

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: 2009-6742

Issue No: 2009, 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 10, 2009

Wayne 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

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 39 year old male. Claimant is 69 inches tall and weighs approximately 190 pounds. Claimant's formal education consists of 14 years of school.

- (2) Claimant has past relevant work experience in construction as an iron worker.
- (3) Claimant has a history of lower back pain. Claimant underwent an L5-S1 discectomy in May 2004. Claimant asserts disability based on continuing low back pain and right leg pain.
- (4) Claimant last worked in March 2007, as an iron worker. Claimant reports he left Michigan for 10 months and when he returned there was no work.
- (5) On July 7, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).
- (6) On October 16, 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).
- (7) On October 21, 2008, Claimant was sent notice of the Department's determination.
- (8) On October 23, 2008, Claimant submitted a request for hearing.
- (9) On January 2, 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).
- (10) On May 6, 2010, additional medical evidence was finally submitted from the local DHS office and forwarded to the State Hearing Review Team for review.
- (11) On May 13, 2010, the State Hearing Review Team reviewed the additional medical evidence and again 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 low back pain and right leg pain. What follows is a synopsis of all relevant evidence in the record from medical sources presented in chronological order.

There is paper work from an Emergency Room visit on June 30, 2008. There is no signed documentation but what is provided has Claimant's name on it. The documentation indicates Claimant was determined to have sciatica, was advised of home remedy treatments, and told to follow up with at the Heartside Clinic.

There is also documentation from an Emergency Room visit on July 15, 2008. The examination that day shows Claimant's back was not tender; he was having muscle spasms: and he had a decreased range of motion. [REDACTED] determined Claimant had an acute myofascial strain of his lumbar back. Claimant was discharged with a prescription for [REDACTED]

There is also a Medical Examination Report (form DHS-49) filled out by [REDACTED] an Internal Medicine Specialist, on December 8, 2008. The form indicates December 8, 2008 is

the first and only date Claimant was seen by the Doctor. The Doctor indicated that Claimant was stable with a temporary disability expected to end 12/8/09. Claimant was restricted to frequently lifting less than 10 pounds, occasionally lifting 10 pounds, and never lifting more than 20 pounds. Claimant was restricted to stand/walk less than two hours and sit less than six hours. The Doctor marked that Claimant should not use his hands or arms for any repetitive actions but could use both legs for them. The Doctor listed the medical findings to support the limitations as a previous left knee surgery and the previous back surgery.

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.

Claimant has medical impairments that limit his physical ability to work and have lasted for more than one year.

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 back pain was compared with the Social Security Administration impairment listing 1.04. That listing is:

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:

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

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;

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.

Claimant's back pain cannot be determined to not meet or equal this listing because there is no medically acceptable imaging to establish stenosis.

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 an iron worker. At this hearing Claimant specifically asserted he cannot do any work because of his back and leg pain.

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 accordance with the Medical Examination Report (form DHS-49) from [REDACTED] Claimant has the residual functional capacity to perform sedentary work. Claimant's past work as an iron worker exceeds sedentary work. Claimant would not be able to do his past relevant work.

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 39 years old, has a high school or more education, no transferable work skills, and the residual functional capacity to do sedentary work. In accordance with the Social Security Administration Medical Vocational Guideline Rule 201.27 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: May 21, 2010

Date Mailed: May 25, 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:

