

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201244711  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Hearing Date: June 5, 2012  
Washtenaw 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 Tuesday, June 5, 2012. Claimant appeared and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was extended 90 day for a 2<sup>nd</sup> SHRT review of medical reports introduced at the hearing. (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 November 15, 2011 was denied on April 5, 2011 per BEM 260/261, with a hearing request on April 6, 2011.
2. Vocational factors: Age 56, with high school or more education, and history of unskilled oil rig cleaning and package of chicken parts in wholesale operation, skilled supervisory for oil field operations, restaurant chef, and forklift operator (Medical Packet, Page 27).
3. Last employment ended December 2009; unemployment compensation benefits stated and ended November 2010.
4. Disability is alleged due to a combination severe physical impairment (Medical Packet, Page 177)

5. Medical reports state the Claimant on:
  - a. December 1, 2011, is alert and oriented x3, and appearing in no acute distress; that his lungs are clear to auscultation bilaterally with good excursion; that neuromuscular his cranial nerves II-XII appear grossly intact; that strength is adequate in all extremities; and that gait is within normal limits (Medical Packet, Page 62).
  - b. February 24, 2012, has a stable condition (Medical Packet, Page 38).
  - c. April 18, 2012, has severe medial tibiofemoral joint space narrowing, sharpening of the tibial spines, and small tricompartmental osteophyte formation, compatible with severe osteoarthritis (right greater than left); and that he has no fracture or malalignment (Claimant Exhibit A, Page 1).
6. SHRT report dated May 17, 2012, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 177).

### **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 460.912(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).

At Step 1, disability is not denied. The evidence of record established the Claimant has not been engaged in substantial gainful activities since December 2009.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significantly functional incapacity to perform basic

work activities due to a combination severe physical impairment for 1 year continuous duration, as define 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)).

Whether an individual has one (1) or a combination of medical impairments, the non-severe or severe impairment determination is the same. The medical evidence of record must establish, on date of application, a significant functional incapacity to perform basic work activities for the required duration.

In this case, the medical reports of record are mostly examination, diagnostic and treatment reports. They do not provide medical assessments of Claimant's physical limitations relative to his functional incapacity to perform basic work activities, as defined above. ...20 CFR 416.913(c)(1) and (2). Stated differently, does the combination physical impairments medically impair the Claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical evidence of record does not establish a combination severe physical impairment meeting the one year continuous duration requirement. It established a non-severe impairment.

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he is not considered disabled. 20 CFR 416.994(b)(1)IV).

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 a 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 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 1 year continuous duration. ...20 CFR 416.925(a).

Claimant introduced no medical evidence of record by a treating, examining, non-examining physician stating that Claimant's impairments do meet the requirements of any Social Security listing. To the contrary, the SHRT medical consultant addressed this 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 a required 1 year continuous duration.

Claimant did not introduce any RFC physical medical assessments of any work restrictions regarding any of his past work of record.

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 with 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 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, an individual of advanced age of 56, with a high school or more education, and unskilled/skilled work history who is 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 has not been 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 that disability was not medically established.

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

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

Date Signed: July 27, 2012

Date Mailed: July 30, 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. 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:

