

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-29235
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date: July 19, 2011
Newaygo 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 July 19, 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 the 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 been employed in substantial gainful work since June 13, 2008.
2. On June 13, 2008, the claimant was laid off from his last job and started drawing UCB on January 3, 2009 until exhaustion in June 2010.
3. Claimant's vocational factors are: age 52, 12th grade education, and past work experience as a skilled service representative and federal government inspector doing administrative/clerical work.
4. On January 4, 2011, the claimant applied for Medicaid/SDA, and was denied on April 4, 2011 per BEM 260/261, and requested a hearing on April 13, 2011.

5. Claimant alleges disability due to lumbosacral arthritis and sclerosis of right hip.
6. Medical exam on March 4, 2010, states the claimant is well developed, well nourished and in no apparent distress; and that spine palpation reveals no paraspinal texture abnormalities, range of motion grossly normal, midline tenderness absent and performed range of motion without difficulty; and that gait was normal (Medical Packet, page 88).
7. Medical exam on February 18, 2011 states the claimant's cervical spine and lumbar spine are in a normal range of motion; that he has the ability to sit, stand, bend, stoop, carry, push, pull, button clothes, tie his shoes, dress, undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, write, squat, arise from squatting, get on and off the examining table, climb stairs; that he can walk on heels and toes and in tandem; that gait is stable and within normal limits; that he needs no assistive device for walking; that his grip strength is 5/5 bilaterally (Medical Packet, pages 3 to 6).
8. Medical exam on March 21, 2011 states that the claimant can sit and stand about 20 minutes, walk about 100 feet, and lift less than 20 pounds; that there is no evidence of joint laxity, crepitation, or effusion; that there is diminished space at the lumbar spine; that grip strength remains intact; that dexterity is unimpaired; that he could pick up a coin and open a door; that he had no difficulty getting on and off the examination table, mild difficulty heel and toe walking, mild difficulty squatting to 30 degrees, and mild difficulty standing on either foot; that straight leg raising is negative; that there is no paravertebral muscle spasm noted; that range of motion studies for the dorsolumbar spine and hips were normal; that cranial nerves were intact; that motor strength is reduced to 4/5 power in the right lower extremity; that tone is normal; that sensory is intact to light touch and pinprick; that Romberg testing is negative; that he walks with a guarded gait without the use of an assistive device; that he has degenerative disc disease at L5-S1 which is relatively mild; that x-rays of his right hip showed some mild degeneration; that he did have mild difficulty standing on either foot and doing a partial squat; that claimant's degree of impairment appears mild to moderate (Medical Packet, pages 102 to 105).
9. Medical exam on June 14, 2011 states the claimant out of an eight-hour workday can sit one hour and stand/walk one hour; that he can use his hands effortlessly for simple grasping, pushing, and pulling activities, and fine manipulations; that he can use his hands for repetitive motion tasks; that he can use his right foot for repetitive movements as in operating foot controls; that he can lift/carry frequently ten pounds; that he can reach above shoulder level frequently; that the claimant's pain disables him

from working full-time even in a sedentary position (Claimant Exhibit A, pages 1, 2 and 4).

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 are used as a guideline and 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 of record establishes that claimant has not been engaged in substantial gainful work since June 13, 2008. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record does not establish that claimant is significantly limited in performing basic physical work activities, as defined below, for the required duration 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 evidence of record states that the claimant cannot perform full-time work because of his hip pain. Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment. 20 CFR 416.929(a).

Part-time work could be substantial work activity.

Substantial work activity is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a **part-time** basis or if you do less, get paid less, or have less responsibility than you worked before. 20 CFR 416.972(a).

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 is denied at this step.

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 9, 2011

Date Mailed: November 9, 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:

