

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201111005
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date March 15, 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 March 15, 2011. The claimant appeared and testified.

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 applied for MA/SDA on September 27, 2010 based on inability to do any physical work because of acid reflex, spur in foot and back problems (Claimant Exhibit A, Page 8), was denied on November 17, 2010 per BEM 260/261 with a hearing request on November 22, 2010
- (2) Claimant is age 44 and has a 12th grade education.
- (3) Claimant is currently unemployed.
- (4) Current employment: None
- (5) Claimant last worked in January 2008 because of plant closing; and thereafter drew unemployment compensation benefits until exhaustion in July 2010 (Medical Packet, Page 53).

- (6) Medical report of exam on [REDACTED], states the claimant has limited back motion due to pain (Medical Packet, Page 75).
- (7) Medical report of exam on [REDACTED], states the claimant denies any radiation of back pain; that he does not use an assistive device; that he states he can sit and stand about an hour, walk about 6 blocks, and lift less than 30 pounds; that there is some tenderness over the metatarsal phalange joint of the left foot and over the left heel; that he had no difficulty getting on and off the examination table, unable to heel and toe walk, mild difficulty squatting to 30 degrees, no difficulty standing on the right, and moderate difficulty standing on the left; that range of motion was normal for the cervical spine, dorsal lumbar spine, hips, knees, and ankles; that he did have some evidence of a possible heel spur in the left foot; that his back pain appears to be mostly myofascial; that he had some moderate difficulty standing on his left leg; that he does walk with a guarded gait but remains relatively stable (Medical Packet, Pages 79-81 b).
- (8) SHRT report dated January 12, 2011, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 83).

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).

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.

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.

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 (90 days SDA) 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: Current Employment

At Step 1, the evidence above (Fact #6) establishes the claimant's current unemployment. Therefore, disability is not denied at this Step.

Step 2: Severe Impairment/Duration

The medical evidence above (Facts #8-10) do not establish a severe physical impairment meeting the required durations, as defined below, based on the de minimus standard. To the contrary, the medical reports establish a non-severe physical 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).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months (90 days SDA). 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).

Also, the above medical reports do not state an opinion by any physicians that the claimant cannot do any work. Therefore, disability is denied at this Step.

Step 3: Social Security Listing

The medical evidence above (Fact #11) does not establish the claimant's non-severe physical impairment meets/equals a social security listing. Therefore, disability is not denied at this Step.

Step 4: Ability to Do Past Work

The medical evidence above (Facts #8-10) does not establish the claimant's inability to do his past jobs above (Fact #7) despite his non-severe physical impairment.

Claimant was laid off from work in January 2008 and drew unemployment compensation benefits until exhausted in July of 2010. Two months later he applies for MA/SDA. He admitted that he was available and able to work during his eligibility for unemployment compensation benefits. There is no medical evidence that his physical condition substantially worsened or deteriorated during that two month period before application. Therefore, disability is denied at this Step.

Step 5: Residual Functional Capacity (RFC) For Any Other Work in the National Economy:

The medical evidence above (Facts #8-10), as already discussed above under Steps 2 and 4, do not establish the claimant is without an RFC for, at least, sedentary type work as defined below, despite his non-severe physical impairment.

...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).

At this level (sedentary type work), considering the claimant's vocational profile (younger individual age 44, high school graduate, and unskilled/semiskilled/skilled work experience he is not considered disabled under Vocational Rules 201.27 and 201.28. Therefore, disability is denied at this Step.

Therefore, disability, as defined above, has not been established by the preponderance of the medical evidence of 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, MA/SDA denial is UPHELD.

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

Date Signed: May 10, 2011

Date Mailed: May 11, 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.

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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 /om

cc:

