

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

IN THE MATTER OF:



Reg. No: 20136900
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: March 5, 2013
Oakland County DHS #4

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 Tuesday, March 5, 2013. Claimant appeared and provided testimony on his behalf.

ISSUE

Was disability, as defined below, medically established for the period of May 1, 2012 through April 22, 2013?

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 (3 months retro) /SDA application August 15, 2012 was denied on October 2, 2012 per BEM 260/261, with a hearing request on October 18, 2012.
2. Vocational factors: Age 54, with a 10th grade education, and unskilled/semiskilled work experience.
3. Claimant was last employed in 2004.
4. Claimant alleges disability due to COPD and arthritis.
5. Claimant's disabling symptoms are chronic shortness of breath and intermittent pain in back, rib area, left shoulder, leg, and ankle.
6. Medical reports of exams state the claimant on:

- a. November 28, 2011: Denies shortness of breath secondary to COPD; that he is able to walk into the room and out without assistance or assistive device; that he is able to get up from the chair and get up on the exam table without assistance or assistive device; that gait is normal; that lung is clear to auscultation; that grip is 4/ 5 bilaterally; that upper extremities strength is 4/ 5 bilaterally; that he has no abnormal joints; that straight leg raise test performed while sitting is normal; that cranial nerves II-XII are grossly intact; that he should be able to walk and stand for six hours; that he should be able to sit for a full work day without any difficulty; that he should be able to lift and carry objects without restriction; that he should be able to push and pull with arms. (DHS Exhibit A, Pgs. 112-114).
 - b. June 4, 2012: Is healthy and in no apparent distress. (DHS Exhibit A, Pg. 83).
 - c. August 8, 2012: Has pulmonary vasculature within normal limits; that he has moderate to large left pneumothorax with subcutaneous emphysema. (DHS Exhibit A, Pg. 71).
 - d. August 22, 2012: Has limitations of lifting/carrying less than 10 pounds frequently; standing/walking less than two hours in an eight hour work day; sitting less than about six hours in an eight hour work day; that he is markedly limited in pushing and/or pulling activities; that he has severe COPD; that he is impaired for fine manipulations due to tremors from medication. (DHS Exhibit A, Pgs. 1-3).
 - e. August 28, 2012: His wound is healing; that his lung has expanded; and he is doing strongly well. (DHS Exhibit A, Pg. 94).
7. State Hearing Review Team decision dated January 4, 2013 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 129).
 8. On May 12, 2013 SHRT approved the Claimant for MA-P effective April 26, 2013 and SDA in accordance with BEM 261.

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).

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).

The claimant had the burden of proof to establish disability in accordance with steps 1-4 above... 20CFR 416.912 (a). The burden of proof shifts to the DHS at Step 5... 20CFR 416.960 (c)(2).

[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 2004. 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 one year 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 reports (Findings of Fact #6) state the Claimant is healing very strongly, well and do not show an unstable or deteriorating condition.

The Claimant has not sustained his burden of proof to establish a severe physical impairment, instead of a non-severe impairment, for the required continuous period from May 1, 2012 through April 22, 2013.

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 for the period of May 1, 2012 through April 22, 2013.

Accordingly, MA-P (3 month retro)/SDA denial is **UPHELD** and so ORDERED.

SHRT requires medical review in June, 2014.

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

Date Signed: June 3, 2013

Date Mailed: June 3, 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:

