

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201243435
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: June 28, 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, an in-person hearing was held on June 28, 2012. Claimant appeared with his authorized representative, L&S Associates, Inc. and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The hearing record was closed for 90 days for a 2nd SHRT review and medical records were submitted at the time. (Claimant Exhibit A)

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 January 20, 2012 was denied on March 19, 2012 per BEM 260/261, with a hearing request on March 27, 2012.
2. Claimant was age 27, with a 10th grade education, and work experience as an unskilled janitor, semi-skilled sit-down tagger of military clothing, a cook, landscaping, and a carpenter apprentice. (Medical Packet, Pg. 6)
3. Claimant's last employment ended in December 2009.
4. Claimant alleges disability due to medically diagnosed disorders of arthritis, COPD, asthma, mood & personality disorders. (Medical Packet, Pg. 60)

5. Medical reports of record state the Claimant on:
 - a. January 11, 2012: Has difficulty breathing. (Medical Packet, Pg. 58)
 - b. January 12, 2012: Has an improving condition. (Medical Packet, Pg. 10).
 - c. January 19, 2012: His musculoskeletal, neurological, psychiatric exams were negative; and that he is well appearing, well nourished, and in no distress; and that he is oriented x3 with normal mood and effect; that he has a normal gait and station; and that his recent and remote memory are intact; and that he has a fair mood and effect. (Medical Packet, Pg. 13-14).
 - d. February 4, 2012: His functional assessment shows no impairments; that he is ambulatory; and that he is alert and oriented x4; that his illness is described as moderate; that he had no difficulty breathing; that he was alert and in mild distress; that he had no respiratory distress; that breath sounds were normal; that extremities exhibited normal range of motion; that he had no motor or sensory deficits; and the reflexes were normal. (Medical Packet, Pg. 27 & 30).
 - e. March 3, 2012: Had minimal wheezing; that he had no back pain or joint pain; that he had no difficulty in walking; that he denied depression; that he was not in an acute distress; that he was alert and oriented x4. (Medical Packet, Pg. 90).
 - f. March 30, 2012: Was alert and oriented x4 and in no acute distress. (Medical Packet, Pg. 40).
 - g. Has to stay off work until being scheduled on April 9, 2012 due to flare up of his COPD. (Claimant Exhibit A)
 - h. April 20, 2012: His respiratory, musculoskeletal, neurological, and psychiatric exams were negative; that he is well appearing, well nourished, and in no distress; that he has a normal gait and station; that he has a full range of motion of extremities with strength and tone intact; that he is oriented x3; that his recent and remote memory are intact; that his judgment, insight, mood, and effect are normal. (Claimant Exhibit A, Pg. 23)
6. State Hearing Review Team (SHRT) decision dated May 17, 2012 states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 60).

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

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.

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 activities since December, 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 due to a severe mental/physical impairment in combination 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 reports of record are examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's mental/physical basic work limitations in order to determine whether or not he has a severe or non-severe impairment for the required duration. Differently stated, how do the medically diagnosed disorders significantly functionally impair the Claimant's ability to perform basic work activities? Do the medically diagnosed disorders impair the Claimant's basic work ability slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical evidence of record describes the Claimant's diagnosed impairments as normal, mild, or moderate, and not severe.

The medical evidence of record does not establish Claimant's severe mental/physical impairments for the required duration. It established a non-severe impairment.

If disability had not already been denied at Step 2, it would also be denied at Step 3. The medical evidence of record, on date of application, does not establish the Claimant's impairments meet/equal a Social Security listing for the required duration.

The Listing of impairments describes for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or specific statement of duration is made. For all others, the evidence must show a one year continuous duration. 20 CFR 460.925(a).

Claimant introduced no medical evidence of record by a treating, examining, or non-examining physician that Claimant's impairments do meet the requirements of any Social Security listing. To the contrary, the SHRT medical consultant addressed the matter and found insufficient medical evidence of a disability under a Social Security listing.

If disability had not already been denied at Step 2, it would also be denied at Step 4. The medical evidence of record, on date of application, does not establish the Claimant's functional incapacity, despite his impairments, to perform any of his past work for the required one year continuous duration.

If disability had not already been denied at Step 2, it would also be denied at Step 5. 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 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).

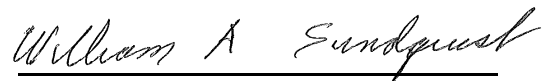
The medical evidence of record, on date of application, does not establish the Claimant was without a RFC for less strenuous work similar to his past work, such as sedentary work, as defined above. Under the Medical-Vocational Guidelines, an individual age 48, with a 10th grade education, and unskilled /semiskilled work history whose limited to sedentary work is not considered disabled.

Therefore, disability has not been established at Step 2 and also would not be established at Steps 3, 4 and 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 disability was not medically established.

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



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

Date Signed: February 6, 2013

Date Mailed: February 6, 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.

WAS/hj

cc:

