

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201150332
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].

Medical reports (Claimant Exhibit A, B and C) submitted at the hearing for a 2nd SHRT review delayed the D&O below.

ISSUE

Did Claimant, on date application, establish a severe mental/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, Claimant's last employment ended.
2. In 2003, Claimant alleges onset of disability due to depression, anxiety, rheumatoid arthritis, herniated disc, enlarged liver, memory loss, dementia, and seizure.
3. Medical exam on October 12, 2010, states the Claimant's primary consideration from the neurologic standpoint regards safety issues including Michigan State driving regulations that will be discussed with the Claimant; and that he should not be driving for six months (Medical Packet, Page 14).

4. Medical exam on December 7, 2010, states the Claimant's GAF score of 45-50 (Claimant Exhibit A, Page 45).
5. Medical exam on November 15, 2010, states the Claimant is in no apparent distress, well-nourished, and well-developed; and that psychiatrically he has no unusual anxiety or evidence of depression (Medical Packet, Page 36).
6. On January 27, 2011, Claimant applied for MA-P; he was age 44, with a 12th grade education, and work experience as an unskilled roofer, janitor, injection molder, and semi-skilled as a laundry operator and injection molder.
7. Medical exam on March 26, 2011, states the Claimant is well-nourished and well-developed; that he is alert; that his HEENT is within normal limits; and that his neuro is grossly intact (Medical Packet, Page 16).
8. On May 16, 2011, Claimant's MA-P application was denied per BEM 260 with a hearing request on August 12, 2011.
9. SHRT report dated October 31, 2011, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 53).

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 established 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 mental/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 Claimant's testimony regarding his disabling impairments, alone, is insufficient evidence to prove disability. It must be supported by competent, material, and substantial evidence on the whole record.

The medical reports of record are mostly examination, diagnostic and treatment reports. They do not provide medical assessments of Claimant's basic work limitations/restrictions in order to determine whether he has a severe impairment, as defined above.

The question is whether the medically diagnosed impairments significantly impair Claimant's ability to perform basic work activities, as defined above. If not, then, the Claimant has established a non-severe impairment only, as defined above, instead of a severe impairment. Said in another way, do the Claimant's diagnosed impairments impair him slightly, mildly, moderately (non-severe impairment, as defined above) or severely, 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 mental/physical impairment that had lasted or was expected to last for a one year **continuous** duration.

Therefore, disability is denied at Step 2. But the analysis will proceed to Step #3 anyway.

At Step 3, disability was not established. The medical evidence of record does not establish a severe mental/physical 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 416.925(a).

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

If disability had not already been denied at Step 2, it would be denied at Step 4. At Step 4, the medical evidence of record, on date of application, does not establish Claimant's inability, despite his impairments, to perform any of his past work for the required one year **continuous** duration.

If disability had not already been denied at Steps 2 and 4, it would be denied at Step 5. At Step 5, 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 required 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, on date of application, does not establish that the Claimant was without a RFC for less strenuous work than his past work, such as sedentary work, as defined above. **Under the Medical-Vocational Guidelines, a younger person, age of 44, with a high school education, and unskilled/semi-skilled work history who is limited to sedentary work is not considered disabled.**

Therefore, disability has not been established at Steps 2, 4 and 5, 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 12, 2012

Date Mailed: June 12, 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

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