

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201142562
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: November 3, 2011
Kalamazoo 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 Thursday, November 3, 2011. Claimant appeared with his authorized [REDACTED], [REDACTED].

Medical reports (Claimant Exhibit A) submitted at the hearing delayed the D&O below.

ISSUE

On date of application, was a severe mental/physical impairment that had lasted or was expected to last for a one year **continuous** duration 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. In December 2010, Claimant's last employment ended due to quitting a holiday job.
2. In 1997, Claimant alleges he became disabled to perform any work due to shoulder pain, cervical fusion, cataracts, migraines, depression, intermittent explosive disorder, anxiety, panic disorder, posttraumatic stress disorder (PTSD) and marijuana dependence.
3. From August 10, 2010 to October 17, 2011, Claimant had many GAF scores ranging from 50 – 55 by RNs in psychiatric specialties (Medical Packet and Claimant Exhibit A).

4. On February 7, 2011, Claimant applied for MA-P/SDA; he was age 48, with a GED, and work experience as an unskilled restaurant dishwasher, and security guard which required standing, sitting, and walking.
5. A fully licensed psychologist exam on March 23, 2011 stated the Claimant's current GAF score of 49; and that it appears the issues the Claimant is dealing with may likely last into next year.
6. On May 27, 2011, Claimant's MA-P/SDA application was denied per BEM 260/261, with a hearing request on May 27, 2011.
7. SHRT report dated August 17, 2011, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 176).
8. Claimant admitted at the hearing that he was looking for part-time work, 20 hours a week, doing custodial work or sedentary work where he could work alone.

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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity

of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

The Claimant has the burden of proof to establish disability as defined above by the preponderance of the evidence of record and in accordance with the 5 step process below. 20 CFR 416.912(a).

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, disability is not denied. The evidence of record establishes that the Claimant was not engaged in substantial gainful work on date of application, nor currently.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant inability to perform basic mental/physical work activities, as defined below, for the one year **continuous** duration, as defined below.

Severe/Non-Severe Impairment

...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).

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 question in this case is whether the Claimant's medically diagnosed disorders significantly limit his ability to perform basic work activities, as defined above.

The medical reports of record are examination, diagnostic or treatment reports, and do not provide medical assessments of Claimant's basic work limitations/restrictions.

Based on the definition of basic work activities, do the medically diagnosed disorders impair the Claimant slightly, mildly, moderately (non-severe, as defined above) or severely, as defined above?

Based on the medical evidence of record, this Administrative Law Judge (ALJ) finds a non-severe impairment has been established.

From August 11, 2010 to October 17, 2011, Claimant had many GAF scores ranging from 50 to 55 by nurses or by an LLP with the exception of a fully licensed psychologist on March 23, 2011 with a score of 49. Acceptable medical sources for mental/physical disorders are MDs, DOs, and fully licensed psychologists. PEM 260.

Claimant testified that he is currently looking for part-time work, 20 hours a week, or sedentary type work where he can be alone.

Substantial work activities, is work activities that involves doing significant physical or mental activities. Your work may be substantial even if it's done on a **part-time** basis, or if you do less, get paid less, or have less responsibility then when you work before. 20 CFR 416.925(a).

So clearly, the Claimant has demonstrated that he has at least a functional work capacity for part-time work which can be substantial gainful work activity.

Duration of Impairment

You cannot be determined disabled without medically establishing the duration requirement, as defined below.

...[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.

The medical evidence of record, on date of application, does not establish a severe impairment that had lasted or was expected to last for a one year **continuous** duration.

The Claimant argues that the acceptable current GAF score of 49 on March 23, 2011 is considered a severe mental impairment with job-functioning. This Administrative Law Judge agrees per DSM-IV (4th edition-revised). But, the date of Claimant's application is on February 7, 2011. And there is no competent evidence of a severe mental impairment on date of application that met the required one year continuous duration.

Therefore, disability is denied at Step 2.

The analysis will proceed to Step 3 where the medical evidence of record does not establish a severe impairment meeting/equaling a Social Security listing for the required duration.

The Listing of impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show the one year continuous duration. 20 CFR 416.925(a).

Claimant introduced no medical evidence of record by a treating, examining or non-examining physician addressing a Social Security listing(s). And to the contrary, the SHRT medical consultant addressed the matter and found insufficient medical evidence of disability under a Social Security listing.

If disability had not already been denied at Step 2, it would be denied at Step 4. The medical evidence of record, on date of application, does not establish Claimant's inability, despite his impairments, to perform any of his past work for the required one year continuous duration.

If disability had not already been denied at Step 2, it would be denied at Step 5. The medical evidence of record, on dated of application, does not establish the Claimant was without a residual functional capacity (RFC), despite his impairments, to perform any other work in the National Economy for the one year continuous 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).

The medical evidence of record, on date of application, does not establish that the Claimant was without a RFC for less strenuous work than his past work, such as sedentary work, as defined above. **Under the Medical-Vocational Guidelines, a younger individual age 48, with a GED, and unskilled work history who is limited to sedentary work is not considered disabled.**

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 has not been established at Step 2 and also at Steps 4 and 5, as defined above, by the 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**.

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

Date Signed: June 7, 2012

Date Mailed: June 8, 2012

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.

201142562/WAS

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/tb

cc:

