

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201148733
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: November 29, 2011
Wayne 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 Tuesday, November 29, 2011. Claimant appeared and provided testimony on his behalf.

ISSUE

Did Claimant, on date of MA-P/SDA application, establish a severe mental/physical impairment that had lasted or was expected to last for one continuous duration (MA-P) and 90 days (SDA).

FINDINGS OF FACT

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

1. About one year ago Claimant ended his last job.
2. On January 4, 2011, Claimant applied for MA-P/SDA based on a medical diagnoses of left knee degenerative joint disease, diabetes, and depression, was denied on July 28, 2011 per BEM 260/261, and requested a hearing on August 9, 2011.
3. On date of MA-P/SDA application, Claimant was age 49, with a high school plus education, and work experience as an unskilled residential house cleaner, semi-skilled as a [REDACTED] lot driver for passengers, and [REDACTED] for a [REDACTED], and skilled work as an auto mechanic.

4. On May 20, 2010, Claimant's medical exam stated a GAF score of 50 (Medical Packet, Page 14).
5. On June 10, 2010, medical exam stated Claimant's GAF score of 50 (Medical Packet, Page 104).
6. On July 26, 2010, medical exam stated the Claimant was alert, interactive, and answers questions appropriately; that Claimant does have surgically deformity of the left knee; that neurologically Claimant is intact to the left knee (Medical Packet, Page 16).
7. On August 3, 2010, medical exam stated the Claimant was normal psychiatrically (Medical Packet, Page 10).
8. On August 24, 2010, medical exam stated that the Claimant regarding left knee pain was permanent and stable; that he could frequently and continuously up to 8 hours with breaks sit, lift up to 25 pounds, reach over shoulder, grasping on left and right side, pushing/pulling activities; that he could sometimes continuously up to 2 hours or occasionally up to 6 hours stand, walk, lift up to 50 pounds; that his nervous system was normal; that he was physically limited in kneeling and stooping; that the Claimant is physically able to enter employment or training; that he can work full-time (6 or more hours); and that he can perform a moderate amount of squatting (Medical Packet, Pages 10 and 11).
9. On January 13, 2011 and February 16, 2011, medical exam states GAF scores of 50 (Medical Packet, Pages 101 and 102).
10. On September 30, 2011, SHRT report stated the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 111).

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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) 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 your impairment(s), your residual functional capacity, your past work, 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 your claim further.... 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, disability is not denied. The evidence of record establishes that the Claimant was not engaged in substantial gainful work on date of application, nor currently.

At Step 2, disability is denied. The medical evidence of record does not establish, on date of application, that Claimant was significantly limited with a severe impairment from performing basic work activities, as defined below, for the required duration of one continuous year, as stated below.

Severe/Non-Severe Impairment

...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).

The medical reports of record introduced by Claimant are mostly examination, diagnostic, and treatment reports. They do not provide medical assessments of the Claimant's basic limitations/restrictions in order to determine whether he has a severe or non-severe impairment(s), as defined above. Said in another way, these reports do not establish whether the Claimant has a slight, mild, moderate (non-severe impairment, as defined above) or severe impairment, as defined above.

The psychiatric evidence of record establishes GAF scores of 50 in March and June of 2010 and January and February of 2011. This is considered borderline severe/non-severe mental impairment with job-functioning. DSM-IV (4th edition-revised).

But, to the contrary, the medical evidence of record establishes that the Claimant is alert and able to answer simple medical questions in his examinations. He was also able to understand, remember and answer questions during the hearing.

Medical disability cannot be established by the testimony alone of the Claimant that he cannot do any work due to his multiple diagnostic impairments.

The medical evidence of record must support the Claimant's alleged inability to do any work on date of application for the required duration.

It is the well settled law that Administrative Law Judges (ALJ) are not permitted or allowed to speculate or guess at material facts in dispute. And it would only be a guess on the part of this ALJ to find a severe impairment based on the medical evidence of record.

Duration of Impairment

...[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.

Claimant cannot be determined disabled without medically establishing the duration requirement. The medical evidence of record does not establish on date of application a severe impairment that had lasted or was expected to last for the required one year continuous duration.

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, p. 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 was not established at Step 2 and therefore; the analysis stops at Step 2.

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**.

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

Date Signed: June 4, 2012

Date Mailed: June 5, 2012

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/tb

cc:

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