

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

IN THE MATTER OF:

[REDACTED] r
[REDACTED]

Reg. No: 201111929
Issue No: 2009
Case No: [REDACTED]
Hearing Date: June 2, 2011
Lapeer 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, an in-person hearing was held on June 2, 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 as material fact:

- (1) Claimant is currently unemployed.
- (2) In November 2007, the claimant quit his job for health reasons.
- (3) Claimant's vocational factors are: age 52, 12th grade education, and past skilled work experience as a brick layer for 25 years.
- (4) On March 24, 2010, the claimant applied for MA, was denied on July 20, 2010, per BEM 260, and requested a hearing on October 12, 2010.
- (5) Claimant alleges disability due to pneumonia, asthma, diabetes, arthritis, hearing loss, and prostate cancer.

- (6) In June 2009, the claimant's prostate cancer was surgically removed.
- (7) Medical exam on [REDACTED], states the claimant's physical exam was negative; that his most recent PSA level was done in [REDACTED], which was 0.1 ng/mL, which is excellent; and that he has no clinical evidence of disease and will return for follow up in one year. (Medical Packet, page 55B).
- (8) Claimant's prostate cancer follow-up on [REDACTED], states he is in no obvious discomfort or distress; and that abdominal exam reveals well-healed incision scars with no signs of any breakdown or erythema (Medical Packet, page 26B).
- (9) Medical exam on [REDACTED], states the claimant has bilateral equal air entry and coarse crackles bilaterally, intrascapularly, lateral and few wheezing in the front (Medical Packet, page 70B).
- (10) Medical exam on [REDACTED], states the claimant is experiencing respiratory distress, wheezing noted throughout the lung fields (Medical Packet, page 66B).
- (11) Medical exam on [REDACTED], states the claimant has no evidence of acute cardiopulmonary process (Medical Packet, page 52B).
- (12) Medical exam on [REDACTED], states the claimant clinically was stable; and that his breathing returned to baseline (Medical Packet, page 63B).
- (13) SHRT report dated January 21, 2011, states the claimant's impairments do not meet/equal a Social Security listing (Medical Packet, page 99B).

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 established 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.

...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).

The claimant uses a cane to assist in walking. But he admitted it is not prescribed by a physician. Therefore, disability is denied at this step based on the duration requirement.

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

At Step 4, the objective medical evidences establishes the claimant's inability to do his past work as a brick-layer for 25 years, which required the lifting/carrying up to 50 pounds and standing on his feet most of the day. Therefore, disability is not 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.

...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. His medical limitations fall within the definition of sedentary work, as defined above. Therefore, the claimant would be able to perform, at least, sedentary work. At this level, considering the claimant's vocational profile (closely approaching advanced age, 52, high school graduate, and past skilled work experience) he is not considered disabled under Vocational Rule 201.15. Therefore, disability is denied at steps 2 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 14, 2011

Date Mailed: June 14, 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

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