

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201149215
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 22, 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, a 3-way telephone hearing was held on Tuesday, November 22, 2011. Claimant appeared with his authorized [REDACTED].

Medical reports (Claimant Exhibit A) submitted at the hearing delayed at D&O below.

ISSUE

Did Claimant, on date application, establish 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. In 1999 Claimant's last employment ended.
2. In 1999 Claimant alleges he became disabled to perform any work due to chest pains and heart problems.
3. Medical history discloses that the Claimant had a mild cardio infarction and coronary artery bypass grafting in February 2011 (Medical Packet, Page 80).
4. Medical exam on February 23, 2011, states the Claimant's heart rate and rhythm are regular without murmur or gallop (Medical Packet, Page 20).

5. Medical exam on March 20, 2011, states the Claimant muscle weakness or pain; that he denies chest pain or shortness of breath; and that he had regular heart rate and rhythm (Medical Packet, Page 70).
6. On May 3, 2011, Claimant applied for MA-P; he was age 48, with a GED, and work experience as a semi-skilled carpenter/roofer, and cashier; and skilled plant nursery worker, and manufacturer dye setter.
7. Medical exam on June 23, 2011, states that the Claimant has no musculoskeletal weakness; and that his condition is stable (Medical Packet, Page 45).
8. On July 18, 2011, Claimant's MA-P application was denied per BEM 260 with a hearing request on August 8, 2011.
9. Medical exam on November 30, 2011, states the Claimant has no evidence of joint laxity, crepitation or effusion; that grip strength remains intact; that dexterity is unimpaired; that he could pick up a coin, button clothing and open a door; that he had no difficulty getting on and off the examination table, no difficulty heel and toe walking, mild difficulty squatting, and mild difficulty hopping; that straight leg raising is negative; that range of motion of the joints are normal for the dorsal lumbar spine, cervical spine, shoulders, elbows, wrists, knees, hips, ankles, hands-fingers; that motor strength and tone are normal; that gait is normal without the use of an assist device; that there was no findings of heart failure; that blood pressure was stable; that physically his degree of impairment appears to mild to moderate (Medical Packet, Pages 84-88).
10. Medical exam on November 30, 2011, states that the Claimant has the 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, write, squatting and arise from squatting, get on and off examining table, climb stairs; that he can walk on heel and toes; that his gait is stable within normal limits; that he does not need a walking aide; and that his strength is 5/5 (Medical Packet, Pages 82 and 83).

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.

The Claimant has the burden of proof to establish disability as defined above by the preponderance of the evidence of record and in accordance with the 5 step process below. 20 CFR 416.912(a).

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, disability is not denied. The evidence of record establishes that the Claimant was not engaged in substantial gainful work on date of application, nor currently.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significant inability to perform basic physical work activities, as defined below, for the one year **continuous** duration, as defined 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).

In February 2011, a severe physical impairment was established. But by November 2011 it had improved to, at least, to a non-severe impairment.

Duration of Impairment

Claimant cannot be determined disabled without medically establishing the duration requirement, as defined below.

...[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.

Therefore, disability has not been established at Step 2, 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: June 6, 2012

Date Mailed: June 7, 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.

201149215/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:

