

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-26413
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date: July 5, 2011
Sanilac 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 July 5, 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 as material fact:

1. Claimant is currently unemployed.
2. In February 2007, the claimant was fired from his last job.
3. Claimant's vocational factors are: age 32, GED, and past work experience as an unskilled floor sweeper with a broom, semi-skilled stock shelving at [REDACTED], construction work, and farm work.
4. On January 12, 2011, the claimant applied for Medicaid/SDA, was denied on March 15, 2011 per BEM 260/261, and requested a hearing on March 23, 2011.
5. Claimant alleges disability due to rod in right leg, pain in knees, legally blind, and closed head injury resulting from a car accident in 1996.

6. Medical report on July 26, 2010 states the claimant's visual acuity in right eye is 24/25 and left eye 24/20, without corrective lenses; that there is no evidence in joint laxity, crepitation, or effusion; that grip strength remains intact; that dexterity is unimpaired; that claimant had no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping on the left and mild on the right; that straight leg raising is negative; that range of motion studies of the joints were normal for the dorsolumbar and cervical spine, knees, hips; and that physically, he appears relatively stable; that he only had mild difficulty hopping on the right side due to some tenderness but his range of motion and power were both well preserved; that he was able to sit, stand, bend, stoop, carry, push, pull, button, tie shoes, dress/undress, dial telephone, open door, make a fist, pick up pencil right, squat and rise from squatting, get on and off examining table, climb stairs; that his gait was stable and within normal limits; and that he needs no assistive device for ambulation (Medical Packet, pages 40 to 45).
7. Medical exam on July 27, 2010, states the claimant's GAF score of 63 (Medical Packet, page 56).
8. Medical exam on February 10, 2011 states the claimant is not significantly limited in ability to remember locations and work-like procedures, understand and remember instructions, carry out simple one to two-step instructions, sustain an ordinary routine without supervision, work in coordination with or proximity to others without being distracted by them, make simple work-related decisions, interact appropriately with the general public, ask simple questions or request assistance, accept instructions and respond appropriately to criticism from supervisors, get along with coworkers or peers without distracting them or exhibiting behavioral extremes, maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, respond appropriately to change in the work setting, travel in unfamiliar places or use public transportation, and set realistic goals to make plans independently of others. (Medical Packet, pages 20 and 21.)
9. Medical exam on February 10, 2011 states the claimant's GAF of 65 (Medical Packet, page 23).
10. SHRT report dated April 7, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 58A).

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is revealed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

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 2007. Therefore, disability is not denied at this step.

At Step 2, the claimant has the burden of proof to establish that he has a severely restrictive mental or physical impairment that has lasted or is expected to last for a duration of at least 12 months, as defined below. There is insufficient objective evidence of record based on the *de minimus* standard of a severe mental/physical impairment meeting the duration requirement.

...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).

In July 2010 and February 2011, the claimant had GAF scores of 63 and 65, respectively. This is considered a person with mild difficulty with job functioning, and not severe. DSM-IV.

Even at the hearing, the claimant was able to understand and properly answer questions without difficulty.

The objective medical evidence in July 2010 shows that the claimant's visual acuity with the right eye was 24/25 and left eye was 24/20 without corrective lenses; and that he had a normal range of motion of the dorsal lumbar spine, knees and hips; that physically, he appears relatively stable; and that he only had mild difficulty hopping on the right side due to some tenderness, but his range of motion and power were both well preserved.

This ALJ finds that the medical record is insufficient to establish that claimant has a severely restrictive mental/physical impairment. Therefore, disability is denied at this step.

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 Administrative Law Judge 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 Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in the past. Disability is denied at this step.

The Administrative Law Judge 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.

If the claimant had not already been denied at Steps 2 and 4, he would be denied at Step 5. The objective medical evidence of record does not establish that the claimant is without a residual functional capacity for other work in the national economy.

...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).

There is insufficient objective medical evidence contained in the file to establish a physical impairment so severe that it would prevent the claimant from working at any job. Claimant's complaints of pain, while profound and credible, are out of proportion to the objective medical evidence contained in the file, as it relates to claimant's ability to perform work. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that 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, at least, sedentary work even with his impairments. Under the Medical-Vocational Guidelines, a younger individual, age 32, with a GED education and an unskilled/semi-skilled work history, who is limited to sedentary work is not considered disabled.

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 disability under the MA-P program and because the evidence of

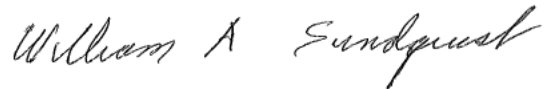
record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance either.

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 was not medically 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 27, 2011

Date Mailed: July 27, 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

cc:

