

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201255764
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: August 16, 2012
Tuscola 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 16, 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 April 4, 2012 was denied on May 7, 2012 per BEM 260/261, with a hearing request on May 24, 2012.
2. Claimant was age 45, with a 10th grade education, and work experience as a skilled carpenter for 15 years.
3. Claimant's last employment ended November 30, 2010 due to a car accident.
4. Claimant alleges disability due to medically diagnosed disorder of avascular necrosis of hip, back pain and depression in combination (DHS Exhibit A, Page 682).
5. Medical reports of record state the Claimant on:

- a. October 12, 2011, had no evidence of any traumatic injury; that clinically his lumbar spine demonstrates no evidence of any functional impairment; that he has normal motion, normal reflexes, normal strength, normal sensation, and no atrophy; that he has obvious evidence of irritability of his right hip and pain with any attempt at internal rotation; that his right hip demonstrated avascular necrosis; that there is no evidence of a traumatic injury related to the event of December 1, 2010; that he does not need any other further treatment in regards to that event; that he does not need assistance with activities with daily living, household assistance or attendant care; that he can return to work in his former capacity without restrictions; that his avascular necrosis is his main problem which has nothing to do with his motor vehicle collision (DHS Exhibit A, Page 158).
 - b. January 19, 2012, his examination reveals him to be comfortable; that he is ambulating slowly though satisfactorily; that he has some pain at extremes of movement of the right hip; that his right hip is relatively satisfactory as far as the joint space is concerned; that there is evidence of possible avascular necrosis with some cystic changes and stated an impression; that the avascular necrosis of right hip is stable (DHS Exhibit A, Page 150).
 - c. March 22, 2012, is not in any acute distress; that musculoskeletally his cervical spine has no gross deformities; that range of motion is within functionally limits; that Spurling's maneuver is negative bilaterally; that his thorax and lumbosacral spine shows positive tenderness; that range of motion is still limited in all planes, secondary to pain; that straight leg raising is positive on both sides; that his extremities show positive tenderness at the right hip area; that range of motion is limited in both hips, right side is worse then left side; that Patrick's maneuver is positive on the right side, negative on the left side; that neurologically his motor exam shows he has some give away weakness in both the lower extremities, secondary to pain; that his sensory is grossly intact to light touch, pinprick and proprioception; that his gait is independent without any assistive device (DHS Exhibit A, Page 54).
6. SHRT report dated July 11, 2012, states the Claimant's disorders do not meet/equal a Social Security listing (DHS Exhibit A, Page 681).

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 December 1, 2010.

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 due to a combination severe mental/physical impairment 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).

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 mostly examination, diagnostic, treatment reports. They do not provide medical assessments of Claimant's physical basic work activities. Stated differently, how do the Claimant's medically diagnosed disorders significantly incapacitate his functional ability to perform basic work activities for the required duration. Do the disorders impair the Claimant's ability slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above? To the contrary, the medical opinion of record is that the Claimant has the functional capacity for his work as a carpenter.

The Claimant has not sustained his burden of proof to establish a medically severe mental/physical impairment in combination for a required duration.

If disability had not already been denied at Step 2, it would also be denied at Steps 3, 4 and 5. The medical evidence of record, on date of application for the required durations, do not establish the Claimant's impairments meet/equal a Social Security listing, at Step 3; inability to perform any of his past work, despite his impairments, such as a carpenter, at Step 4; without a residual functional capacity (RFC) to perform any other work in the National Economy, such as sedentary work defined below at Step 5.

Under Step 5 the Medical-Vocational Guidelines provide younger individuals age 45, with a 10th grade education and skilled work history who are limited to sedentary work are not considered disabled.

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 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**, and SO ORDERED.

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

Date Signed: August 31, 2012

Date Mailed: August 31, 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:

