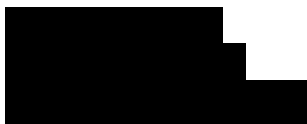


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 20119010
Issue No: 2009
Case No: [REDACTED]
Hearing Date February 24, 2011
Jackson 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 February 24, 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 a material fact:

- (1) Claimant applied for MA application on September 9, 2010, and denied on November 5, 2010 per BEM 260 with hearing request on November 30, 2010.
- (2) Claimant's age is 45 with a high school education.
- (3) Claimant is currently unemployed.
- (4) Claimant's last employment ended two years ago because of back injury in 1999 related to a hit-and-run; unemployment compensation benefits were paid to the claimant during the period of 2000-2008 related to seasonal employment.
- (5) Claimant's past employment is as follows: semi-skilled work on the assembly line at a glass company, outdoor maintenance worker cutting grass, security guard which required a certain amount of sitting, standing, walking, and keeping logs, and unskilled production line worker.

- (6) Claimant's disabling physical complaints are: chronic back pain due to back injury caused in 1999 from a hit and run incident; claimant admits that he can probably do light type work where there is no prolonged sitting.
- (7) Exam on [REDACTED], states the claimants manual muscle testing is 5/5 for bilateral upper and lower extremities; that there was a negative straight leg raise in the seated position; that he is able to walk on his heels and toes; that tandem gait is intact; that the Romberg was negative (Medical Packet, Page 68).
- (8) SHRT report dated January 5, 2011, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 77).

CONCLUSIONS OF LAW

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 undisputed facts above establish the claimant's non-current substantial gainful activity (SGA). Therefore, disability is not denied at this Step.

At Step 2, the undisputed medical facts above establish a severe physical impairment, as defined below based on the de minimus standard. But, not the required one year 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.

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(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 undisputed facts above do not establish the claimant's physical impairment meets/equals a social security listing. Therefore, disability is not denied at this step.

If disability had not already been denied at Step 2, it would be denied at Step 4. At Step 4, the undisputed medical facts above do not establish the claimant's inability to perform his past work stated above despite his severe physical impairment, especially his security guard job. Therefore, disability is denied at this Step.

If disability had not already been denied at Steps 2 and 4, it would be denied at Step 5. At Step 5, the undisputed medical facts above do not establish the claimant has no RFC for other work in the national economy, despite his physical limitations.

...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 testified that he has no RFC for any work, except for light work that does not require prolonged sitting, based on his disabling complaints above (Fact #7), is not supported by the undisputed medical facts above (Fact #8). When considering only the objective medical evidence of record, the claimant would be able to perform at least sedentary work activity. At this level, considering the claimants vocational profile (younger individual age 45, high school education, and unskilled/semi-skilled work experience) he is not considered disabled under Vocational Rule 201.21. Therefore, disability is denied at this Step.

Therefore, the claimant has not established disability, as defined above, based on the preponderance of the medical evidence of 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 Corrigan, Director
Department of Human Services

Date Signed: May 10, 2011

Date Mailed: May 10, 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.

20119010/WAS

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

cc:

