

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

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Reg. No: 20119012
Issue No: 2009; 4031
Case No: ██████████
Hearing Date: March 16, 2011
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

AMENDED 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 March 16, 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/SDA on June 9, 2010 based on inability to do any type of work because of herniated disc in neck, hepatitis C and depression (Medical Packet, Page 262), was denied on August 26, 2010 per BEM 260/261 with a hearing request on September 13, 2010.
- (2) Claimant's age was 42 on date of application.
- (3) Claimant's education is a GED.
- (4) Claimant is currently unemployed.
- (5) Claimant's last employment was December 22, 2009 after quitting job and giving up looking for work on June 14, 2010, based on medical condition.
- (6) Claimant's past employment was skilled work as a welder for 15 years (Medical Packet, Page 21).
- (7) Medical report of exam on June 16, 2010 states claimant's diagnosis of depression with a GAF of 45. 45 is considered a serious impairment with job-functioning and a person who is unable to keep a job. Diagnostic and statistical manual of mental disorders (4th edition-revised).

- (8) Medical report of exam on July 2, 2010, states the claimant was cooperative in answering questions and following commands; that his immediate, recent and remote memory is intact with normal concentration; that insight and judgment are appropriate, that there is no evidence of joint laxity, crepitation, or effusion; that grip strength remains intact, dexterity is impaired; that claimant could pick up a coin and open a door; that claimant had moderate difficulty getting on and off the examination table; that straight leg raising is negative; that there is lumbar spine and cervical spine straightening; that range of motion is normal; that motor strength and tone are normal; that regarding hepatitis C there were no findings of hepatosplenomegaly; that claimant had the abilities to sit, stand, bend, button clothes, dress/undress, dial telephone, open doors, making fists, pick up coin, pick up pencil, write, get on and off examination table, that he had normal extremities reflexes; and that he had no need for a walking aide (Medical Packet, Pages 12-16).
- (9) SHRT report dated December 20, 2010, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 262).

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 (PAM), the Program Eligibility Manual (PEM) 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 (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.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or

- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

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 at least 12 continuous 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).

Step 1: Current Employment

The evidence above (Fact #6) establishes the claimant's current unemployment. Therefore, disability is not denied at this step.

Step 2: Severe Impairment/Duration

The medical evidence of record establishes a severe mental impairment but not lasting, for the required durations, as defined below, based on the *de minimus* standard.

The objective medical evidence does not establish a severe physical impairment lasting for the required duration as defined below.

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 90 days. We call this the duration requirement. 20 CFR 416.909.

...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).

In June 2010, the medical evidence established a severe mental impairment with a GAF score of 45.

Then, in July 2010, the mental evidence is just the opposite. It establishes that the claimant has no mental impairment with the basic mental work activities defined above.

Also, at the hearing, the claimant was very articulate and had no difficulty in understanding and answering questions.

This ALJ gives more evidentiary weight to the medical evidence in July 2010 and the claimant's ability to testify and answer questions at the hearing than the evidence in June 2010. Therefore, this ALJ does not find a severe mental impairment was established. To the contrary, a non-severe mental impairment was established as defined above.

Therefore, disability is denied at this step.

Step 3: Social Security Listing

The medical evidence of record does not establish the claimant's impairments meet/equal a social security listing.

Step 4: Ability to Do Past Work

The medical evidence of record does not establish the claimant's inability to do past work for the required duration, despite his non-severe mental/physical impairment, as already discussed under Step 2 above.

Also, there was no work restrictions placed on the claimant by any examining physician related to his inability to perform past employment. Therefore, disability is denied at this Step.

Step 5: Residual Functional Capacity (RFC) for Any Other Work in the National Economy

The medical evidence of record does not establish the claimant has no RFC for other work in the national economy for the required duration, despite his non-severe mental/physical limitation.

...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, based on his disabling complaints above for any work is not supported by the undisputed evidence, and as already discussed under Steps 2 and 4 above. 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 claimant's vocational profile (younger individual age 42, GED, and unskilled/semiskilled work experience)

he is not considered disabled under Vocational Rules 201.27 and 201.28. Therefore, disability is denied at Steps 2, 4 and 5.

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 SDA benefits either.

Therefore, disability as defined above has not been established 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 has not been medically established.

Accordingly, MA/SDA denial is UPHELD.

William A Sundquist

William Sundquist
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: July 19, 2011

Date Mailed: July 20, 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 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/tg

cc:

