

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-45082
Issue No. 2009
Case No. [REDACTED]
Hearing Date: November 15, 2011
Macomb County DHS (Dist. #12)

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 November 15, 2011.

ISSUE

Was a severe mental/physical impairment that had lasted or can be 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 2008/2009.
2. In 2008/2009, the claimant was self employed as a cable contractor and terminated his business due to no work.
3. On or before 2008/2009, claimant alleges his disabling condition worsened and that he became unable to do any past work or any other work due to low back pain, obstructive sleep apnea, headaches, anxiety, and memory and concentration loss.
4. On June 9, 2011, claimant applied for Medicaid, was denied on July 21, 2011, per BEM 260, and requested a hearing on July 26, 2011.

5. Claimant's vocational factors are: age 51, 8th grade education, and past work history as a skilled self-employed cable contractor, and worker in the field installing cables in apartment buildings.
6. Medical exam on August 19, 2010 states the claimant is very pleasant, alert and oriented male in no acute distress; that cranial nerves II through XII are intact; that range of motion of the cervical and extremity are normal; that gait, station, posture and tone are normal; that strength is 5/5; that he has a memory dysfunction which seems progressive (Medical Packet, pages 10 and 11).
7. Medical exam on September 2, 2010 states the claimant's transcranial Doppler evaluation is compatible with: normal arterial velocity measurements and flow direction supplying the intracranial system (Medical Packet, page 7).
8. Medical exam on September 27, 2010 states the claimant has no evidence of demyelinating process or acute edema within the brain; that gray-white differentiation is normal; that he has a normal magnetic resonance imaging of the brain; and that he has normal magnetic resonance angiography of the circle of Willis (Medical Packet, page 8).
9. Medical exam on October 19, 2010 states that the claimant's neurologic examination was normal (Medical Packet, page 12).
10. Medical exam on June 10, 2011 states the claimant's musculoskeletal and mental areas were normal, except for the mental affect which was flat; and that his condition was deteriorating (Medical Packet, page 13).
11. SHRT report dated September 8, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 22).

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 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).

At Step 1, the evidence of record establishes that claimant has not been engaged in substantial gainful work since 2008/2009. Therefore, disability is not denied at this step.

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

...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 restrictive mental/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 restrictive mental/physical impairment for the required period.

Most of the medical reports of record are diagnostic/treatment reports that do not assess the claimant's mental/physical work limitations/restrictions.

There was no assessment reports regarding the claimant's inability to understand, remember and carry out simple instructions. At the hearing, the claimant had no difficulty understanding, remembering and answering simple questions.

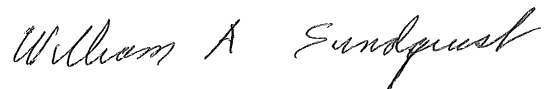
Therefore, disability is denied at Step 2.

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: November 29, 2011

Date Mailed: November 29, 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.

2011-45082/WAS

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cc:

