

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201149281
Issue No: 2009
Case No: [REDACTED]
Hearing Date: November 23, 2011
Jackson 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 23, 2011. Claimant appeared with his authorized [REDACTED].

ISSUE

Did Claimant, on date of Medicaid (MA-P) 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 2003/2004, Claimant ended his last job.
2. On January 26, 2011, Claimant applied for MA-P (and three months retro) based on a medical diagnoses of coronary artery disease, diabetes, back pain, and arthritis in the knees, was denied on May 12, 2011 per BEM 260, and requested a hearing on August 9, 2011.
3. On date of MA-P application, Claimant was age 64, with a 12th grade education, and past work experience as an unskilled factory assembly line worker, rehab care facility doing administrative work and food service, factory machine press operator, and manual laborer.
4. On October 12, 2010, medical exam states Claimant is well-developed, well-nourished, and in no distress; that neurologically he is able to move

all his extremities; that musculoskeletally he is normal with no evidence of deformity (Medical Packet, Page 21).

5. On October 21, 2011, medical exam states the Claimant is positive for back pain; that straight leg raising test with Claimant in supline is negative; that straight leg raising with Claimant sitting is negative; that his gait is normal; that there is no edema present; that neurologically his cranial nerves are intact; that he has no motor or sensory deficits; that his Type II diabetes is controlled; and that he is doing well (Medical Packet, Pages 11 and 12).
6. On October 5, 2011, SHRT report states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 26).

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 does not establish, on date of application, that Claimant was significantly limited with a severe impairment from performing basic 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 medical reports of record introduced by Claimant are mostly examination, diagnostic, and treatment reports. They do not provide medical assessments of the Claimant's basic work limitations/restrictions in order to determine whether he has a severe or non-severe physical impairment(s), as defined above. Said in another way, these reports do not establish whether the Claimant has a slight, mild, moderate (non-severe impairment, as defined above) or severe impairment, as defined above.

Medical disability cannot be established by the testimony alone of the Claimant that he cannot do any work due to his multiple diagnosed impairments.

The medical evidence of record must support the Claimant's alleged inability to do any work on date of application for the required duration.

It is a well settled law that Administrative Law Judges (ALJ) are not permitted or allowed to speculate or guess at material facts in dispute. And it would only be a guess on the part of this ALJ to find a severe impairment based on the medical evidence of record.

Duration of Impairment

...[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.

Claimant cannot be determined disabled without medically establishing the duration requirement. The medical evidence of record does not establish on date of application a severe impairment that had lasted or was expected to last for the required one year continuous duration.

Therefore, the disability analysis stops at Step 2. But, the analysis will proceed anyway.

At Step 3, disability was not established. The medical evidence of record does not establish a severe impairment meeting/equaling a Social Security listing for the required duration.

The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show the one year continuous duration. 20 CFR 460.925(a).

Claimant introduced no medical evidence of record by a treating, examining, or non-examining physician addressing a Social Security listing(s). And to the contrary, the SHRT medical consultant addressed matter and found insufficient medical evidence of disability under a Social Security listing.

At Step 4, disability would be denied. The medical evidence of record, on date of MA-P application, does not establish the Claimant's inability, despite his impairments, to perform any of his past work for the required one year continuous duration.

At Step 5, disability would be denied. The medical evidence of record, on date of application, does not establish the Claimant was without a residual functional capacity (RFC), despite his impairments, to perform any other work in the National Economy for the one year continuous 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 medical evidence of record does not establish that the Claimant, on date of application, was without a residual functional capacity for less strenuous work, such as sedentary work, as defined above.

Therefore, disability has not been established at Step 2, and also at Steps 4 and 5, 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 4, 2012

Date Mailed: June 4, 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:

