

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-18232
Issue No. 2009
Case No. [REDACTED]
Hearing Date: June 23, 2011
Bay 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, an in person hearing was held on June 23, 2011.

Medical reports (Claimant Exhibit A) submitted after the hearing for a second SHRT review delayed the D&O below.

ISSUE

Was a severe mental/physical impairment that was expected to last for a one year continuous duration 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 has not worked since August 17, 2007.
2. On August 17, 2007, the claimant was laid off from his last job. Thereafter, he became an UCB recipient until exhausted in December 2009.
3. Claimant's vocational factors are: age 48, 11th grade education, and past work experience as a semi-skilled mechanic, customizing internal wood paneling of motor-vans, and a carpenter.
4. On July 6, 2010, the claimant applied for Medicaid (and June retro), was denied on October 26, 2010 per BEM 260, and requested a hearing on January 2011.

5. Claimant alleges disability due to a mini stroke, depression, and back problems.
6. Medical exam on June 10, 2010 states that the claimant has a full range of motion of all four extremities; that he does have some weakness of the right upper extremity; and that his strength is 4/5 (Medical Packet, page 43).
7. Medical exam on September 24, 2010 states the claimant does not appear to be in any acute distress or discomfort; that he is alert and oriented x3; that he ambulates normally; that he is able to bend and touch his toes; that he is able to straight-leg raise normally; that he has some problems with abduction and extension of the left elbow; that he has the current ability to sit, stand, bend, stoop, carry, push, pull, button clothes, tie shoes, dress, undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, squat and arise from squatting; get on and off examining table, climb stairs; that he can walk on heels and toes and can walk; that his gait is stable and within normal limits; that he needs no assist device for walking; that his range of motion is normal for the cervical spine, lumbar spine, shoulders, elbow, hips, knees, ankles, wrists, and fingers (Medical Packet, pages 143 through 148).
8. Medical exam on October 6, 2010 states the claimant's GAF score of 68 (Medical Packet, page 72).
9. Medical exam on June 2, 2011 states the claimant's current and last year's GAF score of 52; that claimant is not significantly limited in the ability to remember locations and work-like procedures, understand and remember one or two-step instructions, understand and remember detailed instructions; and moderately limited in carrying out simple one- or two-step instructions, carry out detailed instructions, maintain attention and concentration for extended periods, perform activities within a schedule, maintain regular attendance, and be punctual and customary; sustain an ordinary routine without supervision, work in coordination or proximity to others without being distracted by them, make simple work-related decisions, complete a normal work day or work week without interruptions from psychologically based symptoms and to perform at a consistent pace without a number or length of rest periods, interact appropriately with the public, ability to ask simple questions and request assistance, accept instructions and respond appropriately to criticism from supervisors, to get along with coworkers, peers without distracting them or exhibiting behavioral extremes, maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness, respond appropriately to change in the work setting, to be aware of normal habits and taking appropriate precautions, travel to unfamiliar places or use public transportation, and set realistic goals or make plans independently of others (Claimant Exhibit A, pages 1 and 2).

10. SHRT report dated February 23, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 154).

CONCLUSIONS OF LAW

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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

When determining disability, the federal regulations 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).

At Step 1, the evidence of record establishes that claimant has not been engaged in substantial gainful activity since August 17, 2007. Therefore, disability is not denied at this step.

At Step 2, the objective medical evidence of record does not establish that the claimant is significantly limited in performing basic mental/physical work activities, as defined below, for the required duration stated below of one **continuous** year.

...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 impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

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).

The medical exams on September 27, 2010; October 6, 2010, and June 2, 2011 state GAF scores of 52, 68, and 52 respectively. 52 is considered a person with moderate difficulty with occupational functioning and 68 is considered a person with mild difficulty with occupational functioning. [REDACTED]).

There is no evidence in the record establishing the claimant's alleged disabling physical symptoms would restrict/limit him from performing basic work activities, as defined above.

The claimant has the burden of proof to establish that he has a severely restricted mental or physical impairment that has lasted or can be expected to last for the duration of one continuous year. There is insufficient objective medical evidence in the record that claimant suffers from a severely restricted mental or physical impairment for the required duration. Therefore, disability is denied at Step 2.

If the claimant had not been denied at Step 2, the analysis would proceed to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would meet a statutory listing in the Code of Federal Regulations. In order to qualify as disabled, a severe impairment for the required duration has to be established first under Step 2.

The claimant offered no evidence by a treating, examining, or non-treating physician, addressing any Social Security Listing. To the contrary, the SHRT medical consultant addressed the issue and found no disability at this step.

If claimant had not already been denied disability at Step 2, he would be denied again at Step 4 based upon his ability to perform his past work despite his impairments. There is no evidence upon which this ALJ could base a finding that claimant is unable to perform work in which he has engaged in the past for the required one year duration. Therefore, disability would be denied again at this step.

The ALJ will continue to proceed through the sequential evaluation process to determine whether or not claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

If claimant had not already been denied at Steps 2 and 4, he would be denied again at Step 5. At Step 5, the objective medical evidence of record does not establish that the claimant is without a residual functional capacity for other work in the national economy for the duration of one **continuous** year.

...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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do sedentary tasks, as defined above, if demanded of him even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe physical impairment or combination of impairments which prevent him from performing any level of work for a period of one **continuous** year. Therefore, disability is denied at Steps 2, 4 and 5.

Therefore, the claimant has not established disability, as defined above, by the necessary 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, Medicaid denial is UPHELD.

William A Sundquist

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

Date Signed: November 8, 2011

Date Mailed: November 9, 2011

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/tg

cc:

