

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

IN THE MATTER OF:



Reg. No: 20119840
Issue No: 4031
Case No: [REDACTED]
Hearing Date: March 1, 2011
Ionia 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.

Medical reports (Claimant Exhibit A) submitted at the hearing for SHRT review delayed the Decision & Order below.

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 as material fact:

- (1) Claimant is currently unemployed.
- (2) In June/July 2006, the claimant was fired from his last job.
- (3) Claimant's vocational factors are: age 48, 10th grade education, and past semi-skilled work as carpet cleaner/installer, factory wire cutter, and skilled roofer.
- (4) On November 3, 2010, claimant applied for SDA, was denied on November 22, 2010, per BEM 261, and requested a hearing on November 30, 2010.

- (5) Claimant alleges disability due to COPD, chronic back pain radiating down right leg, bipolar disease, anxiety, and panic attacks.
- (6) Medical exam on [REDACTED], states the claimant is alert and oriented x3; that his gait was normal; that ROM of all joints was full; that he had no difficulty getting on and off the examination table; that heel and toe walking were normal; that straight leg raise was negative; that no paravertebral muscle spasms were palpable; that cranial nerves II-XII are grossly intact; that strength is 5/5 in all extremities; that, regarding COPD claimant's lungs are clear to auscultation bilaterally (Medical Packet, pgs. 299 and 300).
- (7) Medical exam on [REDACTED] states the claimant's diagnosis of major depressive disorder, including cannabis dependence continues with a GAF score of 40-45 (Medical Packet, p. 22).
- (8) Medical exam on [REDACTED], states the claimant is alert and oriented, a fairly good historian, normal mood, and normal affect; and that muscles have normal bulk, power, tone, and coordination (Medical Packet, p. 174).
- (9) Medical exam on [REDACTED], states the claimant cannot lift more than 10 pounds, bend, squat, crawl, kneel, climb stairs; that he sometimes continuously up to 2 hours or occasionally up to 6 hours can sit, stand, lift up to 10 pounds, grasp with right or left hand, and pushing/pulling activities; that due to claimant's pain, if he were required to work 8 hours per day, 40 hours per week in a competitive work environment, he would have severe limitations as to pace and concentration; that the claimant would be best suited for part-time work, as opposed to full-time work; and that claimant's conditions are permanent (Claimant Exhibit A, pgs. 1 and 2).
- (10) SHRT report dated January 7, 2011, states the claimant's impairments do not meet/equal a Social Security listing (Medical Packet, p. 305).

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 facts above are undisputed:

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. BEM, Item 261, p. 1.

When determining disability, the federal regulations as a guideline 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 evidence establishes that the claimant is not currently engaged in substantial gainful activity. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record establishes that the claimant is significantly limited in performing basic mental/physical work activities, as defined below, based on the *de minimus* standard, but not for the required duration of 90 continuous days.

...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).

Therefore, disability is denied at this step due to the duration requirement.

At Step 3, the objective medical evidence does not establish the claimant's impairments meet/equal a Social Security listing.

At Step 4, the objective medical evidence does not establish the claimant's inability to do any of his past work, despite his severe impairment, for the required duration. His past work as a factory wire cutter falls within his medical limitations. Therefore, disability is denied at this step.

At Step 5, the objective medical evidence does not establish that the claimant is without a Residual Functional Capacity (RFC) 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).

The medical statement above states that the claimant cannot work at any job.

Statements by your physician that you are unable to work do not mean that you will be determined disabled. There must be medical support for the conclusion. 20 CFR 416.927.

Also, the medical conclusion is inconsistent with the medical statement above that the claimant has the RFC for part-time work.

Substantial work activity is work activity that involves doing significant physical or mental activities. Your work maybe substantial even if it is done on a **part-time basis** or if you do less, get paid less, or had less responsibility than when you worked before. 20 CFR 416.972(A).

Claimant's disabling complaints above that he has no RFC for any work is not supported by the objective medical evidence of record. Sedentary work, as defined above, falls within the claimant's medical limitations. Therefore, the claimant would be able to perform, at least, sedentary work. At this level, considering the claimant's vocational profile (younger individual, age 48, 10th grade education, and past semi-skilled work experience) he is not considered disabled under Vocational Rule 201.19. 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 State Disability Assistance Benefits.

In addition, the objective evidence of record indicates that the claimant has a history of drug abuse. Applicable hearing the Drug Abuse and Alcohol (DA&A) Legislation, Public Law 104-121, Section 105(b)(1), 110 STAT. 853, 42 USC 423(d)(2)(C), 1382(c)(a)(3)(j) Supplement Five, 1999. The law indicates that individuals are not eligible and/or are not disabled when drug addiction or alcoholism is a contributing factor material to the determination of disability. After a careful review of the credible and substantial evidence on the whole record, this Administrative Law Judge finds that claimant does not meet the statutory disability definition under the authority of the DA&A Legislation because her substance abuse is material to her alleged impairment and alleged disability.

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, MA denial is UPHELD.

/s/

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

Date Signed: June 20, 2011

Date Mailed: June 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

cc:

