

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013282
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: January 9, 2013
County: Eaton

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 January 9, 2013. 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 applied SDA on June 4, 2012 and MA-P on July 5, 2012 was denied on September 17, 2012 and requested a hearing on September 19, 2012
2. Claimant was age [REDACTED] with a 12th grade education, and past work experience as follows: semi-skilled maintenance supervisor and self-employed home repair for low-income housing.
3. Claimant has not worked since his last job ended 1½ years ago, due to work being too heavy.
4. Claimant's medically diagnosed impairments are degenerative disc disease (DDD), rotator cuff tears, carpal tunnel syndrome and neuropathy (DHS Exhibit A, Page 212).

5. Medical reports of exams state the Claimant on:
- a. June 26, 2011, his acromioclavicular joint is **normal**; and that he has mild arthritic change of the glenohumeral joint with articular cartilage thinning (DHS Exhibit A, Page 187).
 - b. August 3, 2011, his shoulder shrug is **normal**; that coordination with both fingers–nose and heel–chin testing is **normal**; that reflexes are **normal** in the brachioradialis, biceps triceps, knee and ankles; that muscle, bulk, tone, and strength are all normal in both proximal and distal muscle groups of the arms and legs; that gait was **normal**; that sensory exam is **normal**; (DHS Exhibit A, Page 175).
 - c. December 29, 2011, has mild dextroconvex curvature within the cervical spine; that the cranial cervical junction is **unremarkable**; that the cervical spinal cord demonstrates **normal** signal intensity; that he has **mild** endplate degenerative changes present from the C3-C7 levels; that there is **mild** disc space narrowing of the C6-C7 levels; that the vertebrae body heights are maintained; that there are no acute osseous **abnormalities**; that there is **minor** disc bulging at the C2-C3; that there is **minor** diffuse disc bulging at the C3-C4; that there is **mild** diffuse disc bulging C4-C5; that there is **mild** diffuse disc bulging C5-C6; that there is **moderate** disc bulging at C6-C7; that there is **no significant abnormalities** at the C7-T1 (DHS Exhibit A, Page 142).
 - d. January 18, 2012, would not be helped with his hands complaints by wearing wrists splints, but a steroid injection into the carpal tunnel area would be something to strongly consider, initially on the right (DHS Exhibit A, Page 131).
 - e. February 20, 2012, has a **normal** gait, tone and strength; that he has 5/5 bilateral shoulder abductors, 5/5 bilateral biceps, 5/5 bilateral triceps, 5/5 bilateral hand grip, 5/5 bilateral wrist extensors, 5/5 bilateral fingers abductors; that he has range of motion, neck pain with right lateral flexion and right ward rotation; and that he has pain with bilateral shoulder adductors, internal rotation, and external rotation (DHS Exhibit A, Page 114).
 - f. February 24, 2012, has degenerative change at the L3-L4 through L5-S1 levels; that there is disc bulge in combination with mild facet arthropathy producing borderline canal stenosis and bilateral neural foraminal narrowing (DHS Exhibit A, Page 107).
 - g. May 2, 2012, has current health that require surgical treatment, medical care and that due to the excessive care which will be required for the Claimant, he will be unable to perform regular work

duties; that he will be taken off work for the following year April 19, 2012 to April 19, 2013 (DHS Exhibit A, Page 88).

- h. June 21, 2012, his neck is supple with full range of motion; that he has a **normal** gait, grossly **normal** tone and muscle strength, full painless range of motion of all major muscle groups and joints, that cranial nerves II-XII are grossly **intact**; and that lumbar and cervical MRI studies do not show any evidence of central stenosis or cord compression (DHS Exhibit A, Page 74).
- i. July 12, 2012, can lift/carry up to 5 pounds occasionally 20 minutes out of an 8 hour day and frequently out for 30 minutes out of an 8 hour day; that he can stand/walk 1 to 2 hours without interruption for 15 minutes out of an 8 hour day; that he can sit 1 to 2 for 15 minutes out of an 8 hour day; that he should not sit for prolonged periods; that he needs to take unscheduled breaks for rest periods for 15 to 20 minutes for 4 to 6 hours during the day; that he will be probably absent from work more than 4 days per month; that he can never climb ladders; that he can rarely look down (sustain flexion of neck), look up, twist, stoop (bend) and crouch/squat; that he can occasionally turn head (right or left), hold head in static position, and climb stairs; that his pain would constantly interfere with his attention and concentration needed to perform simple work tasks (DHS Exhibit A, Pages 41-43).
- j. July 11, 2012, cannot lift over 5 pounds, do repetitive motion to shoulders, neck and back; that he cannot operate heavy machinery while taking medications; and that he cannot perform a **full-time job** (DHS Exhibit A, Pages 37-38).
- k. August 6, 2012, can lift/carry occasionally 20 pounds, frequently 10 pounds, stand/walk with normal breaks about 6 hours in an 8 hour work day; that he can sit with normal breaks about 6 hours in an 8 hour work day; that he can push/pull unlimitedly; that he can climb stairs, balancing, kneeling, and crouching; that he can occasionally stoop and crawl; and that he can never climb a ladder, rope or scaffolds; that he is limited in reaching in all directions; that he is unlimited in handling, fingering, and feeling; that he has no problems with using his hands and with no difficulty with sitting, standing, and walking; that neurologically he shows no dysfunction in his gait is not impaired; that in light in the above the extent of pain that is alleged is **partially credible**; and that the opinion that he is limited to 5 pounds lifting/carrying, 1-2 hours standing/walking, is not **fully supported** by the **normal** neurologic findings, and the normal gait functions and by the functional report (DHS Exhibit A, Pages 28-35).

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 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 416.912(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 establishes the Claimant has not engaged in substantial gainful activities since 1½ years ago.

Step 2, disability is not denied. The medical evidence of record, on date of application, does not establish the Claimant's significant functional physical incapacity perform basic work activities due to a severe impairment 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 burden of proof is on the Claimant to establish disability based on the objective medical evidence of record. ...20 CFR 416.912(a).

Claimant testified to his disability symptoms; that he is unable to do any work due to severe pain in arms and shoulder, when moving; that he has intermittent low back pain from body movement; that he has chronic neck pain; that he has blurred vision after 5 to 10 minutes of neck activities; that he has chronic headaches; and that he is limited to lifting/carrying 5 pounds.

...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 in July 2012 states the Claimant is unable to work a **full-time job**; that he cannot lift over 5 pounds; that he cannot operate heavy equipment.

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

Inability to perform **full-time** work is not the test for disability. Substantial work activities is work activities that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a **part-time** basis or if you do less, get paid less, or had less responsibility than when you work before.20 CFR 416.972(a).

The medical evidence in August 2012 states that the Claimant can lift/carry occasionally 20 pounds, and frequently 10 pounds; that based on the examinations the opinion that the Claimant is limited to lifting/carrying is **not fully** supported by the **normal** neurological findings; and that the Claimant's alleged pain is partially credible.

In June 2011 to February 2012, the Claimant's medical impairments, in essence, were rated mild (not severe) based on many normal examinations.

This Administrative Law Judge (ALJ) finds that the medical evidence in July 2012 is not supported by the many **normal** physical examinations before and after July 2012 (in August 2012). Therefore, the ALJ gives more evidentiary weight to the medical evidence of record before and after July 2012 and finds the Claimant has not established a severe physical impairment in combination for the required one year continuous duration. Therefore, the sequential evaluation is not required to continue to the next step.

If Step 2 disability had not been denied, it would have been denied at Step 3. The objective medical evidence of record, for the required duration, does not establish the Claimant's impairments meet/equal Social Security listed impairment, therefore, the sequential evaluation would be required to continue to the next step.

If Step 2 disability had not been denied, it would have been denied at Step 4. The medical evidence of record, on date of application, does not establish the Claimant's functional physical incapacity, despite his impairments, to perform any of his past work, such as a semi-skilled maintenance supervisor, for the required one year continuous duration.

If Step 2 disability had not been denied, it would have been denied at Step 5. At Step 5, the burden of proof shifts to the Department to establish that the Claimant does have a residual functional capacity (RFC). 20 CFR 416.994(b)(1)(v).

The RFC is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the National

Economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 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).

Claimant introduced no objective medical evidence of record under Step 4 that he had the inability to perform any of his past work. Therefore, this ALJ finds that he is able to perform less strenuous type work than his past work, such as sedentary, as defined above.

Under the Medical-Vocational guidelines, Rule 201.28, a younger individual, age 44, with a high school education, and semi-skilled work history who is limited to sedentary work is not considered disabled.

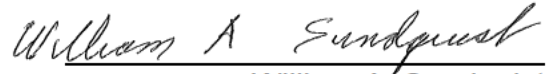
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 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, medical disability has not been established at Step 2, and also would not have 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**.



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/tb

cc:

