

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-26909
Issue No. 4031
Case No. [REDACTED]
Hearing Date: July 20, 2011
St. Clair 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 23, 2011.

Medical reports (Claimant Exhibit A) submitted after the hearing for a second SHRT review delayed the D&O below.

ISSUE

Was a severe physical impairment expected to preclude the claimant from sedentary type work for a duration of 90 continuous days?

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 has not worked since February 22, 2006.
2. On February 22, 2006, the claimant was laid off from his last job.
3. Claimant's vocational factors are: age 49, 12th grade education, and past unskilled work as a school janitor, and semi-skilled work as a foreman in a stucco wall construction worker and fork truck driver.
4. On December 20, 2010, the claimant applied for SDA and was denied on March 17, 2011 per BEM 261, and requested a hearing on March 17, 2011.
5. Claimant alleges disability due to neck, back, knee, hips, and pelvic pain.

6. Medical exam on February 3, 2010 states the claimant can sit ten minutes at a time; that he can occasionally lift, carry up to five pounds; that he has marked limitation in grasping, turning and twisting; that he has marked limitation in use of arms for reaching; that his condition interferes with the ability to keep his neck in a constant position (for example looking at a computer screen; that he cannot do a full-time job on a sustained basis; that his impairments are expected to last at least 12 months; that during an eight-hour workday, he will need to take breaks every 45 minutes; that his breaks will need to be 15 minutes; that out of a competitive five day a week environment, on a sustained basis, he can sit two hours and stand/walk one hour; and that he should not sit continuously in a work setting more than 15 minutes at a time (Medical Packet, pages 136 to 141).
7. Medical exam on September 27, 2010 states the claimant has no evidence of joint laxity, crepitance, or effusion; that grip strength remains intact; that dexterity is unimpaired; that he could button clothing and open a door; that he had mild difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting to 40 degrees, no difficulty standing on the right, and mild difficulty standing on the left; that straight leg raising is negative; that range of motion studies were normal for the cervical spine, dorsal lumbar spine, shoulders, elbows, hips, knees, ankles, wrists, and hands-fingers; that cranial nerves are intact; that motor strength and tone are normal; that sensory is intact to light touch and pinprick; that Romberg testing is negative; that he walks with a mild left limp without the use of an assistive device; that he did have significant diminished range of motion to the left hip with associated tenderness; that he did have findings of degenerative arthropathy between L4 and S1 at his lumbar spine without radicular symptoms; that he did have difficulty doing orthopedic maneuvers because of pain in his left hip but power was stable; that he does walk with a mild left limp; that he would benefit from use of his cane for leg fatigue when walking more than 100 yards but it is not required; that he is at risk for further deterioration to his hip and back with repetitious work (Medical Packet, pages 183 to 185).
8. Medical exam on November 16, 2010 states the claimant's upper extremities bilaterally are 5/5 and normal; that lower extremities are 5/5 on the right and 4/5 on the left hip secondary to pain; that he had unlimited range of motion of the cervical spine; that he had unlimited range of motion of the thoracic spine; and that he had limited range of motion of the lumbar spine (Medical Packet, pages 190 and 191).
9. Medical exam on January 29, 2011 states the claimant's musculoskeletal area is helped by the claimant's use of a cane to help stability; and that his condition is deteriorating (Medical Packet, page 192).

10. Medical exam on May 17, 2011 states the claimant's prognosis is fair for long-term stability and improvement; that in a normal competitive five-day week work environment on a sustained basis, he can sit one hour and stand/walk one hour; that he should not sit on a continuous basis on a work setting; that he should sit 15 minutes at a time and move around for 15 minutes; that he should not stand/walk continuously in a work setting; that he is limited to lifting/carrying occasionally up to five pounds; that the claimant's impairments are expected to last at least 12 months and that his condition interferes with the ability to keep the neck in a constant position (for example looking at a computer screen on a desktop); and that he should not do any pushing and kneeling activities (Claimant Exhibit A, pages 1 through 7).
11. SHRT report dated April 14, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 206).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Facts above are undisputed.

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.

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 reviewed. 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 are used as a guideline and 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 of record establishes that claimant has not been engaged in substantial gainful work since February 22, 2006. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record establishes that claimant is significantly limited in performing basic physical work activities, as defined below, for the required duration of 90 **continuous** days.

...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).

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 not denied at this step.

At Step 3, the medical evidence of record does not give rise to a finding that claimant would meet a statutory listing in the Code of Federal Regulations. In order to qualify as disabled, a severe physical impairment for the required duration has to be established under Step 2.

The claimant offered no evidence by a treating, examining, or non-treating physician, addressing any Social Security Listing. And to the contrary, the SHRT medical consultant addressed the issue and found no disability under this step.

At Step 4, the medical evidence of record establishes the claimant's inability to do any of his past work due to the continuous lifting/carrying, bending and twisting movements required as a stucco worker, janitor and fork truck driver. Therefore, disability is not denied at this step.

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 for the required 90 **continuous** days.

...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 has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do sedentary tasks, as defined above, if demanded of him even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe physical impairment or combination of impairments which prevent him from performing any level of work for a period of at least 90 **continuous** days. Under Medical-Vocational guidelines, a younger individual, age 49, with a high school education and a semi-skilled work history, who is limited to sedentary work is not considered disabled.

The claimant presented medical evidence of his physical work limitations/restrictions. But, this information was based on a continuous full-time work, eight hours a day, and five days a week.

Substantial work activity is work activity that involves doing significant physical activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility than when you worked before. 20 CFR 416.972(a).

Therefore, disability is denied at Step 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, SDA denial is UPHELD.

William A. Sundquist

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

Date Signed: November 8, 2011

Date Mailed: November 9, 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:

