

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012-69216
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: November 07, 2012
Kent County DHS

ADMINISTRATIVE LAW JUDGE: William A. Sundquist

HEARING DECISION

This matter is before the undersigned Administrative Law Judge (ALJ) 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 November 7, 2012. Claimant appeared and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [REDACTED]. The hearing record was extended 90 days for a second State Hearing Review Team (SHRT) review of medical reports submitted at the hearing (Claimant Exhibit 1).

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 April 20, 2012 was denied on July 20, 2012 per BEM 260/261, with a hearing request on August 2, 2012.
2. Vocational factors: Age 54, with a high school or more education, and work history as an unskilled custodian, placing advertisements in newspapers, maintenance at Wendy's fast food restaurant and stocking shelves/bagging groceries at a grocery store.
3. Claimant's last employment ended 2003 due to being fired; he became eligible for unemployment compensation benefits with exhaustion in the end of 2004.
4. Claimant alleges disability due to medically diagnosed disorders of Chronic Obstructive Pulmonary Disease (COPD) and osteoporosis.

5. Medical reports of record state the Claimant on:
- a. September 12, 2011: that his lungs are clear to auscultation; that lungs are clear to percussion; that there is no chest wall tenderness; that there is no cough; that respiratory effort is **normal** (Claimant Exhibit 1, Pg. 109).
 - b. September 14, 2011: that he has **normal** left shoulder; that there is **mild** narrowing at the C5-6 disk space; that the odontoid and prevertebral soft tissues are **normal**; that there is **moderate** spurring at the facets posteriorly at C3-C4 and C5-6 on the right and on the left C4-5 facets; that these result in **moderate** foraminal narrowing; that there is no acute abnormalities (DHS Exhibit A, Pg. 59).
 - c. November 22, 2011: that he is in no acute distress; that neck is supple with no tenderness; that his back is non-tender (DHS Exhibit A, Pg. 45).
 - d. January 9, 2012: that he has multi-level degenerative changes throughout the mid cervical spine with multiple foraminal narrowing, which appear **moderate** in degree (DHS Exhibit A, Pg. 36).
 - e. May 17, 2012: his lungs are clear to auscultation bilaterally; that there is occasional expiratory wheeze; that there are no crackles or rhonchi; that he has tenderness to palpitation over the mid to lower thoracic spine as well as to the right in the paraspinal musculature area (Claimant Exhibit 1, Pg. 82).
 - f. June 6, 2012: that his neck is supple without masses; that there is no evidence of joint laxity, crepitance, or effusion; that grip strength remains intact; that dexterity is unimpaired; that claimant could thread laces, button clothing and open a door; that claimant had **no difficulty** getting on and off the examination table, **no difficulty** heel/toe walking, **no difficulty** squatting, and **no difficulty** hopping; that range of motion (ROM) was normal for the cervical spine, thoracic spine and shoulders; that cranial nerves are intact; that motor strength and tone are **normal**; that sensory is intact to light touch and pinprick; that reflexes are intact and symmetrical; that he walks with a **normal** gait without the use of an assist device; that he appears to have **moderate** chronic bronchitis (DHS Exhibit A, Pgs. 15-18).
 - g. October 1, 2012: that he has a **mild** loss of vertical stature of the T12 vertebra body with no evidence of cortical disruption; that the remaining thoracic vertebrae are **normal** in stature; that there is **mild** generalized loss of the intervertebral disk space height throughout

the thoracic spine; that the paravertebral soft tissues are normal; that he has **mild** multi-level spondylosis of the thoracic spine with no findings of an acute displaced fracture (Claimant Exhibit 1, Pgs. 77 & 118).

- h. October 9, 2012: his lungs are clear to auscultation bilaterally and that he has no wheezing (Claimant Exhibit 1, Pg. 39).
6. State Hearing Review Team decision dated September 18, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (DHS Exhibit A, Pg. 134).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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.

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 activities since 2003.

Step 2, disability is not denied. The medical evidence of record, on date of application, does establish the Claimant's significant physical functional incapacity, based on the *de minimus* standard, to perform basic work activities for the required one year continuous duration, 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).

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 burden of proof is on the claimant to establish disability, as defined above.....
20 CFR 416.912(a).

Claimant testified that he cannot do any type of work due to his disabling symptoms of pain in the mid-back, shoulders and neck; that otherwise, he would be able to work; that he is able to lift/carry up to 25 pounds.

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

Therefore, the claimant has sustained his burden of proof to establish a severe physical impairment, instead of a non-severe impairment for the required duration. Therefore, the sequential evaluation is required to stop.

At Step 3 disability is denied. The medical evidence of record, for the required duration, does not establish claimant's impairments meet/equal a Social Security listing.

At Step 4 disability is denied. The medical evidence of record, on date of application, does not establish the claimant's functional physical incapacity, despite his impairments, to perform any of his past work, such as unskilled custodial and stocking/bagging groceries in a grocery store, for the required one year continuous duration.

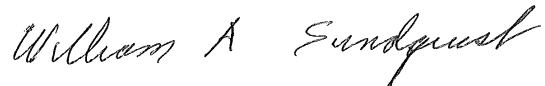
The department's program eligibility manual contains the following policy statements and instructions for case workers regarding the SDA program: to receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM, Item 261, Pg.1. Because the claimant does not meet the definition of disabled under the MA - P program and because the evidence of record does not establish the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for SDA benefits either.

Therefore, medical disability has not been established at Steps 3 & 4 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 disability was not medically established.

Accordingly, MA-P denial is **UPHELD**.



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

Date Signed: February 8, 2013

Date Mailed: February 8, 2013

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 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant;
 - the failure of the ALJ to address other relevant issues in the hearing decision

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

WAS/jk

cc:

