

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

IN THE MATTER OF:



Reg. No: 201233002
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: April 12, 2012
Newaygo 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 Thursday, April 12, 2012. Claimant appeared and provided testimony on his behalf.

ISSUE

Was disability, as defined below, 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's MA-P/SDA application on December 1, 2011 was denied on January 27, 2012 per BEM 260/261, with a hearing request on February 6, 2012
2. Claimant was 48, with a 12th grade education, and history of semi-skilled work.
3. Claimant last worked 5 years ago and became an unemployment compensation benefit (UCB) recipient with exhaustion in April 2011.
4. Claimant alleges disability due to a combination of multiple medically diagnosed mental/physical impairments.
5. Medical exam on June 27, 2011, states the claimant was actually able to reduce his pain medication by using cannabis and he is in the process of applying for the card; that he is alert and cooperative; that he has a relatively normal gait, no muscle atrophy or gross neuro muscular deficit; and that he seems dependable and reliable at this point (Medical Packet, Page 270).

6. Medical exam on August 17, 2011, states the claimant's range of motion of the shoulder is preserved as long as he is careful and does not move fast; that his maximum lifting is 20 to 30 pounds; that he is in no distress; that his gait is normal; that inspection of the spine reveals normal contours; that posture is very good; that cervical motion is within normal functional range; that neurologically he is alert, oriented and answers all questions appropriately; that sensation is preserved in all four limbs; that reflexes are symmetric at the knees and ankles; that no additional treatment is required for the auto accident in October 2009; that restrictions related to the accident are limited to the left shoulder, which would allow occasional use above shoulder height with a weight less than 20 pounds and that other than the left shoulder, he has reached maximum medical improvement in regard to the motor vehicle accident (Medical Packet, Page 371-376),
7. Medical exam on August 22, 2011, states the claimant has no atrophy or gross sensory motor deficit in the lower extremities; that he cannot heel and toe walk without lost of balance; and that his pain is adequately controlled using medication (Medical Packet, Page 269).
8. Medical exam on October 24, 2011, states that because the claimant has severe deformities and deficits, he is not going to be able to return to any type of manual labor; that he is not going to be able to do any type of manual labor anywhere near the level he did in the past; that he has a relatively normal gait, but cannot sit or stand for long periods due to his past fractures and disc disease; that he is cooperative and pleasant (Medical Packet, Page 265).
9. Medical exam on November 30, 2011, states that the claimant is not expected to be able to return to any serious gainful employment involving any type of manual labor; that in terms of sedentary activity it is unlikely that he will be able to sit for any period of time to work for a full 40 hour week; that he has limited ability to walk, stand, or sit to less then 1 hour continuous; that he has limited ability to lift; that he cannot lift more than 10 pounds and then not repeated; that he cannot return to any type of gainful employment similar to what he has done in the past; that it has been suggested to the claimant that he look for something completely sedentary and quite limited in scope; and that he will not be able to perform more than 15 to 20 hours week of some sort of sedentary activity (Medical Packet, Page 263).
10. SHRT report dated March 16, 2012, states the claimant's impairments do not meet/equal a social security listed impairment (Medical Packet, Page 379).

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 416.920(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).

Disability is not denied at Step 1. The evidence of record establishes that the claimant has not been engaged in substantial gainful work since 5 years ago.

Disability is denied at Step 2. The medical evidence of record does not establish, on date of application, the claimant's significant inability to perform basic work activities due to a combination of severe mental/physical impairments for a 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 is whether the claimant's combination of medically diagnosed mental/physical disorders is non-severe or severe, as defined above. Said in another way, do combination of claimant's diagnosed mental/physical disorders impair claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical reports of record are diagnostic and treatment reports, and do not provide medical assessments of claimant's mental/physical limitations relative to inability to perform basic work activities, as defined above. 20 CFR 416.913(c)(1) and (2).

The medical opinion of record states the claimant cannot work 40 hours a week but only 15 to 20 hours, is not the legal test for inability to engage in substantial gainful work activity.

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

The medical evidence of record established a combination of non-severe impairments. Therefore, a combination of severe mental/physical impairments meeting the one year continuous duration requirement has not been established.

If disability had not been denied at Step 2, the analysis would 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 that are considered severe enough to prevent a person from doing any gainful activities. 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 a one year continuous duration. 20 CFR 416.925(a).

Claimant introduced no medical evidence of record by a treating, examining, or non-examining physician stating claimant's impairments meet the requirements for any social security listed impairment. 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 not be denied at Step 4 where the medical evidence of record, on date of application, does establish claimant's inability to perform any of his past work for the required one year continuous duration.

The medical evidence established the claimant's inability to perform his past heavy work as a construction and carpenter worker.

If disability had not already been denied at Step 2, it would be denied at Step 5 where the medical evidence of record, on date 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 required 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 high school education, and semi-skilled work history 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 Step 5 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: April 23, 2012

Date Mailed: April 23, 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.

201233002/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:

