

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201149276
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 20, 2011
Washtenaw 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 Wednesday, November 30, 2011. Claimant appeared with his authorized representative, [REDACTED].

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

ISSUE

Did Claimant, on date of 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. Four years ago, Claimant's last employment ended.
2. Claimant alleges that he became disabled to perform any work due to diverticulitis, cerebrovascular accident, and fibromyalgia.
3. Medical exam on August 6, 2010, states the Claimant's heart exam revealed regular rate and rhythm with no murmurs, rubs or gallops (Medical Packet, Page 23).
4. On October 28, 2010, Claimant applied for MA-P; he was age 50, with an 8th grade education, and work experience as semi-skilled bakery cook, loading semi trucks with a forklift motor vehicle, supervisor/roofer, and plant security guide.

5. Medical exam on November 6, 2010, states the Claimant's heart did not appear to be clinically enlarged; that he had no murmurs or gallops; that S1 and S2 appeared normal; that his gait was normal and steady without use of a cane; that grip and pincher strength were intact; that dexterity appeared unimpaired; that he had no difficulty getting on and off the examination table, heel and toe walking, squatting and arising, balancing, or hopping; that motor and sensory function appeared intact; that Romburg testing was negative (Medical Packet, Page 96).
6. On November 18, 2010, Claimant's MA-P application was denied per BEM 260 with a hearing request on March 9, 2011.
7. Medical exam on February 7, 2011, states the Claimant appeared to be in mild to moderate distress; that his chest was clear to auscultation bilaterally; that he had a regular cardiac rate and rhythm with no murmurs, rubs or gallops; that cranial nerves II-XII were grossly intact, 5/5 strength in upper and lower extremities; that sensation was grossly intact; and that he had a normal gait (Claimant Exhibit A, Page 18).
8. Medical on May 27, 2011, states the Claimant is stable from the cardiovascular standpoint (Claimant Exhibit A, Page 13).

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 required 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).

The question in this case is whether the Claimant's medically diagnosed disorders significantly limit his ability to perform basic work activities, as defined above.

The medical reports of record are mostly examination, diagnostic or treatment reports, and do not provide medical assessments of Claimant's basic work limitations/restrictions.

Based on the definition of basic work activities, do the medical disorders impair the Claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

Based on the medical evidence of record, this Administrative Law Judge (ALJ) finds a non-severe impairment has been established based on the basic work activities, as defined above.

Duration of Impairment

You 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.

The medical evidence of record, on date of application, does not establish a severe impairment that had lasted or was expected to last for the one year **continuous** duration.

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: May 21, 2012

Date Mailed: May 21, 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.

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:

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