

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-014658
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: December 10, 2014
County: Ogemaw

ADMINISTRATIVE LAW JUDGE: Bill Sundquist

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 10, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant applied for SDA on May 1, 2014, was denied on August 29, 2004 per BEM 261 and requested a hearing on October 17, 2014.
2. Claimant's vocational factors: Age 40, 12th grade education or more and unskilled work experience as a fast food manager, requiring the lifting/carrying of over 30 pounds.
3. Claimant's last employment ended April 30, 2014.
4. Alleged disabling medical disorder(s): degenerative disc disease.
5. Medical evidence of record established a severe impairment for a 90 day continuous duration.
6. Medical evidence of record established claimant's residual functional capacity for sedentary work

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).

DISABILITY

A person is disabled for SDA purposes if he:

- receives other specified disability-related benefits or services, or
- resides in a qualified Special Living Arrangements facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. BEM, Item 261, p. 1.

...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 April 30, 2014. 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 de minimis standard is applied to determine whether the medical evidence establishes impairments having more than a minimal effect on a person's mental or physical ability to do basic work activities.

The medical assessments should describe—

- (1) Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling; and
- (2) In cases of mental impairments, your ability to reason or make occupational, personal, or social adjustments...20 CFR 416.913(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 to establish whether the Claimant is impaired more than minimally for the required 90 day continuous duration.

Medical report of exam on [REDACTED] states the claimant had the right foraminal disc protrusion I at L4-5 level, causing right neuroforaminal narrowing in conjunction with facet degenerative changes (DHS exhibit A, page 85).

Medical report of exam on [REDACTED] states the claimant's musculoskeletal range of motion is abnormal due to low back and hip pain (DHS exhibit A, page 119).

Medical report of exam on [REDACTED] states the claimant has right protrusion at L4-5 (DHS exhibit A, page 85).

The claimants disabling symptoms are consistent with the objective medical evidence of record.

...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).

...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).

inability to remember locations and work like procedures, understand and remember one or two step instructions, and understand (DHS exhibit A, page 14).

The medical reports show that Claimant's physical examinations were abnormal; and that the claimant has established a severe impairment, for the required duration

Therefore, medical disability has been established at Step 2 by the competent, material and substantial evidence on the whole record. And the sequential evaluation is therefore required to continue to step three

Step 3

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

For each of the major body systems, the List of Impairments describes impairments which are considered severe enough to prevent a person from doing any substantial gainful activity. Most of the listed impairments are permanent or expected to result in death, or make a specific statement of duration. (20 CFR 404.1525 and 416.925).

The Claimant introduced no objective medical evidence of record that his impairments meet/equal a social security listing for the required duration. And therefore the sequential evaluation is required to continue to step four.

Step 4

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

...We consider that your work experience applies when it was done within the last 15 years, lasted long enough for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 year or more before the time we are deciding whether you are disabled applies.... 20 CFR 416.965(a).

The claimant introduced no objective medical evidence of a functional inability to perform any of her past work due to a severe impairment. Therefore, the sequential evaluation is required to stop at step four. If disability had not already been denied at step four it would also have been denied at step 5

Step 5

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 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).

Younger person. If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation.... 20 CFR 416.963(b).

...If you are unemployed because of your age and you can still do a significant number of jobs which exist in the national economy, we will find that you are not disabled.... 20 CFR 416.963(a).

The Claimant introduced no objective medical evidence under Step 4 of inability to do past work, which required heavy lifting up to 100 pounds. This ALJ finds that the Claimant should be able to do less strenuous work than his/her past work, such as sedentary type work, as defined above.

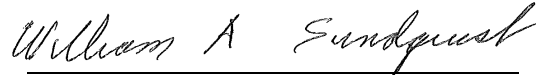
Under the medical-vocational guidelines, Rule 201.28, a younger person age 40 with a 12th grade education and semiskilled work history who is limited to sedentary work is not considered disabled.

Therefore, medical disability has not been established at Step 4, and also would not have been established at step 5 by the competent, material and substantial evidence on the whole record.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **AFFIRMED**.



Bill Sundquist

Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/11/2014**

Date Mailed: **12/11/2014**

WAS/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

