

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201256667
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: August 23, 2012
Ingham 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, August 23, 2012. Claimant appeared and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

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 August 26, 2011 was denied on May 23, 2012 per BEM 260/261, with a hearing request on June 1, 2012.
2. Claimant was age 50, with a high school education, and work experience as a semi-skilled semi truck driver and skilled truck mechanic (DHS Exhibit A, Page 16).
3. Claimant's last employment ended July 31, 2009 due to lay-off; therefore he became an unemployment compensation benefits recipient in November 2001 with exhaustion in February 2011.
4. Claimant alleges disability due to medically diagnosed disorders of degenerative joint disease, arthritis, degenerative disc disease, hypertension, cerebrovascular accident and depression (Medical Packet, Page 522).

5. Medical reports of record state the Claimant on:
- a. August 30, 2010, is able to ambulate with a cane in the left hand for right knee pain but he is able to walk in the clinic and exercise with it; that he has no atrophy; that manual muscle testing is normal; that he has no muscle spasms, and grip strength in left hand 5/5; that he has a mild degree of diminished light touch on the left face, arm and leg likely from the hypertensive CVA; that straight leg was negative bilaterally in the seated position; that cerebella tone was normal; that rapid alternating movements were intact; that fine and gross motor coordination was intact for ADL and independent ambulating for short distances with the cane; that range of motion was normal to all areas except the right knee was painful beyond 110° degrees of flexion; that he limped on the right leg due to right knee pain; and that he could step, climb, heel and toe stand and ½ squats without assistance in-out of the chair (DHS Exhibit A, Pages 405 and 406).
 - b. August 30, 2010, has a current GAF score of 56 (DHS Exhibit A, Page 113).
 - c. September 17, 2010, has no evidence of stenosis or nerve compromise; that he has mild central disc bulge at L5-S1 level without evidence disc herniation, spinal stenosis, or compromise of the exiting nerve roots; that disc desiccation at the L4-L5 and L5-S1 levels are consistent with changes of degenerative disc disease (DHS Exhibit A, Page 34).
 - d. November 12, 2010, his palpitation of the lumbosacral region reveals significant bilateral lumbosacral tenderness, as well as bilateral sacroiliac and coccygeal tenderness; and that he has lost no strength on bilateral lower extremity testing; and that sensation is intact (DHS Exhibit A, Page 509).
 - e. February 20, 2012, is a well-developed, well-nourished, and in no acute distress; that he ambulates on his own without difficulty; that he has a regular, rate and rhythm cardiovascular without murmurs; that he has a normal S1-S2 with no rubs or thrills; that he had tenderness over the lower lumbar area; that he had decreased flexion of 40° degrees and decreased extension of 10° degrees; that there was no tenderness or inflammation of any of the joints; that there was a good range of motion in all joints; that neurologically he was alert and oriented to time, person, and place; that cranial nerves II-XII were grossly intact; that motor exam showed slight decreased power in the left upper extremity rated at

4+/5; that he had normal tone through out; that sensory exam showed decreased vibratory sensation in the left lower extremity in a stocking-glove distribution to the ankle; that deep tendon reflexes were 2+ and equal bilateral; that cerebella function was intact; that gait was normal; that he would not be able to do any significant lifting more than 10 pounds, nor would he be able to do any repetitive bending or twisting; the he continues to have problems with pain in both of his knee joints, although there was no tenderness on exam today and range of motion was within normal limits; and that he did have some mild decrease power in the left upper extremity (DHS Exhibit A, Pages 9 and 10).

- f. February 27, 2012, had a GAF score of 53 (DHS Exhibit A, Page 7).
6. SHRT report dated July 20, 2012, states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Page 521).

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 burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 416.912(a).

When determining disability, the federal regulations are used as a guideline and 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).

Step 1 disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful work since July 31, 2009.

Step 2 disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity to perform basic work activities for the required 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).

SEVERE IMPAIRMENT

To qualify for MA-P, claimant must first satisfy both the gainful work and the duration criteria (20 CFR 416.920(a)) before further review under severity criteria. If claimant does not have any impairment or combination of impairments which significantly limits physical or mental ability to do basic

work activities, an ultimately favorable disability determination cannot result. (20 CFR 416.920(c)).

The medical evidence of record established Claimant's GAF scores of 56 in August 2010 and 53 in February 2012. These scores are considered a non-severe mental impairment with occupational-functioning. DSM-IV (4th edition-revised)

The medical reports of record are examination, diagnostic, treatment and progress reports and do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medically diagnosed disorders do not establish whether or not the Claimant is impaired slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

It is a well settled law that fact-finders are not permitted to speculate at material facts in dispute. And it would only be a guess as to whether a severe impairment had been medically established, based on the medical evidence of record, as defined above.

Therefore, the Claimant has not sustained his burden of proof to establish a severe impairment, instead of a non-severe impairment, for a required duration.

If Step 2 disability had not been denied, Steps 3 and 4 would also be denied. The medical evidence of record, for the required duration, does not establish Claimant's impairments meet/equal a Social Security listing at Step 3, and inability to perform his past work, as a semi-skilled truck driver and skilled truck mechanic at Step 4.

Under Step 5 the Medical-Vocational Guidelines, individuals closely approaching advanced age of 50, with a high school education, and semi-skilled/skilled past employment who are limited to sedentary work are not considered disabled.

...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 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 Steps 3 and 4, as defined above 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 as defined above has not been established.

Accordingly, MA-P/SDA denial is **UPHELD**, and SO ORDERED.

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

Date Signed: September 21, 2012

Date Mailed: September 25, 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.

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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:

