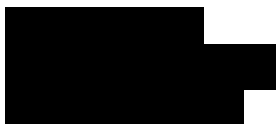


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 20119432
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: March 1, 2011
Washtenaw 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 March 1, 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 18, 2010, was denied July 1, 2010, and requested a hearing on July 15, 2010.
- (2) Claimant is age 37 and has a high school education.
- (3) Claimant is currently unemployed.
- (4) Claimant's last employment ended in 2002 thereafter he was incarcerated until June 17, 2010.
- (5) Claimant's past employment for 15 years was semiskilled automotive sales, skilled farming, and skilled buying and selling of horses and cattle, unskilled construction worker, semiskilled accounting clerk and GED tutor (Medical Packet, Page 10).

- (6) Claimant's disabling physical complaints are Injured back in 2007 with two bulging disk and pinched nerve in neck causing frequent urination at least once an hour and constipation/looseness; discomfort with difficulty sleeping and bloating of stomach; intermittent back pain.
- (7) On [REDACTED], states the claimant had an MRI regarding back pain; central canal has no significant stenosis at L1/L2 and L2/L3; that at L3/L4 an asymmetric to the right diffuses disc analysis bulge is present with mild biforamino protrusions; that no evidence of central canal stenosis or significant foraminal narrowing is identified; and that superimposed facts hypertrophy contribute to moderate biforaminal stenosis (Medical Packet, Pages 16-17).
- (8) Exam on [REDACTED], states the claimants stance, gait, and pain level are normal; that claimant has temporary disability/date expected to return to work on October 1, 2010; that he is limited in lifting/carrying occasionally 10 pounds; that he can stand and/or walk less then 2 hours in an 8 hour work day; that an assistive device is not medically required for ambulation; and that he is able to use his extremities on a repetitive basis (Medical Packet, Pages 5-6).
- (9) SHRT report dated December 22, 2010, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 29).

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).

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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 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 do not establish a severe physical impairment meeting the duration requirements, as defined below based on the de minimus standard. The MRI regarding the claimant's back pain establishes a more significant mild condition. To the contrary, a non-severe physical impairment is established, 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 (90 days for SDA). 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).

Therefore, disability is denied at this step.

At Step 3, the undisputed medical 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 does not establish the claimants' inability to perform his past work stated above, especially as an accounting clerk and GED tutor, despite his non-severe physical impairment. 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's testimony that he has no RFC, based on his disabling complaints above for any work in the national economy is not supported by the undisputed medical facts above and discussion under Step 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 37, high school education, and semi-skilled/skilled work experience) he is not considered disabled under Vocation Rule 201.28. 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 or 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 UPHHELD.

/s/

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

Date Signed: May 18, 2011

Date Mailed: May 19, 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.

20119432/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 /om

cc:

