

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013830
Issue No: 2009; 4031
Case No: [REDACTED]
Hearing Date: January 10, 2013
Sanilac 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; January 10, 2013. Claimant appeared and provided testimony on his behalf. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

The record was left open 90 days at the Claimant's request for a 2nd SHRT review of medical reports submitted after the hearing (Claimant Exhibit 1) on January 22, 2013.

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 July 26, 2012 was denied on September 12, 2012 per BEM 260/261, with a hearing request on September 20, 2012.
2. Vocational factors: Age [REDACTED] 11th grade education, and past 15 years of semi skilled work experience as a car detailer and a roofer.
3. Claimant's last employment ended in 2008.
4. Claimant alleges disability due to inflammatory spinal arthropathy.
5. Claimant's disabling symptoms are inability to do any work due to chronic pain in shoulders, neck, both hips, right knee, and whole spine; and that he is limited to lifting/carrying a half gallon of milk.

6. Medical reports of exams state the claimant on:
- a. May 3, 2011: Is currently in *no acute* distress; that he has a kyphotic malformation of the thoracic spine; that he has tenderness to palpitation of his cervical, thoracic, and lumbar spine and bilateral sacroiliac joints; that he has limited range of motion of his shoulders bilaterally; that he has a *full* range of motion without evidence of crepitation or effusion; that his strength is 5/5 in upper and lower extremities bilaterally. (DHS Exhibit A, Pg. 35).
 - b. August 30, 2011: Has early degenerative changes of the left hip joint; that he has *mild* increase sclerosis with *minimal* indistinct joint line and bilateral inferior S1 joints; that he has early sacroiliitis. (DHS Exhibit A, Pg. 32).
 - c. August 30, 2011: Is in *no acute* distress; that he has some tenderness to palpitation over his spine in the thoracic and lumbar regions; that he does have *some* spasm with his paraspinal muscles prominently in the lumbar region; that he continues to have limited range of motion in his shoulders bilaterally; that he has mild increase sclerosis with minimal indistinct joint line; that he has early sacroiliitis. (DHS Exhibit A, Pg. 21-22).
 - d. Is overall doing much better; that he is in no acute distress and appears well; that he has a full range of motion of the neck; that he continues with obvious kyphotic malformation of the thoracic spine; that spasm has improved; that shoulders have a more full range of motion than at last visit, but unable to fully abduct without rotation of shoulder blades; that he has *early* degenerative changes of the left hip joint; that he has *mild* increased sclerosis; with minimal indistinct joint line. (DHS Exhibit A, Pgs. 25-26).
 - e. March 27, 2012: Is in no acute distress and appears well; that he has a full range of motion of the neck; that thoracic spine spasm is improved; that he has early degenerative changes of the left hip joint; that he has mild increased sclerosis with minimal indistinct joint line. (DHS Exhibit A, Pg. 29-30).
 - f. May 1, 2012: Has limited range of motion of the spine; that he has shown improvement; that he has joint inflammation which limits his ability to work; that he has been unable to work since March 27, 2012; and that it will take at least six months to be able to return to work if new medication is helpful; that claimant at this time is unable to work; if he has improvement with treatment he will be able to return to work at a later date. (DHS Exhibit A, Pg. 5).

- g. May 8, 2012: Has a deteriorating condition. (DHS Exhibit A, Pg. 20).
 - h. December 1, 2012: Has no motor and sensory deficit; that he has no ext remity tenderness; that he has a full range of motion in all extremities. (Claimant Exhibit 1, Pg. 890).
 - i. December 2, 2012: Has no appar ent distress; and that h e is neurologically *intact*. (Claimant Exhibit 1, Pg. 897).
7. State Hearing Review Team decis ion dated October 29, 2012 states the Claimant's impairments do not meet/equal a Social Se curity listing for the required duration. (DHS Exhibit A, Pg. 82).

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).

[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 2008. 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.

...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).

The medical evidence states the claimant's medical examinations impaired him minimally and mildly; that he had an improved overall condition and doing much better with a full range of motion of the neck; that he had early degenerative changes of the left hip; that in May, 2012 a physician concluded that the Claimant had been unable to work since March, 2012 (approximately six months).

The medical statement on May 1, 2012 concludes that the Claimant has been unable to work since March 27, 2012; and that it would take at least six months (total of seven months) to be able to return to work (car dealer and roofer) if the new medication regimen is helpful.

...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).

Claimant testified that he is unable to do any work due to chronic pain, in essence, throughout his body; and that he is limited to lifting/carrying a half gallon of milk. (Findings of Fact #5).

...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 Claimant has not sustained his burden of proof to establish a severe physical impairment, instead of a non-severe impairment, for the one year continuous 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.

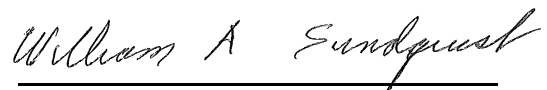
The department's Bridges Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 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 17, 2013

Date Mailed: April 17, 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.

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