

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201143737
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 16, 2011
Livingston 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 Wednesday, November 16, 2011. Claimant appeared with his [REDACTED], [REDACTED].

ISSUE

On date of MA-P application, did claimant establish, medically, a severe physical impairment that had lasted or was expected to last for a one year continuous duration?

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 his layoff in 2008 and he is currently in [REDACTED].
2. On an unknown date the claimant's employment was terminated.
3. Claimant's diagnosed impairments are coronary artery disease, diabetes and neuropathy.
4. On March 30, 2011, claimant applied for MA-P (and 3 months retro), was denied on July 15, 2011 per BEM 260, and requested a hearing on July 13, 2011.
5. Claimant's vocational factors are: age 47, 8th grade education, and past work history as a foreman in a factory, stockman for [REDACTED], and installer of fences for a fence company.

6. Medical exam on March 12, 2011, states the claimant was alcohol intoxicated and with right-sided foot pain; that related to alcoholism he drinks approximately a ½ of gallon of alcohol per day; and that his last drink was approximately 15 hours ago (Medical Packet, Page 21).
7. Medical exam on March 28, 2011, states the claimant's condition is stable; that he is able to stand and/or walk less than 2 hours in an 8 hour workday; that he needs no assistive device for ambulation; that he is able to use his extremities on a repetitive action (Medical Packet, Page 11).
8. Medical exam on May 8, 2011, states the claimant is alert, well-nourished, cooperative, well-hydrated; that he has a steady gait; that he has a small dime sized ulcer on left great toe; that he has a normal range of motion; that he has musculoskeletal normal range of motion; and that neurologically he is alert and oriented to person, place, time, and situation (Medical Packet, Pages 801-802).
9. Medical exam on June 20, 2011, states the claimant has a worsening left foot pain radiating from the left right toe up to the ankle; that he has a history of heavy alcohol abuse and drinks approximately ½ gallon of vodka per day; that he has Type II diabetes; that he had an amputation of the right big toe about 3 months ago; that he is awake and alert; that he is in no acute distress; and that his left big toe is massively swollen, red, and tender (Medical Packet, Pages 795-799).
10. SHRT report dated August 25, 2011, states the claimant's impairments do not meet/equal a social security listing (Medical Packet, Page 816).

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 Program Administrative Manual (BAM), the Program 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.

...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 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).

Step 1 is decided in the claimant's favor based on the medical evidence of record.

Step 2 is not decided in the claimant's favor. The medical evidence of record does not establish that the claimant is significantly limited in performing any basic physical work

activities, as defined below, for the required duration of one continuous year, as stated below.

Severe/Non-Severe Impairment

...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).

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 restrictive impairment that has lasted or can be expected to last for the duration of at least one **continuous** year. There is insufficient objective medical evidence in the record that claimant suffers a severely restrictive physical impairment for the required duration.

All of the medical reports of record are examination, diagnostic or treatment reports. The medical reports of record do not address the claimant's physical work limitations/restrictions related to his diagnosed medical impairments, except the report mentioned above.

Therefore, disability is denied at Step 2.

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

The claimant introduced no medical evidence of record by a treating, examining or non-examining physician addressing a social security listing. And to the contrary, the SHRT medical physician addressed the issue and found no disability under this step.

If disability had not already been denied at Step 2, it would be denied at Step 4. The medical evidence of record, does not establish the claimant's inability to perform any of his past work, as stated above, despite his impairment(s) for the required one year **continuous** duration.

This Administrative Law Judge (ALJ) will continue to proceed, anyway, through the sequential evaluation process to determine whether claimant has the residual functional capacity to perform some other less strenuous task than in his last prior jobs.

If disability 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 (RFC) for other work in the national economy for the required 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).

The claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity (RFC) to perform some other less strenuous task than in his prior employment or that he is physically unable to do sedentary work, 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 12 months. **Under the medical-vocational guidelines, a younger individual, age 47, with an 8th grade education, and 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 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**.

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

Date Signed: April 25, 2012

Date Mailed: April 25, 2012

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.

201143737/WAS

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/tb

cc:

