

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201151649
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 14, 2011
Ingham 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, December 14, 2011. Claimant appeared with his authorized [REDACTED], [REDACTED].

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

ISSUE

Was disability, as defined below, medically 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. On April 19, 2011, Claimant applied for MA-P (and March retro), was denied on June 3, 2011 per BEM 260, and requested a hearing on August 31, 2011.
2. Claimant's vocational factors, on date of application are: age 53, 9th grade education, and last 15 years of work experience as a janitor and vehicle delivery driver of parts.
3. In 2006, Claimant's last employment ended due to being fired, and whether he became an [REDACTED] is unknown; Claimant employment is currently is unknown.
4. Onset of Claimant's alleged disability due to combination mental/physical impairments is unknown.

5. Medical exam on March 20, 2011, states the Claimant musculoskeletally is negative for pain, erythema, swelling; that neurologically he has no numbness, tingling or weakness; that he has no anxiety or depression; and that he is alert, oriented x3 and in no acute distress (Medical Packet, Page 21).
6. Medical exam on October 5, 2011, states the Claimant is alert, oriented x3 and in no apparent distress and pain free (Claimant Exhibit A, Page 2).
7. Medical exam on October 5, 2011, states the Claimant reports some fatigue and weakness for the past few days (Claimant Exhibit A, Page 8).
8. Medical exam on October 19, 2011, states the Claimant's condition is stable (Claimant Exhibit A, Page 14).
9. SHRT report dated November 1, 2011, states the Claimant's impairments do not meet/equal a Social Security listing (Medical Packet, Page 96).

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 denied due to Claimant's unknown current employment status (he was absent from the hearing and there is no competent evidence of record regarding his current employment, if any).

If disability had not already been denied at Step 1, it would be denied at Step 2. The medical evidence of record, on date of application, does not establish the Claimant's significant inability to perform basic mental/physical activities 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 is whether the Claimant's disabling complaints and diagnosed disorders, on date of application, significantly limited his ability to perform basic work activities, as defined above. Said in another way, do the diagnosed disorders impair the Claimant slightly, mildly, moderately (non-severe, as defined above) or severely, 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 medical evidence of record, this Administrative Law Judge (ALJ) finds a non-severe impairment has been established.

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 a one year **continuous** duration.

Therefore, disability is denied at Step 2.

If disability had not already been denied at Steps 1 and 2, the analysis would proceed to Step 3, where 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 416.925(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 the matter and found insufficient medical evidence of disability under a Social Security listing.

If disability had not already been denied at Steps 1 and 2, it would be denied at Step 4, where 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 1, 2 and 4, it would be denied at Step 5, where 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 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.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

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 light work, as defined above. **Under the Medical-Vocational Guidelines, an individual closely approaching advanced age of 53, with a 9th grade education, and unskilled work history who is limited to light work is not considered disabled.**

Therefore, disability has not been established at Step 1 and also 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 8, 2012

Date Mailed: June 8, 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.

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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:

