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: 2009-6250
Issue No: 2009; 4031
Case No: [redacted]
Load No: [redacted]
Hearing Date:
March 10, 2009
Ionia 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 10, 2009. Claimant appeared and testified.

ISSUES

(1) 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?

(2) 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 59 year-old male. Claimant is 69 inches tall and weighs approximately 140 pounds. Claimant's formal education consists of 12 years of school.

(2) Claimant has past relevant work in restaurant management, courier work doing pick up and delivery, general labor, and as a musician.

(3) Claimant last worked in 2004 as a musician. Claimant reports he left that employment because he developed shingles.

(4) On August 21, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On September 30, 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).

(6) On October 10, 2008, Claimant was sent notice of the Department's determination.

(7) On November 11, 2008, Claimant submitted a request for hearing.

(8) On December 17, 2008, the Department of Human Services State Hearing Review Team (SHRT) determined that the medical evidence was insufficient to determine disability. SHRT ordered a complete physical examination.

(9) At this hearing the physical examination was available for admission into the record. Claimant asserted the Doctor who conducted the examination was incompetent because the Doctor had incorrectly recorded some of the information Claimant provided. Claimant demanded to have another examination. Claimant was informed that the Department would not pay for a second examination but that he was welcome to obtain another examination on his own and it would be included in the record and considered along with the other evidence from medical sources. Claimant elected to obtain another examination and was given 90 days to submit it to the Department.

(10) On June 29, 2009, Claimant had not submitted any additional medical evidence. All medical evidence in the record was forwarded to the State Hearing Review Team.

(11) On July 1, 2009,4 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 least12 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.

STEP 1

At this step, a determination is made on whether Claimant's is engaging in substantial gainful activity (20 CFR 416.920(b)). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. Substantial work activity is work activity that 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 SGA, you are not disabled regardless of how sever your physical or mental impairments are and regardless of your age, education, and work experience.

On the Activities of Daily Living (form DHS-49G) Claimant reported that he does lawn care, snow removal, and some household repairs when needed but only for an hour or two at a time due to back pain and fatigue. Claimant also reported that he spends about six hours a day writing music, recording it, and posting it on the internet. Claimant is not engaged in substantial gainful activity because he is not receiving pay or profit for these activities.

STEP 2

At the second step, it is determined whether you have a medically determined impairment that is severe or a combination of impairments that is severe (20CFR 416.920(c)). 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. An impairment or combination of impairments is not severe when medical and other evidence establishes only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (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 your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon neck pain, back pain, and cardiomyopathy. Relevant evidence in the record from medical sources includes: documentation from [redacted], hospital visit for dizziness, nausea, and shortness of breath pages 11-43; documentation from a [redacted], follow up with [redacted] of [redacted] [redacted] that included a cardiac exercise stress test pages 44-58; and a January 28, 2009, physical examination report by [redacted]. of Michigan Medical Consultants.

On July 15, 2008, Claimant was admitted to the [redacted] of [redacted] for cardiovascular observation. Claimant was complaining of dizziness, nausea, and shortness of breath. After observation and testing it was concluded that Claimant had sinus tachycardia (elevated heart rate) due to dehydration and high caffeine intakes, some viral syndrome which

was contributing to the elevated heart rate and dehydration, and cardiomyopethy. Claimant was discharged on July 16, 2008 and advised to follow up with a cardiologist for the cardiomyopathy.

On [redacted], Claimant was examined and tested at [redacted] by [redacted]. Claimant reported to [redacted] that: he has had cardiomyopathy since 1981; he had significant problems with alcohol abuse and illegal drug use in the past; and his heart condition worsens when his alcohol consumption has been significant. Claimant had a resting heart rate of 92 beats per minute. Claimant was given an exercise stress test. After 9 minutes 31 seconds of increasing exercise exertion the test was stopped due to Claimant reporting back pain. [redacted] recorded that Claimant has dilated cardiomyopathy. [redacted] recorded that Claimant's stress test showed no signs of myocardial ischemia (a disease characterized by reduced blood supply to the heart muscle). The Doctor also recorded that Claimant is on a good medical therapy for the dilated cardiomyopathy and that his LVEF (left ventrical ejection fraction) had improved to 49%.

Research done during this analysis shows that dilated cardiomyopathy is a condition in which the heart becomes weakened and enlarged, and cannot pump blood efficiently. Although no cause is apparent in many cases, dilated cardiomyopathy is probably the end result of damage to the heart muscle produced by a variety of toxic, metabolic, or infectious agents. A reversible form of dilated cardiomyopathy may be found with alcohol abuse, stimulant use, and chronic uncontrolled tachycardia (elevated heart rate). Healthy individuals typically have ejection fractions between 50% and 65%.

On January 28, 2009, Claimant was examined by [redacted] of Michigan Medical Consultants. Claimant had normal range of motion in all joints, had no difficulty getting on and off the examination table, heal and toe walking, squatting, or hopping. Claimant had a negative

straight leg raise and no muscle spasms. The Doctor did note some tenderness in the lower cervical spine area. The Doctor concluded that Claimant has some mild arthritic disease in the neck and back. The Doctor found no signs of heart failure.

Claimant's impairments are severe because they could limit his ability to do some basic work activities. Claimant's impairments have persisted for at least 12 months.

STEP 3

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 were compared with the Social Security Administration impairment listings 1.04 Disorders of the spine and 4.02 Chronic heart failure. Those listings entail:

> 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:
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> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); or
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> B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;
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> or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or

2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b(ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

a. Dyspnea, fatigue, palpitations, or chest discomfort; or

> b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or
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> c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or
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> d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

Claimant's impairments did not meet or equal any of these listings.

STEP 4

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 asserts he cannot work because of his heart condition causes him to get fatigued and his bad back becomes painful when he does too much. On the Activities of Daily Living (form DHS-49G) Claimant reported that he does lawn care, snow removal, and some household repairs when needed but only for an hour or two at a time due to back pain and fatigue. [redacted] of [redacted] Consultants found some tenderness in the lower cervical spine and concluded that Claimant has some mild arthritic disease in the neck and back. Claimant's dilated cardiomyopathy (elevated heart rate) was first discovered in 1981. Claimant has the residual functional capacity to do light work because 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 (20 CFR 416.967).

Claimant reports past relevant work in restaurant management, courier work doing pick up and delivery, general labor, and as a musician. Restaurant management, courier work doing pick up and delivery, and working as a musician are all light work. Claimant is not disabled because he is capable of performing most of his past relevant work.

STEP 5

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 a 59 year-old male with a high school education and a work history of unskilled and has a work history of unskilled work and skilled work (musician) which is not transferable. As determined in step 4 Claimant has the residual functional capacity to do light work. In accordance with the Social Security Administration Medical-Vocational Guidelines rule 202.06 Claimant would be considered disabled if he was not able to perform his past relevant work.

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 18, 2009

Date Mailed: August 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/[redacted]

cc: [redacted]