

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: 2009-9598
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 31, 2009
Lapeer 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 31, 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 48 year-old male. Claimant is 72 inches tall and weighs approximately 140 pounds. Claimant's formal education consists of 10 years of school.

(2) Claimant has past relevant work in unskilled manual labor including automobile work, construction, and saw mill work.

(3) Claimant last worked in 2006 doing manual labor at a saw mill. Claimant reports he left that employment because he was terminated.

(4) On September 16, 2008, Claimant applied for Medical Assistance (MA) based on disability and State Disability Assistance (SDA).

(5) On November 13, 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 November 17, 2008, Claimant was sent notice of the Department's determination.

(7) On November 25, 2008, Claimant submitted a request for hearing.

(8) On January 9, 2008, the Department of Human Services 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.

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 severe your physical or mental impairments are and regardless of your age, education, and work experience.

Claimant testified that most days he stays at home, tends his dogs, watches TV, and does the light cleaning around the house. Claimant is not engaged in substantial gainful activity because he is not paid for his activity.

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). If your medically determinable impairments are not severe you are not disabled.

Claimant asserts disability based upon low back pain. Claimant asserts his back hurts all the time and prevents him from being able to work. The only evidence in the record from medical sources is a disability evaluation done by [REDACTED], on [REDACTED]. Claimant reported to the Doctor that he (Claimant) had chronic backache secondary to spurs and neck pain secondary to degenerative disk disease. Claimant reported to the Doctor that he (Claimant) was taking no medication for his back pain. The Doctor's examination determined

that: Claimant's cervical spine was tender with limited movements; Claimant's lumbosacral spine was tender with some limited movements; Claimant's neck was tender to deep palpation with reduced movement; and Claimant's right elbow was tender with restricted movements to some extent. The Doctor also noted that Claimant's stance, posture, and ambulation were normal. The Doctor conducted a range of motion study and found some decreased range of motion in Claimant's cervical spine, lumbar spine, and right elbow. On the Neurologic and Orthopedic Supplemental Report the Doctor noted that Claimant's current abilities include: sit; stand; bend; stoop; carry; push; pull; button clothes; tie shoes; dress-undress; dial telephone; open door; make a fist; pick up a coin; pick up a pencil; write; squat and rise (with some effort); get on and off examining table; climb stairs; etc (Page 14).

Your symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect your ability to do basic work activities unless medical signs or laboratory findings show that a medically determinable impairment(s) is present. Medical signs and laboratory findings, established by medically acceptable clinical or laboratory diagnostic techniques, must show the existence of a medical impairment(s) which results from anatomical, physiological, or psychological abnormalities and which could reasonably be expected to produce the pain or other symptoms alleged. 20 CFR 416.929 (b)

The evidentiary record contains no diagnosis of degenerative disc disease or arthritis. There are no X rays or other imaging tests or evaluations of X rays or other imaging tests by medical professionals. [REDACTED] made findings which would be consistent with Claimant's asserted medical conditions. However, the Doctor did not diagnose Claimant as having those conditions nor could those conditions be the only explanation for the Doctor's findings.

CFR 416.921 defines a non-severe impairment. 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. 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.

The only medically determined impairments in this evidentiary record are tenderness in the spine and elbow with some decreased range of motion. The evidence from medical sources indicates these impairments are non-severe because they do not significantly limit Claimant's ability to do basic work activities.

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. The *Higgs* court used the severity requirement as a "*de minimus* hurdle" in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

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 asserted impairment was compared with the Social Security Administration impairment listings 1.04 Disorders of the Spine. Claimant's reduced range of motion did not meet or equal those 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.

The only medical source evidence in the record is a disability evaluation done by [REDACTED] on [REDACTED]. The Doctor indicates that Claimant has tenderness in the spine and elbow with some decreased range of motion. On a supplemental neurologic and orthopedic report the Doctor indicated Claimant retains a wide range of abilities that include: sit; stand; bend; stoop; carry; push; pull; button clothes; tie shoes; dress-undress; dial telephone; open door; make a fist; pick up a coin; pick up a pencil; write; squat and rise (with some effort); get on and off examining table; climb stairs; etc (Page 14). The Doctor did not identify any strength limitations for Claimant. [REDACTED] conclusion was "this 47 year-old male patient has worked hard in various jobs for 10 years until 2 years ago and now he is on food stamps and has no medical assistance." In the absence of any medically determined strength limitations, Claimant is determined to have a residual functional capacity to perform heavy work as defined in 20 CFR 416.967. Claimant's past relevant work in unskilled manual labor including

automobile work, construction, and saw mill work would all be heavy work or less. Claimant is able to perform his past relevant work. Claimant is not disabled.

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 48 years-old with a limited education and unskilled work history. Claimant has the residual functional capacity to perform heavy work. In accordance with the Social Security Administration Medical-Vocational Guidelines Section 402.00 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 14, 2009

Date Mailed: August 18, 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 

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