

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201256170
Issue No: 4031
Case No: [REDACTED]
Hearing Date: August 22, 2012
Calhoun 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 Wednesday, August 22, 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 SDA application on April 24, 2012 was denied on May 18, 2012 per BEM 261, with a hearing request on May 31, 2012.
2. Claimant was age 54, with a high school education, and work experience as a semi-skilled shoe salesman and security guard (Medical Packet, Page 148).
3. Claimant's last employment ended November 2000 due to medical reasons; therefore he became an [REDACTED] recipient in [REDACTED] with exhaustion after 3 months.
4. Claimant alleges disability due to medically diagnosed disorders of back pain and lower extremity neuropathy in combination (Medical Packet, Page 151).

5. Medical reports of record state the Claimant on:
 - a. January 19, 2011, stands and walks forward fluxed; that he can transfer independently, but does so slowly; that gait without can was examined is intact; that he is able to walk on his toes and on his heels; that gait is tandem and intact; that coordination is intact in the upper and lower extremities; that reflexes are symmetrical without long track findings; that he has decreased sensation to pinprick distal to his hips; that light touch is intact throughout; and that sensation is intact to proprioception and vibration (DHS Exhibit A, Page 43).
 - b. September 19, 2011, is well-developed, well-nourished, and well hydrated and in no acute distress (DHS Exhibit A, Page 132).
6. SHRT report dated July 12, 2012, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 151).

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).

Facts above are undisputed.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets

any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

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 November 2000.

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 90 days 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 physical basic work limitations. Stated differently, how do the Claimant's medically diagnosed disorders

significantly incapacitate his functional ability to perform basic work activities for a required duration? Do the disorders impair the Claimant's ability 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/guess as to material facts in dispute. And based on the medical reports of record, it would only be a guess whether or not the Claimant had establish a severe mental/physical impairment in combination for the required one year continuous duration.

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

If disability had not already been denied at Step 2, it would also be denied at Steps 3, and 4. The medical evidence of record, on date of application for the required duration, does not establish the Claimant's impairments meet/equal a Social Security listing at Step 3, and inability to perform any of his past work, despite his impairments, such as a shoe salesman and security guard, at Step 4.

Therefore, disability has not been established at Step 2 and also would not be established at Steps 3 and 4 based on 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, 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 24, 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.

201256170/WAS

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:

