

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 201112948
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date March 31, 2011
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

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 March 31, 2011. The Claimant appeared and testified.

ISSUE

Was disability medically established?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds a material fact:

- (1) Claimant is currently unemployed.
- (2) In November 2008, the Claimant was last employed due to being fired.
- (3) On September 10, 2010, the Claimant applied for MA/SDA and was denied on November 30, 2010, per BEM 260/261 with a hearing request on December 21, 2010.
- (4) Claimant's vocational factors are: age 43, high school graduate, and past semi-skilled work experience as a restaurant cook, scheduling appointments by phone for inspection of homes needing repair of windows, landscaping work, and unskilled general laborer.
- (5) Claimant's disabling complaints at time of application are: bulging disk, post traumatic stress syndrome, deep depression, and anxiety (Medical Packet, Page 22).

- (6) Medical report of exam done on August 21, 2009, states the Claimant was alert, cooperative in answering questions and following requests, and well oriented; that affect was appropriate; that his immediate, recent and remote memory was intact with normal concentration; that insight and judgment were both appropriate; that the dorsal lumbar spine was within normal ROM; that motor strength was 5/5 and tone was normal; that Romberg testing was negative; that he walked with a mild left-sided limp without the use of an assistive device; that straight leg raising was accomplished to 60 degrees on the right and 30 degrees on the left (Medical Packet, Pages 38 and 39).
- (7) Medical report of exam done on November 5, 2009, states the Claimant's GAF of 45/50 (Medical Packet, Page 94).
- (8) Medical report of exam done on December 15, 2009, states a GAF of 60-65 (Medical Packet, Page 89).
- (9) Medical Report of exam on January 12, 2010, states the Claimant, regarding alcohol and other drug use, has been doing much better; that he has tolerated both Zyprexa and Zoloft very well; and that his anxiety and depression have been in much better control (Medical Packet, Page 130).
- (10) Medical report of exam done on March 9, 2010 states, the Claimant is moderately limited in the ability to remember locations and work-like procedures, ability to understand and remember one or two-step instructions, ability to carry out detailed instructions, ability to sustain an ordinary routine without supervision, ability to make simple work-related decisions, ability to ask simple questions or request assistance, ability to accept instructions and respond appropriately to criticism from supervisors, ability to respond appropriately to change in work setting, and ability to travel in unfamiliar places or use public transportation; that he is not significantly limited in ability to carry out simple, one of two-step instructions, ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, and ability to be aware of normal hazards and take appropriate precautions (Medical Packet, Page 102-103).
- (11) Medical report of exam done on September 9, 2010, states the Claimant had an MRI scan of the lumbar spine dated November 24, 2009, which demonstrates grade I anterolisthesis of L5 on S1; that there is severe, left-sided stenosis, and moderate to severe right-sided stenosis at L5-S1 in the foramina; and that this is related to a disk bulging at the spondylolisthetic segment, and stated an opinion that he is completely disabled and not able to work (Medical Packet, Page 18).
- (12) SHRT report dated February 8, 2011, states the Claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 187).

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 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 facts above are undisputed:

"Disability" is:

...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 not less than 12 months.... 20 CFR 416.905.

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920(b).

2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920(c).

3. Does the impairment appear on a special listing of impairments or are the client's symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290(d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920(e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, Sections 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920(f).

At Step 1, the evidence above establishes that the Claimant is not currently engaged in substantial work activity. Therefore, disability is not denied at this Step.

At Step 2, the objective medical evidence establishes the Claimant's severe physical impairment based on the de minimus standard meeting the one year continuous duration requirement, as defined below.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

Non-severe impairment(s). 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(a).

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. 20 CFR 416.921(b).

Therefore, physical disability is not denied at this step.

At Step 2, the objective medical evidence establishes the Claimant's severe mental impairment, but not the required continuous one year duration stated above.

In August 2009, the objective medical evidence established that the Claimant was alert, cooperative in answering questions and following requests, and well-oriented; and that his recent and remote memory was intact with normal concentration.

In November 2009, the Claimant had a GAF of 45-50. This is considered a severe mental impairment. But, in December 2009 he had a GAF of 60-65. This is considered a non-severe impairment. Diagnostic and Statistical Manual of Mental Disorders (4th Edition-Revised).

In January 2010, the medical evidence, regarding the Claimant's discontinuation of alcohol and drug use, stated the Claimant was doing much, much better; and that his anxiety and depression have been in much better control.

At the hearing, the Claimant had no problem understanding, carrying out, and remembering questions asked of him. He was asked on what page of the medical packet a doctor had stated he was unable to do any work. He immediately found the page and the paragraph in the report.

The medical opinion related to the Claimant's back problem stated he is completely disabled by this condition, and is not able to work because of it.

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

This opinion does not explain why or how the Claimant's back impairment would restrict the Claimant from performing work, for example, sedentary type work, as defined below. Therefore, not much evidentiary weight is given to it.

Therefore, disability is not denied based on the physical impairment, but denied on the mental disability due to non-continuous duration of one year.

At Step 3, the objective medical evidence does not establish the severe physical impairment meets/equals a social security listing. Therefore, disability is not denied at this step.

At Step 4, the objective medical evidence does not establish the Claimant's inability to do his past work for the required duration, especially the job of scheduling appointments for inspection of homes. Therefore, disability is denied at this step.

If disability had not already been denied at Step 4, it would be denied at Step 5. At Step 5, the objective medical evidence above does not establish that the Claimant has no residual functional capacity for other work in the national economy, for the required duration, despite his severe physical impairment.

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...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).

Claimant's disabling complaints above that he has no residual functional capacity for any work is not supported by the objective medical evidence of record. When considering only the objective medical evidence of record, the Claimant would be able to perform, at least, sedentary type work, as defined above, and as already discussed under Steps 2 and 4. At this level considering the Claimant's vocational profile (younger individual, age 43, high school graduate, semiskilled work history) he is not considered disabled under Vocational Rule 201.28. Therefore, disability is denied at Step 5.

The department's program eligibility manual contains the following policy statements and instructions for caseworkers regarding the state disability assistance program: To receive state disability assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, Page 1. Because the Claimant does not

meet the definition of disabled under the MA-P program and because the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, the Claimant does not meet the disability criteria for state disability assistance benefits either.

Therefore, disability as defined above has not been established by the necessary competent, material and substantial evidence on the whole record.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law decides that disability was not medically established.

Accordingly, MA/SDA denial is UPHELD.

William A Sundquist

William Sundquist
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 18, 2011

Date Mailed: July 19, 2011

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 receipt 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.

WAS/ar

cc:

