

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 2011-29242
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date: July 19, 2011
Shiawassee 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

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P) and State Disability Assistance (SDA)?

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 2010, the claimant was laid off from his last job.
3. Claimant is age 53, has an 11th grade education, and past semi-skilled/skilled work history in construction and building restoration.
4. On November 5, 2010, the claimant applied for Medicaid/SDA, and was denied on April 14, 2011 per BEM 260/261, and requested a hearing on April 13, 2011.
5. Claimant alleges disability due to back pain, chronic obstructive pulmonary disease (COPD), high cholesterol, neuropathy, depression and insomnia.

6. Medical exam on August 5, 2010, states the claimant given his severity of his radiologic findings and limitations results in his inability to lift, carry, climb, sit/stand for extended periods of time; that this is frustrating for the claimant as it severely limits his employment opportunities; that his work experience is in the roofing and construction business and with the continued pain and medications used to treat him, it would be impossible for him to obtain and maintain employment (Medical Packet, page 157).
7. Medical exam on August 6, 2010 that the claimant has the ability to sit, stand, bend, push, pull, button clothes, tie shoes, dress-undress, dial telephone, open door, make a fist, pick up a coin, pick up a pencil, write, get on and off examining table, climb stairs; or that he is able to walk on heels and toes and tandem; that he does not need a walking aid; that his range of motion is normal with the lumbar spine, and knees (Medical Packet, pages 182 to 185).
8. Medical exam on August 6, 2010 states the claimant states that the claimant's tandem gait is satisfactory; that he is able to heel and toe walk; that he can bend 60 degrees, back bend ten degrees, side bend ten degrees right and left; that in a sitting exam, he was able to straight leg raise 90 degrees; and that tandem gait and heel-and-toe were satisfactory; that he can sit for short periods of time, stand for short periods of time and bend a little bit; that he has difficulty stooping, carrying, pushing and buttoning clothes with pain; that he is not able to squat or rise from squatting; that he states he can climb stairs on a limited basis; that he can stand and walk a total of 15 hours, however, he would need to change positions frequently; that he is not able to do repetitive bending, lifting or twisting; that he has restrictive lifting from floor-to-waist approximately 20 pounds, waist to chest of ten pounds, and no overhead lifting (Medical Packet, pages 187 and 188).
9. Psychological report on August 11, 2010 states the claimant's GAF score of 60 (Medical Packet, page 180).
10. Medical exam on September 22, 2010, states the neuro surgery back restriction for the first four weeks as follows: wait two weeks to drive, or until you are off pain medication, walk a little, sit a little, do not lift over 15 pounds, no pushing, pulling, sweeping, vacuuming, long work, garage cleaning, or other vigorous activities, walking exercises as tolerated (Medical Packet, page 147).
11. Medical exam on October 5, 2010 states the claimant's condition is improving (Medical Packet, page 135).

12. Medical exam on May 5, 2011 states that the claimant is limited in his capacity to get and maintain gainful employment; that the side effects of his medications would restrict his ability to work as a roofer, which is where his skills lie; that the same side effects will necessarily limit his ability to drive or operate any potentially dangerous equipment; that his unstable spine and chronic back pain with history of surgical intervention will limit his opportunity as any type of labor or; that in addition, sedentary jobs, that require long periods of sitting will exacerbate the pain; that these physical limitations in conjunction with the medication side effects will likely disqualify him from sustaining any job on a consistent basis (Medical Packet, page 217).
13. SHRT report dated August 17, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 220).

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, claimant is not engaged in substantial gainful activity and has not worked since October 2010. Claimant is not disqualified from receiving disability at Step 1.

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, for the required duration stated below, but not a severe mental impairment as defined 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).

To the contrary, the mental evidence of record establishes the claimant's GAF score of 60. This is a person with a nonsevere occupational mental impairment. [REDACTED] [REDACTED]).

Therefore, disability is denied at this step based on a mental impairment, and not denied based on a physical impairment.

At Step 3, the medical evidence of record of claimant's condition does not give rise to a finding that he would meet a statutory listing in the Code of Federal Regulations.

At Step 4, the objective medical evidence establishes the claimant's inability to do any of his past construction and roofing type work with his severe physical impairment. Therefore, disability is not denied at Step 4.

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.

At Step 5, the objective medical evidence does not establish that the claimant is without a residual functional capacity 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 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, as defined above, 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. Therefore, this Administrative Law Judge finds that the objective medical evidence on the record does not establish that claimant has no residual functional capacity. 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, as defined above, even with his impairments. **Under the Medical-Vocational Guidelines, a person closely approaching advance age of 53, with a high school education, and semi-skilled/skilled work history, who is limited to sedentary work is not considered disabled.**

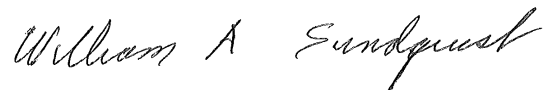
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 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
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 13, 2011

Date Mailed: October 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 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

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cc:

