

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

IN THE MATTER OF:



Reg. No: 201120561
Issue No: 2009;4031
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 October 2008, the claimant was laid off from his last job.
- (3) Claimant's vocational factors are: age 38, 12th grade education, and past skilled work experience in car sales, security work similar to a private police officer, and culinary cook in a restaurant for 6 years.
- (4) On September 7, 2010, the claimant applied for MA (retro for 3 months)/SDA, was denied on February 1, 2011, per BEM 260/261, and requested a hearing on February 17, 2011.

- (5) Claimant alleges disability due to 3 herniated disks, left leg neuropathy, irritable bowel syndrome, hypertension, hyperlipidemia, enlarged atria, spine tumor, and chronic depression (Medical Packet, pages 8 and 38).
- (6) Medical exam on [REDACTED], states the claimant is under medical care and he may not return to work at this time; that he is currently being evaluated and undergoing medical treatment for condition which maybe worsened by prolong sitting or excessive movement (Medical Packet, page 20).
- (7) Medical exam on [REDACTED], states the claimant, regarding low back pain, x-rays of back confirm sciatica and radiculopathy; that he is impaired in walking, sitting, sleeping, bed mobility, bending, twisting, lifting weight and running; that he has moderate tenderness over low back and paraspinal muscles; and that his gait is slow and gradual (Medical Packet, pages 29 and 30).
- (8) Medical exam on [REDACTED] states the claimant has several medical conditions, which make him unable to perform his normal job duties; that his condition is worsened by prolonged sitting, bending, twisting, and sudden movements (Medical Packet, page 21).
- (9) Medical exam on [REDACTED], regarding the MRI of the lumbar sacral spine, states the claimant's L1-2, L2-3, and L3-4, have no significant disk/facet abnormality, spinal stenosis, or foraminal narrowing; that the L4-5 has minimal central contusion; and that L5-S1 has small to medium sized central protrusion with annular tear (Medical Packet, page 19).
- (10) Medical exam on [REDACTED], states an ambulatory aid is medically required (cane) because of weak left leg; and that he has a normal mentation (Medical Packet, page 7).
- (11) SHRT report dated March 9, 2011, states the claimant's impairments do not meet/equal a Social Security listing (Medical Packet, page 38).

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.

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 establishes 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 does not establish that the claimant is significantly limited in performing basic mental work activities, as defined below, but has established a severe physical impairment 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)

Therefore, disability is denied at this step.

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

At Step 4, the objective medical evidence does not establish the claimant's inability to do his past work, despite his severe physical impairment. The medical evidence states

that the claimant is unable to perform his **normal** job duties. What does this mean? His last job? Or all of his last jobs? There is no objective medical evidence or record that establishes that the claimant will be unable to physically perform any of his last jobs, especially that of a car salesman, for the required one year duration. Therefore, disability is 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 for the required one year duration.

...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 for the required one year duration is not supported by the objective medical evidence of record. His medical limitations fall within the definition of sedentary work activities, as defined above. Therefore, the claimant would be able to perform, at least, sedentary work. At this level, considering the claimant's vocational profile (younger individual, age 38, 12th grade education, and past skilled work experience) he is not considered disabled under Vocational Rule 201.28. Therefore, disability is denied at Steps 2, 4, and 5.

The departments program eligibility manual contains the following policy statements and instructions for caseworkers regarding 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 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, 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/SDA denial is UPHELD.

/s/

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

Date Signed: June 15, 2011

Date Mailed: June 16, 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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