

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 200917713
SOAHR REC. 201035684
Issue No: 2009, 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: July 2, 2009
SOAHR Date: May 27, 2010
Antrim County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

RECONSIDERATION 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 July 2, 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 49 year old male. Claimant is 68 inches tall and weighs approximately 168 pounds. Claimant's formal education consists of 12 years of school.
- (2) Claimant has past relevant work experience in sewing and janitorial work.

- (3) Claimant asserts disability based on fractured vertebra.
- (4) Claimant last worked in January 2009 doing janitorial work. Claimant reports he left that employment because of an accident.
- (5) On April 9, 2007 [REDACTED] Social Security Number [REDACTED] appealed the denial of his application for Supplemental Security Income (SSI).
- (6) On January 5, 2009 Claimant, [REDACTED] Social Security Number [REDACTED] submitted an application for Medical Assistance (MA) and State Disability Assistance (SDA).
- (7) On February 13, 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). At some time during the life of this case the Social Security Number block on the MRT decision form was filled in by hand with the other [REDACTED]
- (8) On February 19, 2009, Claimant was sent notice of the Department's determination.
- (9) On February 24, 2009, Claimant submitted a request for hearing.
- (10) On April 22, 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). The State Hearing Review Team decision showed the other [REDACTED] Social Security Number [REDACTED].
- (11) Claimant presented additional medical information following the hearing. This information was forwarded to SHRT for additional review.
- (12) On August 5, 2009 the Social Security Administration made a favorable decision on the appeal of the other [REDACTED] Social Security Number [REDACTED]
- (13) On April 15, 2010 SHRT advised that the claimant has been approved for Social Security disability benefits on August 5, 2009, with a disability onset date of [REDACTED]. This SHRT decision form also had [REDACTED] typed into the Social Security Number box. A copy of the Social Security Administration decision for [REDACTED] was sent along with the SHRT decision.

- (14) On April 27, 2010 Administrative Law Judge Gary F. Heisler incorrectly issued a positive Decision and Order for [REDACTED] [REDACTED] [REDACTED] Social Security Number [REDACTED] based on the Social Security Administration decision about the other [REDACTED] [REDACTED] Social Security Number [REDACTED].
- (15) On May 27, 2010 the State Office of Administrative Hearings and Rules issued an Order of Reconsideration for the April 27, 2010 Decision and Order.
- (16) On August 6, 2010 the record was sent to State Hearing Review Team for review of the case to include the additional medical evidence submitted by Claimant after the hearing.
- (17) On August 10, 2010 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.

STEP 1

At this step 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.

STEP 2

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

There is a radiology examination report of Claimant's lumbar spine dated [REDACTED] by [REDACTED]. The Doctor reported: no disc herniation; no central canal, lateral recess or foraminal stenosis; and no conditions present to suspect fracture or bone marrow contusion.

There is a radiology examination report of Claimant's thoracic spine dated [REDACTED] by [REDACTED]. The [REDACTED] MRI was compared to one from [REDACTED]. The Doctor reported mild superior endplate deformities at T3-T5 and some vertebral body height loss with little change from the January MRI. The Doctor also reported that the thoracic spinal cord is normal and the spinal canal is well maintained.

There is a large amount of information from Claimant's hospital visit on [REDACTED] following a slip and fall on outside stairs. On [REDACTED] Claimant and all the medical imaging of his back were evaluated by a Neurosurgeon [REDACTED]. (Pages 18 & 19) The Doctor determined that Claimant had new transverse process fractures at L2-L3 which were structurally insignificant and no new compression fracture. The Doctor determined that all the other minor abnormalities were from older events. The Doctor suggested a lumbosacral corset and physical therapy and stated there was no need for further neurological involvement.

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. In order to do a thorough evaluation of Claimant's assertions the analysis will continue.

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.

In this case there is insufficient objective medical evidence to use for a comparison to any of the Social Security Administration impairment listings. Claimant is not found eligible at this step.

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 reports past relevant work in sewing and janitorial work. At this hearing Claimant specifically asserted he cannot work because of back pain caused by bending, twisting, and staying in any postural position very long.

Your residual functional capacity is your remaining physical, mental, and other abilities. Those abilities are outlined in 20 CFR 416.945.

Physical abilities. When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain 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), may reduce your ability to do past work and other work.

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

The only medical source evidence in the record addressing Claimant's asserted physical restrictions is a musculoskeletal assessment done by a nurse on [REDACTED] right after his slip and fall. (Page 25) The nurse described Claimant as rigid and that his movement was limited. There is no other medical source evidence showing range of motion studies or evaluations of Claimant's physical abilities. In the absence of physical restrictions contained in medical source evidence Claimant is found to have the RFC to perform any level of work. That RFC includes Claimant's past relevant work so Claimant is found ineligible at this step also.

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.

In step 4 above Claimant was determined to have the residual functional capacity to perform any level of work. Under the Social Security Medical-Vocational Guideline rules 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 deny 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: October 5, 2010

Date Mailed: October 6, 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/vc

cc:

