED] [REDACTED] Axis I diagnoses of claimant was bipolar I disorder with most recent episode hypomanic. The first two evaluations were the result of claimant seeking treatment and documented the depressed or down side of claimant's mood disorder. The 2008 evaluation was done for purposes of evaluating claimant's disability claim. The 2008 evaluation is the first to document the elevated, or up side, of claimant's mood disorder. The evidence shows that claimant's mental disorder has persisted for more than 12 months.

STEP 3

In the previous step, it was established that claimant has a medically determined physical impairment due to his limitation in range of motion which has persisted more than 12 months and a medically determined mental impairment due to his mood disorder that has persisted more than 12 months. In this step claimant's impairments are compared to the Social Security Administration listings of impairments.

LIMITATION IN RANGE OF MOTION: Evaluation of claimant's limitation in range of motion is made by a comparison to the Social Security Administration listings of impairments of the musculoskeletal system. Specifically listing 1.04, arthritis of one major joint in each of the upper extremities (due to any cause). This listing has two alternative criteria.

The first criteria are abduction and forward flexion of both arms at the shoulders, including scapular motion, restricted to less than 90 degrees. Claimant does not meet these criteria because he had abduction of both shoulders to 120 degrees.

The second, alternate, criteria is gross anatomical deformity and enlargement or effusion of the affected joints. While [REDACTED] noted crepitation (clicking, rattling, or crackling noises) in both of claimant's shoulder joints there was no deformity or effusion (fluid retention, swelling). Claimant does not meet these criteria.

Claimant's medically determined physical impairment does not meet or equal the Social Security Administration impairments listing.

MOOD DISORDER: Evaluation of claimant's mental limitation due to mood disorder is made by a comparison to the Social Security Administration listings of impairments of mental disorders, specifically listing 12.04 for affective disorders. With regard to bipolar disorders the criteria are:

Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration;

OR

Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

During the hearing claimant testified that he has not been taking medications previously prescribed for his mental disorder, due to not having any health insurance. That fact indicates evaluation under the first of the two alternate criteria listed above.

Evidence in the record regarding claimant's daily living include: statements claimant made during all four of the psychological and/or medical evaluations; statements claimant made on the DHS Form 49-G; and verbal testimony given at the hearing. Activities of daily living include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office. The quality of these activities is assessed in the context of your overall situation, by their independence, appropriateness, effectiveness, and sustainability. In this case claimant resides with his parents. Claimant indicates that his mother does all the house cleaning and shopping. The evidence in the record shows that a majority of claimant's daily activities involve watching TV, smoking, eating, talking to his mother, and walking his dog. The evidence in the record shows that claimant dresses himself and takes care

of his own personal hygiene needs. The record contains no evidence establishing that claimant has marked restriction of activities of daily living.

Evidence in the record regarding claimant's social functioning include: statements claimant made during all four of the psychological and/or medical evaluations; statements claimant made on the DHS Form 49-B; and verbal testimony given at the hearing. Social functioning refers to your capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. Claimant reported having difficulty getting along with others. Claimant's mother testified that she is always "on eggshells around him." None of the four psychological and/or medical evaluations contain observations or conclusions of negative or inappropriate social interaction by claimant. Claimant's demeanor and behavior during the hearing was appropriate, cooperative, and pleasant. The record contains no evidence establishing that claimant has marked difficulties in maintaining social functioning.

Evidence in the record regarding claimant's concentration, persistence, or pace include: all four of the psychological and/or medical evaluations; statements claimant made on the DHS Form 49-F; and verbal testimony given at the hearing. Concentration, persistence, or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. Claimant worked as a truck driver until March, 2008. On August 8, 2008, claimant signed a DHS Form 49-F stating that his reason for leaving that employment was "fired, quit & terminated." On [REDACTED] when examined by [REDACTED] claimant stated he stopped truck driving because of pain in his arms and shoulders. During this hearing claimant stated he can no longer drive a truck because he cannot get up into the cab. None of the three psychological assessments include observations or conclusion that claimant is unable to sustain focused attention and

concentration. The record contains no evidence establishing that claimant has marked difficulties in sustaining focused attention and concentration.

Evidence in the record regarding claimant's episodes of decompensation include: all four of the psychological and/or medical evaluations; statements claimant made on the DHS Form 49-F; and verbal testimony given at the hearing. Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. Evidence in the record indicates that claimant was treated for depression in [REDACTED] and again in [REDACTED]. Claimant worked as a truck driver from 2003 until March 2008. The term repeated episodes of decompensation, each of extended duration in the listings means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks. The record contains no evidence establishing that claimant has repeated episodes of decompensation, each of extended duration.

Claimant's medically determined mental impairment does not meet or equal the Social Security Administration impairments listing.

STEP 4

In this step we assess claimant's residual functional capacity to determine if he can do his past relevant work. A claimant's impairments, and any related symptoms, such as pain, may cause physical and mental limitations that affect what he can do in a work setting. Residual functional capacity is the most you can still do despite your limitations. Your residual functional capacity is assessed based on all the relevant evidence in the case record.

Assessing residual functional capacity involves assessment of physical abilities, mental abilities, and other abilities. Physical abilities considers 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). Mental abilities considers the ability to carry out certain mental activities of work activity, such as limitations in understanding, remembering, and carrying out instructions, and in responding appropriately to supervision, coworkers, and work pressures in a work setting. Other abilities considers medically determinable impairments, such as skin impairments, epilepsy, impairments of vision, hearing or other senses, and impairments which impose environmental restrictions.

It has already been established that claimant has a slight limitation in the range of motion of his shoulders and crepitation in his shoulder joints. Claimant told [REDACTED] that he stopped work as a truck driver because of pain in his arms and shoulders. Claimant asserts pain in his hands, arms, and shoulders. 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. (20 CFR 416.929)

Claimant's past relevant work is as a truck driver. That occupation requires extended periods of time in the same position. The evidence in the record indicates that claimant would not have sufficient physical residual functional capacity to work as a truck driver.

STEP 5

At this step claimant's residual functional capacity and his vocational profile are assessed to determine if he can make an adjustment to other work. Claimant's vocation profile includes

age, education, and skills. In this case claimant is 36 years old, has obtained a GED, and has acquired the skills necessary to work as a truck driver. The assessment of claimant's ability to adjust to other work is done in accordance with the Social Security Administration's Medical-Vocational Guidelines.

Claimant's exertional limitations still allow him to do both light and sedentary work that allows for movement and changes of posture.

Claimant was assessed on the Global Assessment of Functioning (GAF) in 2005 and again in 2008. Claimant's GAF scores were a 55 and a 54. A GAF score between 51-60 indicates moderate symptoms OR any moderate difficulty in social, occupational, or school functioning. Claimant's psychological assessments indicate any difficulty he may have in functioning is restricted to social functioning.

Using the Medical-Vocational Guidelines Claimant has sufficient residual functional capacity to conduct light work as defined by rule 202.20. Claimant is not disabled under the Social Security Administration standards.

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 denied Claimant's State Disability Assistance (SDA) application and his application for Medical Assistance (MA) based on disability. Claimant is capable of light work.

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: April 16, 2009

Date Mailed: April 20, 2009

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:

