

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-18197
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date: July 7, 2011
Kent 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, an In Person hearing was held on July 7, 2011.

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 October 2009, the claimant was fired from his last job.
3. Claimant's vocational factors are: age 26, 10th grade education, and past work experience as an unskilled preparation cook, semi-skilled construction and roofing, and skilled draftsman.
4. On August 31, 2010, the claimant applied for Medicaid/SDA, was denied on October 29, 2010 per BEM 260/261, and requested a hearing on January 22, 2011.
5. Claimant alleges disability due to chronic wrap around pain at bellybutton level and kidney disease (Medical Packet, page 69).

6. On December 18, 2009, the claimant underwent bilateral ureterocele resection; bowel sounds are normal, no masses, no organomegaly left subcostal tenderness and has a sensation of rib clicking (Medical Packet, pages 63 and 65.)
7. Medical exam on December 24, 2009 states that claimant's right kidney is marked with hydronephrotic changes; that there is thinning of the renal cortex consistent with a chronic hydronephrosis; and that the echotexture of the left kidney is normal (Medical Packet, page 88).
8. Medical exam on August 28, 2010 states the impression of abdominal pain of unknown origin; that the claimant's abdomen is soft and nondistended; and that range of motion of his hips and legs do not illicit pain (Medical Packet, page 124).
9. SHRT report dated February 23, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 69).

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).

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.

We follow a set order to determine whether you are disabled. We review any current work activity, the severity of the impairment(s), your residual functional capacity, and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review it further. 20 CFR 416.920(a).

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 claimant is not engaged in substantial gainful activity and has not worked since October 2009.

At Step 2, the claimant has the burden of proof of establishing that he has a severely restrictive physical impairment that has lasted or is expected to last for a continuous duration of at least 12 months, as defined and stated below. There is sufficient objective evidence of record that the claimant suffers a severe physical impairment based on the *de minimus* standard, but not on a sustained and continuous duration of 12 months. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding medical evidence of record supporting these complaints and limitations. In short, the claimant has restricted himself from tasks associated with occupational functions based upon his reports of pain, rather than medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the burden of proof can be made. This ALJ finds that the medical evidence of record is insufficient to establish that the claimant has a severely restricted physical impairment meeting the duration requirement 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, disability is denied at this step based on physical duration.

If the claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the Code of Federal Regulations.

If claimant had not already been denied at Step 2, this ALJ would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this ALJ could base a finding that claimant is unable to perform work in which he has engaged in the past. Therefore, disability would be denied at Step 4.

The ALJ will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

...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 [REDACTED] 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).

There is insufficient objective medical evidence of record that the claimant's physical impairment is so severe that it would prevent him from working at any job. Claimant's complaints of pain, while profound and credible are out of proportion to the objective medical evidence of record, as it relates to his ability to perform work. Therefore, this ALJ finds that the objective medical evidence of record does not establish that the claimant has no residual functional capacity. Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by the objective medical evidence that he cannot perform light or sedentary type work even with his impairments. Under the Medical-Vocational Guidelines, a younger individual, age 26, with a 10th grade education and an unskilled, semi-skilled and skilled work history, who is limited to sedentary work is not considered disabled.

Therefore, disability is denied at Steps 2, 4, and 5.

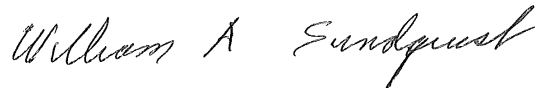
The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance: To receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, page 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that the 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, the claimant has not established disability, as defined above, 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 has not been established.

Accordingly, Medicaid/SDA denial is UPHELD.



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

Date Signed: July 22, 2011

Date Mailed: July 25, 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 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.

WAS/tg

2011-18197/WAS

cc:

