

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201317068
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: March 21, 2013
County: Kent 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, March 21, 2013. Claimant appeared and provided testimony on his behalf with his mother and representative, [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] and [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 October 1, 2012 was denied on November 29, 2012 per BEM 260/261, with a hearing request on December 5, 2012.
2. Vocational factors: Age 40, with a GED, and past 15 years of semiskilled work as a shipper unloading trucks and preparing delivery orders, skilled work as a high roll factory operator and bus chauffeur for senior citizens dealing with special needs.
3. Claimant was last employed on April 26, 2007.
4. Claimant alleges disability due to degenerative disc disease, arthritis in both knees, weakness in both hands, and facial tumors. (DHS Exhibit A, Pg. 203).

5. Claimant's disabling symptoms are chronic pain in back and knees, and chronic numbness and tingling in both hands; limited to lifting/carrying ten pounds.
6. Medical reports of exams state that the Claimant on:
 - a. March 30, 2012: should not be in one position more than 45 minutes; that he should not sit, stand, or walk during an eight hour workday with normal break periods of one and a half hours; that he can lift/carry occasionally ten pounds; that he can continuously use either hand for simple grasping or fine finger movements; that he can continuously perform fine manipulations; that he can continuously perform pushing and pulling activities; that he is unable to perform repetitive movements such as operation of foot controls; that he can occasionally reach above shoulders; that he can never bend, twist, squat, kneel, climb stairs, climb ladders etc, crouch, crawl, stoop. (DHS Exhibit A, Pgs. 28-30).
 - b. April 24, 2012: Has *no* acute traumatic or intrinsic osseous *abnormalities*; has *no right knee* acute traumatic or intrinsic osseous abnormalities; that joint space is *well* maintained without discernable spurring, eburnation or erosive change along opposing surfaces; that there is no evidence of joint laxity, crepitation, or effusion; that there is synovial thickening of both knees, more pronounced on the right than the left; that there is lumbar spine straightening; that grip strength remains *intact*; that dexterity is unimpaired; that Claimant could button clothing, tie, and open a door; that he had *mild* difficulty getting on and off the examination table; *mild difficulty* heel and toe walking; mild difficulty squatting; *mild* difficulty standing on the left and moderate difficulty standing on the right predominantly due to weakness in his right leg; that range of motion was *normal* for the dorsal lumbar spine; cervical spine, shoulders, elbows, hips, knees, ankles, wrists, hands-fingers; that cranial nerves are *intact*; that motor strength is reduced to 4/5 power in the right lower extremities; that tone is *normal*; that sensory is intact to light touch and pinprick; that Romberg testing is *negative*; that Claimant walks with a wide based gait without the use of an assist device; that his upper extremities were relatively *stable*; that Claimant's degree of impairment does appear *mild to moderate* and permanent; that progress is fair to guarded but potentially *controllable*. (DHS Exhibit A, Pgs. 43-48).
 - c. September 24, 2012: Has neurological and orthopedic ability to sit, stand, bend, stoop, carry, push, pull, button close, tie shoes, dress-undress, dial telephone, open door, make a fist, pick up coin,

pick up pencil, squat and arise from squatting, getting on and off examination table, climb stairs; that he can walk on heels and toes; that he does not need a walking aid; and that his grip strength is 5/5. (DHS Exhibit A, Pgs 41-42).

7. State Hearing Review Team decision dated February 5, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 203).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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).

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies are contained 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 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).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

Acceptable medical verification sources are licensed physicians, osteopaths, or certified psychologists ...20CFR 416.913(a)

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

It must allow us to determine --

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Step 1

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

The evidence of record established that the Claimant has not engaged in substantial gainful activity since April 26, 2007. Therefore, the sequential evaluation is required to continue to the next step.

Step 2

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

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).

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).

...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).

The medical reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, the medical reports do not establish whether the Claimant is impaired slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The Claimant's disabling symptoms (Findings of Fact #5) are inconsistent with the objective medical evidence of record (Findings of Fact #6).

...Your symptoms, including pain, will be determined to diminish your capacity for basic work activities...to the extent that your alleged functional limitations and restrictions due to symptoms, such as pain, can reasonably be accepted as consistent with the objective medical evidence and other evidence. 20 CFR 416.929(c)(4).

...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 states the Claimant's medical exams, for the most part, were normal and unremarkable; that his right knee was impaired mildly to moderately (not-severely) and that his condition was not unstable.

The Claimant has not sustained his burden of proof to establish a severe physical/mental impairment in combination, instead of a non-severe impairment, for the required duration.

Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes,

overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals. Delegation of Hearing Authority, July 13, 2011, per PA 1939, Section 9, Act 280.

Therefore, the sequential evaluation is required to stop at Step 2.

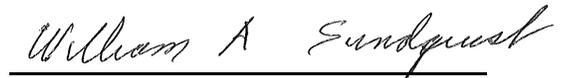
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 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 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 disability was not medically established.

Accordingly, MA-P denial is **UPHELD** and so ORDERED.



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

Date Signed: April 26, 2013

Date Mailed: April 26, 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.

WAS/hj

cc:

