

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

IN THE MATTER OF:



Reg. No. 2011-31935
Issue No. 2009
Case No. [REDACTED]
Hearing Date: August 11, 2011
Ingham 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 August 11, 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 continuous one year 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 October 2010.
2. In October 2010, the claimant was laid off from his last job; thereafter, he became a recipient of UCB and is still a current recipient at the time of his application and will apply for an extension.
3. Claimant's vocational factors are: age 30, 5th grade education, and past work experience as unskilled lawn care person, sales person, and farm worker, and semi-skilled cook; he admits that he has the residual functional capacity for his past job as a preparation cook where he can sit down.

4. On December 7, 2010, the claimant applied for Medicaid, was denied on February 11, 2011 per BEM 260, and requested a hearing on May 3, 2011.
5. Claimant alleges disability due to depression, shortness of breath, chronic chest pain, and back pain.
6. Medical exam on October 12, 2010 states the claimant musculoskeletal has no clubbing, nor muscle wasting; and that psychiatrically, he is alert and oriented to time, place and person with normal insight and affect (Claimant Exhibit A, page 3).
7. Medical exam on October 12, 2010 states the claimant did not appear to be in any significant distress and appeared to be well nourished; and that psychiatrically, he appeared alert and oriented to time, place and person with normal insight and normal affect (Medical Packet, pages 26 and 27).
8. Medical exam on January 26, 2011 states the claimant neurologically is grossly intact (Claimant Exhibit A, page 19).
9. Medical exam on July 28, 2011 states the claimant is able to walk but depends upon the day; that he can lift about 50 pounds; that he is cooperative in answering questions and following commands; that his immediate recent and remote memory is intact with normal concentration; that his insight and judgment are both appropriate; that he appeared mildly depressed; that his heart has a regular rate and rhythm without enlargement; that there is no evidence of joint laxity, crepitance, or effusion; that grip strength remains intact; that dexterity remains unimpaired; that he could pick up a coin, tie shoelaces and open a door; that he had no difficulty getting on and off the examination table, no difficulty heel and toe walking, no difficulty squatting, and no difficulty hopping; that straight leg raising is negative; that range of motion is normal for the dorsolumbar spine, cervical spine, shoulders, elbows, wrists, knees, hips, ankles, hands-fingers; that cranial nerves are intact; that motor strength and tone are normal; that sensory is intact to light touch and pinprick; that reflexes are intact and symmetrical; that he walks with a normal gait without the use of an assistive device; that there is no evidence of heart failure on exam today; that neurologically, he appears stable; that his degree of impairment at present appears mild and his prognosis appears fair; that he has the current ability to sit, stand, stoop, carry, push, pull, button clothes, tie his shoes, dress, undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, write, squat, and arise from squatting, get on and off examining table, climb stairs; that he can walk on heels and toes; that his gait is stable and within normal limits; that he does not need a walking aid; and that his grip strength is 5/5 (Medical Packet, page 61 to 67).

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 the claimant has not been engaged in substantial gainful work since October 2010. 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 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 a duration of at least one **continuous** year. There is insufficient objective medical evidence in the record that claimant suffers a severely restricted mental or physical impairment for that required duration.

In addition, claimant does receive unemployment compensation benefits. In order to receive unemployment compensation benefits under the federal regulations, a person must be monetarily eligible. They must be totally or partially employed. They must have an approvable job separation. Also, they must meet certain legal requirements which include being physically and mentally able to work, being available for and seeking work, and filing a weekly claim for benefits on a timely basis. This Administrative Law Judge finds that claimant has not established that she has a severe impairment or combination of impairments which have lasted or will last the durational requirement of 12 months or more or have kept her from working for a period of 12 months or more.

The claimant admitted at the hearing that he has a residual functional capacity to do his past cooking job, especially as a prep cook where he would sit down. Therefore, disability is denied at this step.

If 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. And as already discussed under Step 2. 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 required 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 at least 12 months. **Under the Medical-Vocational guidelines, a younger individual (age 30), with a limited education and an unskilled/semi-skilled work history who is limited to sedentary work is not considered disabled.**

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 14, 2011

Date Mailed: November 14, 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:

