

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

IN THE MATTER OF:



Reg No. 201037350
Issue No. 4031
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: July 6, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on Tuesday, July 6, 2010. The claimant personally appeared and testified on his own behalf.

ISSUE

Did the department properly deny the 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 a material fact:

1. On April 14, 2010, the claimant applied for SDA.
2. On May 17, 2010, the Medical Review Team (MRT) denied the claimant's application for SDA stating that the claimant's physical and mental impairment does not prevent employment for 90 days or more under Medical Vocational Grid Rule 202.20.
3. On May 19, 2010, the department caseworker sent the claimant a notice that his application was denied.
4. On May 24, 2010, the department received a hearing request from the claimant, contesting the department's negative action.

5. On June 15, 2010, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of SDA eligibility for the claimant. The SHRT report reads in part:

The claimant is alleging disability due to back and shoulder pain. He is 31 years old and has an 11th grade education with a history of unskilled work. The claimant did not meet applicable Social Security Listing 1.01. The claimant has a non-severe impairment/condition per 20 CFR 416.920(c).

6. The claimant is a 31 year-old man whose date of birth is [REDACTED]. The claimant is 6' tall and weighs 205 pounds. The claimant completed the 11th grade of high school. The claimant can read or write and do basic math. The claimant was last employed in March 2006 as a laborer at the medium level, which is his pertinent work history.
7. The claimant's alleged impairments are back and shoulder pain.

CONCLUSIONS OF LAW

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).

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS, INCLUDING 'MA While Appealing Disability Termination,'**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as “special education” as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.
- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since March 2006. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities. Basic work activities means, 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. 20 CFR 416.921(b).

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.

The objective medical evidence on the record further substantiates the following:

The claimant had several CTs and MRIs performed at [REDACTED]

- [REDACTED], CT of the abdomen and pelvis with contrast. The radiologist’s impression was no evidence of cholecystectomy with a normal appearing appendix. There was narrowing of the terminal ileum for which small bowel series was recommended for further evaluation. Department Exhibit 55.
- [REDACTED], CT of the pelvis with contrast. The radiologist’s impression was normal appendix, no pelvic mass identified, normal-sized prostate with intact periprostatic and perirectal fat. Department Exhibit 53.
- [REDACTED], MRI of the lumbar spine without contrast. The radiologist’s impression was there was no evidence of disc herniation, central canal, or foraminal stenosis. Department Exhibit 50.
- [REDACTED], CT of the abdomen without and with contrast. The radiologist’s impression was negative CT of the abdomen with the exception of a fluid-filled structure in the right lower

abdominal quadrant which could represent fluid-filled bowel or the appendix. Department Exhibit 49.

- [REDACTED], MRI of the brain without and with contrast. The radiologist's impression was normal unenhanced and enhanced MR examination of the brain. Department Exhibit 57.

On [REDACTED], the claimant saw his treating physician because of back pain. The claimant had a normal physical examination. The treating physician did note that the claimant did have some guarding in the right upper quadrant and some tenderness in the right lower quadrant with no organomegaly. There was no bruit present and no discoloration noted or rebound tenderness. The claimant's straight leg raise was negative. He was able to raise his legs bilaterally to about 75 degrees. The claimant had good strength and good range of motion. Reflexes were noted bilaterally to be positive. Pulses were full. Upon straight leg raise, the claimant did complain of some pain when his legs were raised to 45 degrees. When the claimant sat up without assistance, he was able to extend his legs bilaterally out in front of him and denied any complaints of pain at that time. The claimant did ambulate with a steady gait. The claimant was able to get up and down off the examining table without assistance. The claimant was encouraged to do stretching exercises especially before rising out of bed where he was encouraged to work on his core strengthening exercises. The claimant was encouraged to decrease the spicy and fatty foods. He was also encouraged to lose some weight in regard to his back pain. Department Exhibit 35 and 37.

On [REDACTED], the claimant had a lumbar spine x-ray at [REDACTED]. The radiologist's impression was normal examination. Department Exhibit 48.

At Step 2, the objective medical evidence in the record indicates that the claimant has not established that he has a severe impairment. The claimant had multiple x-rays and CT scans that were basically and essentially normal. In addition, his treating physician gave him an essentially normal physical examination on [REDACTED]. Therefore, the claimant is disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings that the claimant does not have a driver's license and does not drive because he received a ticket and owes the driver responsibility fee. The claimant does not cook because he can't stand too long. The claimant does not grocery shop because of the pain. The claimant does not clean his own home because of the pain. The claimant doesn't do any outside work or have any hobbies. The claimant felt that his condition has worsened in the past year because he is losing the strength in his legs. The claimant testified that he did not have any mental impairment.

The claimant testified that he's up all night. He wakes up at 5:00 a.m. He uses the bathroom. He goes back to sleep. He wakes up again at 7:00 to 8:00 a.m. He gets the kids ready for school. He sits on the couch. He uses the computer. He sits on the porch. He goes to bed at 11:00 p.m.

The claimant felt that he could walk 150 feet. The longest he felt he could stand was 20 minutes. The longest he felt he could sit was 20 minutes. The heaviest weight he felt could carry and walk was 5 pounds. The claimant stated he is ambidextrous. The claimant's level of pain on a scale from 1 to 10 without medication is a 10 that decreases to a 7/8 with medication.

The claimant stopped smoking in 2008 where before he would smoke 3-4 cigarettes a day. The claimant does drink on New Year's Eve. He does not or has ever taken illegal or illicit drugs. The claimant was not sure what work he could do.

This Administrative Law Judge finds that the claimant has not established that he cannot perform any of his prior work. The claimant was previously employed and has a pertinent work history as a laborer at the medium level. The claimant should be able to perform that level of work as supported by the objective medical evidence on the record. Therefore, the claimant is disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and

- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor.... 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, 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(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The objective medical evidence on the record is insufficient that the claimant lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his limitations are exertional.

At Step 5, the claimant should be able to meet the physical requirements of medium work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a younger individual with a limited or less education, and an unskilled work history, who is limited to medium work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 203.25. Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, medium activities and that the claimant does not meet the definition of disabled under the SDA program because the objective medical evidence on the record does not establish that the claimant is unable to work for a period exceeding 90 days.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for SDA. The claimant should be able to perform any level of simple, unskilled, medium work. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: August 23, 2010

Date Mailed: August 23, 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.

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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.

CGF / vc

cc:

