

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-23290
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date: June 23, 2011
Bay 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, 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 claimant from substantial gainful work, **continuously**, for one year 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 has not worked since December 2008.
2. In December 2008, the claimant quit his last job.
3. Claimant's vocational factors are: age 29, 9th grade education, and past work experience as an unskilled clerk; semi-skilled security officer, and drain technician.
4. On August 18, 2011, the claimant applied for Medicaid (three months retro)/SDA, was denied on December 6, 2010 per BEM 260/261, and requested a hearing on February 22, 2011.

5. Claimant alleges disability due to left hand problems, head trauma, muscle and back problems.
6. Medical exam on December 8, 2010 states the claimant has a good range of motion in all extremities; and that an x-ray of the finger shows a maldeformity and a healed shortening fracture of the distal phalanx (Claimant Exhibit A, page 1).
7. Medical exam on November 3, 2010 states he can sit about an hour; that he denies any problems with standing or walking; that he can lift about 25 pounds with the right arm, but cannot grasp anything with the left; that there is no evidence of joint laxity, crepitation, or effusion; that grip strength remains intact on the right, but there is decreased grip and fist strength on the left with mild digital dexterity loss; that he did have tenderness over the distal aspect of the left fifth digit with nail deformity; that he can button clothing, tie with mild difficulty, and open a door; that he has no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting and arising, and no difficulty hopping; that range of motion of the joints was impaired in the third, fourth, and fifth digits on the left hand, but was normal in all other tested joints; that cranial nerves are intact; that motor strength and tone are normal; that sensory is intact to light touch; that reflexes are intact and symmetrical; that Romberg testing is negative that he walks with a normal gait without the use of an assistive device; that the most significant area in his left hand where he did have diminished range of motion and diminished dexterity; that he was able to open a door; that he does have mild difficulty tying shoes and buttoning; that in regards to his neck and back, he did have some mild cervical lumbar spine straightening; and that he may have some underlying degeneration (Medical Packet, pages 6 to 9).
8. SHRT report dated April 1, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 109).

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).

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

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.

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 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 has not been engaged in substantial gainful work since December 2008. 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 physical work activities, as defined below, for the required duration stated below of one **continuous** year.

...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 medical reports of record are mostly diagnostic/treatment reports rather than physical assessment reports of the claimant's physical work limitations/restrictions.

Therefore, the claimant has not sustained his burden of proof to establish a severe physical impairment lasting for a continuous duration of one (1) year.

Therefore disability is denied at this step.

If claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he 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 first 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.

If claimant had not already been denied at Step 2, he would have to be denied again at Step 4 based upon his ability to perform his past work, despite his impairment. There is no evidence upon which this ALJ could base a finding that claimant is unable to perform work in which he has engaged in the past for the required one year duration.

Therefore, disability would be denied at this step.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not claimant has a residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

If the claimant had not been already denied at Steps 2 and 4, he would be denied again at Step 5.

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 duration of one **continuous** year.

...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, if demanded of him. 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 12 months. The claimant's testimony as to his limitation indicates that he should be able to perform sedentary-type work. Therefore, claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by the objective medical evidence that he could not perform sedentary work even with his impairments. **Under the Medical-Vocational Guidelines, a younger individual age 31, with a high school plus additional education and a semi-skilled work history who is limited to sedentary work is not considered disabled.** Therefore, disability is denied at Steps 2, 4 and 5.

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, 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, Medicaid/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 7, 2011

Date Mailed: November 8, 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:

