

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201267594
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 21, 2012
County DHS: Kent

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 November 21, 2012. Claimant appeared along with his authorized representative [REDACTED] 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 SHRT review of medical reports submitted at hearing. (Claimant Exhibits 1 & 2).

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 application on January 23, 2012 was denied on July 19, 2012, per BEM 260, with a hearing request on July 25, 2012.
2. Claimant was age 54, with a high school or more education, and work experience as a semi-skilled/skilled design lay-out of landscaping projects, bar owner, usher for Van Andel area and restaurant cook.
3. Claimant's last employment ended June 2007 due to incarceration.
4. Claimant alleges disability due to medically diagnosed disorders of degenerative disc disease and depression.

5. Medical reports of exams state the Claimant on:
- a. November 1, 2011, Claimant has no peripheral edema of the musculoskeletal/extremities; that he is well developed, well nourished, and in no apparent distress. (DHS Exhibit A, Page 170).
 - b. December 22, 2011, Claimant is in no apparent distress; that he moves easily sitting crossed-legged on exam table except for getting back on exam table from standing position; that he is oriented to person, place, and time; that memory is intact; that affect and mood are normal; that fluent conversation was appropriate with eye contact; that sensation is grossly intact to light touch, equal bilaterally; that reflexes are 2/4 bilaterally; that gait is normal; that strength is 5/5 bilaterally. (DHS Exhibit A, Page 178).
 - c. February 24, 2012, Claimant is moderately limited in ability to understand and remember 1 or 2- instructions, carry out simple, one of 2-step instructions, carry out detailed instructions, perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, sustain an ordinary routine without supervision, work in coordination with proximity to others without being distracted by them, make simple work-related decisions, ask simple questions or request assistance, be aware of normal hazards and take appropriate precautions, set realistic goals or make plans independently of others; that he is not significantly limited in ability to interact appropriately with the general public, and travel in unfamiliar places or use public transportation. (DHS Exhibit A, Pages 90 & 91).
 - d. June 17, 2012, Claimant has a GAF score of 53. (DHS Exhibit A, Page 17).
 - e. February 3, 2012, Claimant has physical impairments plus emotional impairments that would constantly interfere with attention and concentration needed to perform simple work tasks; that he is incapable of even "low stress" jobs; that he is limited to walking 3 blocks before needing a rest; that he is able to sit at one time for 5 minutes before needing to get up; that he can stand for 5 minutes before needing to sit down; walk around; that he can sit and stand/walk for a total of less than 2 hours in an 8 hour work day; that he needs 10-15 minutes for walking around during an 8 hour work day; that he can walk each time 8-10 minutes; that he needs a job that permits shifting positions at will from sitting, standing or walking; that he will sometimes need to take unscheduled breaks during an 8 hour work day; that this will happen every 15 minutes; that he will need 10-20 minutes before returning to work; that with

prolonged sitting his legs should be elevated; that he does not need a cane for standing/walking; that he can rarely lift/carry less than 10 pounds; that he can occasionally look down in a sustained flexion of neck, turn head right or left, look up, and hold head in static position; that he can rarely climb stairs, occasionally twist, and never stoop, crouch/squat, and climb ladders; that he has significant limitations with reaching, handling or fingering; and that he is likely to be absent from work as a result of the impairments more than 4 days per month. (DHS Exhibit A, Pages 48-50).

6. SHRT report dated September 13, 2012, states the Claimant's disorder does not meet/equal a social security listing. (DHS Exhibit A, Page 298).

CONCLUSIONS OF LAW

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 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 engaged in substantial gainful activity since June 2007.

Step 2 disability is not denied. The medical evidence of record, on date of application, establishes the Claimant's significant functional mental/physical incapacity, based on the de minimus standard, to do basic work activities for the required 1 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 Claimant has the burden of proof to establish disability, as defined above, by the preponderance of the medical evidence of record...20 CFR 416.912(a).

Claimant testified that he cannot do any work due to lack of concentration, poor memory, short-term memory loss, but that medications sometimes help; that physically he has no hand grip strength; that he has chronic hand/back pain; that he cannot bend over without pain; and that he cannot lift/carry any weight.

...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).

The medical evidence of record establishes Claimants GAF score of 53 in June, 2012. This score is considered a non-severe mental impairment with occupational-function. DSM-IV (4th edition, revised). The mental residual functional capacity assessment establishes the Claimants ability to understand, remember and carry out simple instructions.

Therefore, the Claimant has sustained his burden of proof to establish a severe physical (not mental) impairment, instead of a non-severe impairment, for the required duration. Therefore, the sequential evaluation is required to continue to the next step.

Step 3 disability is denied. The medical evidence of record, for the required duration, does not establish the Claimant's impairment meet/equal a Social Security listed impairment.

Therefore, the sequential evaluation continues to the next step.

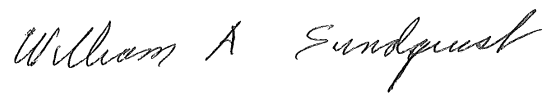
Step 4 disability is denied. The objective medical evidence of record, on date of application, does not establish the Claimants functional physical incapacity, despite his impairments, to perform any of his task work. (Findings of Fact 2) for the required 1 year continuous duration.

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 that disability was not medically established.

Accordingly, SDA 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/kl

cc:

