

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

IN THE MATTER OF:



Reg. No: 201119996
Issue No: 2009
Case No: [REDACTED]
Hearing Date: June 9, 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, a telephone hearing was held on June 9, 2011. The claimant appeared and testified.

Continuance of the hearing to obtain additional medical reports was denied for lack or good cause, per PEM 600.

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 as material fact:

- (1) Claimant is currently unemployed.
- (2) In November 2001, the claimant was laid off from his last job and thereafter was a recipient of Unemployment Compensation Benefits (UCB), which were exhausted in 2002.
- (3) Claimant's vocational factors are: age 59, 11 ½ years high school, and past semi-skilled work in a warehouse and mattress box spring factory, restaurant short order cook, cashier, janitor, and filling orders for a wholesale distributor.

- (4) On August 20, 2010, the claimant applied for MA, was denied on September 23, 2010, per BEM 260, and requested a hearing on November 24, 2010.
- (5) Claimant alleges disability due to chronic cholecystitis, digestive problems, peritoneal adhesions, diabetes, rotator cuff damage, migraine headaches, and arthritis.
- (6) Medical exam on [REDACTED], states the claimant went to the ER due to gallstones (Medical Packet, p. 72).
- (7) Admission on [REDACTED], states a diagnosis of chronic cholecystitis cholelithiasis, discharged diagnosis on [REDACTED], of s/p laparoscopic converted to open cholecystectomy, chronic cholecystitis, cholelithiasis, COPD, nicotine abuse; that surgical procedure performed was laparoscopic converted to open cholecystectomy; that significant diagnostic studies revealed gallbladder pathology which was acute and chronic cholecystitis with cholelithiasis; that claimant was instructed to perform activity as tolerated, limited to lifting to less than 20 pounds for 6 weeks, no driving while on narcotic pain medication, showering is okay, and resume tub bathing in 3 to 5 days; that diet is on a regular basis; that claimant was in good condition at time of discharge (Medical Packet, pgs. 159 and 160).
- (8) The medical reports do not indicate that the claimant's impairments meet/equal a Social Security listing.

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 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 establishes that the claimant is not currently engaged in substantial gainful activity. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record establishes that the claimant is significantly limited in performing basic physical work activities, as defined below, based on the *de minimus* standard, but not for the required duration stated below.

Therefore, disability is denied at this step.

At Step 3, the objective medical evidence does not establish the claimant's impairments meet/equal a Social Security listing.

At Step 4, the objective medical evidence does not establish the claimant's inability to do any of his past work for the required duration, despite his severe physical impairment. Therefore, disability is denied at this step.

At Step 5, the objective medical evidence does not establish that the claimant is without a Residual Functional Capacity (RFC) for other work in the national economy, for the required duration.

...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 RFC for any work is not supported by the objective medical evidence of record. Sedentary type work, as defined above, falls within his medical limitations. The claimant would be able to perform, at least, sedentary work. At this level, considering the claimant's vocational profile (advanced age, age 59, 11 ½ years of high school, and past semi-skilled work experience) he is not considered disabled under Vocational Rule 201.03. Therefore, disability is denied at Steps 2, 4, and 5.

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 was not medically established.

Accordingly, MA denial is UPHELD.

/s/

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

Date Signed: June 20, 2011

Date Mailed: June 20, 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:

