

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-39493
Issue No. 2009
Case No. [REDACTED]
Hearing Date: October 25, 2011
St. Clair 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 October 25, 2011.

ISSUE

Was a severe mental/physical impairment expected to preclude the claimant from performing gainful work continuously for one year 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 February 2009.
2. In February 2009, claimant was fired from his last employment.
3. In February 2009, claimant alleges that he became unable to do any past work or any other work due to bipolar disorder, borderline personality, acid reflux, hypertension, chest pain, Crohn's disease, and diabetes.
4. On March 9, 2011, claimant applied for Medicaid (January and February retro), was denied on April 15, 2011 per BEM 260, and requested a hearing on June 16, 2011.
5. Claimant's vocational factors are: age 50, high school plus, and past work history as a semi-skilled sedentary tax preparer, skilled sedentary work as a [REDACTED] instructor, and semi-skilled assistant manager for [REDACTED].

6. Medical exam on May 3, 2011 states the claimant is mentally anxious; and that he is in stable condition (Medical Packet, page 317).
7. Medical exam on May 23, 2011 states the claimant's current/last year GAF score of 40; that he is not significantly limited in ability to understand and remember one- or two-step instructions, carry out simple, one- or two-step instructions, to be aware of normal hazards and take appropriate precautions, and travel in unfamiliar places or use public transportation; and that he is moderately limited in ability to carry out detailed (not simple) instructions, maintain attention and concentration for extended periods, perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, and sustain an ordinary routine without supervision (Medical Packet, pages 315 and 316).
8. SHRT report dated July 25, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 324).

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 Program Reference Manual (PRM).

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 activity since February 2009. Therefore, disability has not been 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 one continuous year. There is insufficient objective medical evidence in the record that claimant suffers a severely restrictive mental/physical impairment for one continuous year.

The medical evidence of record shows that on May 23, 2011, the claimant had a current/last year GAF score of 40. This is considered a severe mental impairment. [REDACTED] [REDACTED]). There is no medical evidence of record that shows that the impairment was continuous for one year. The medical evidence also shows that on May 23, 2011, the claimant had the ability to understand, remember, and carry out **simple** instructions. Also, the claimant had no difficulty at the hearing understanding, remembering, and answering questions. This established that the claimant was not significantly impaired for basic work activities, as defined above.

The medical reports of record were mostly diagnostic in treatment reports. There were no assessment reports as to how the claimant's physical impairments limited him from performing basic work activities, as defined above, for the continuous duration of one year.

Therefore, disability is denied at Step 2.

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 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 first established under Step 2.

The claimant offered no evidence by a treating, examining or non-treating physician addressing any Social Security Listing. And to the contrary, the SHRT medical consultant addressed the issue and found no disability under Step 3.

If claimant had not already been denied at Step 2, he would have to 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 continuous duration. Therefore, disability would have to be denied 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 job.

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 the work in the national economy for required one continuous year duration.

...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).

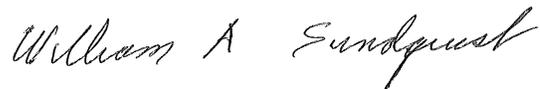
Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do sedentary tasks as defined above, if demanded of him even with his impairments. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any 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
Administrative Law Judge
For Maura D. Corrigan, Director
Department of Human Services

Date Signed: October 31, 2011

Date Mailed: October 31, 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

2011-39493/WAS

cc:

