

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201153292
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 6, 2011
Bay 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 Tuesday, December 6, 2011. Claimant was not present at the hearing, his authorized [REDACTED] is [REDACTED].

ISSUE

Did Claimant, on date of application or there after, establish that he was not performing substantial gainful work?

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 September 2010, Claimant ended his last job; and whether he became an unemployment compensation benefit recipient is unknown due to his non-appearance at the hearing.
2. On December 28, 2010, Claimant applied for MA-P (3 months retro) based on medical diagnoses of herniated disc, high blood pressure, and heart condition, was denied on June 16, 2011 per BEM 260, and requested a hearing on September 3, 2011.
3. On date of application, Claimant was age 45, with a 12th grade education, and work experience as a unskilled cleaning person, factory press operator, and semi-skilled chore provider and printing press operator.
4. Medical on December 16, 2010, states that the Claimant was in discomfort, but not in acute distress; that heart had a regular rate and rhythm with no murmur, rubs, or gallops; that neurologically his upper grip strength is normal, and with lower extremities he was able to do straight

leg raising; that he had slight decrease patellar reflex on the left; that he was able to extend his great toe; and that he appeared to have good strength with that (Medical Packet, Page 23).

5. Medical exam on December 16, 2010, states that the Claimant is in no acute distress (Medical Packet, Page 31).
6. Medical exam on December 16, 2010, states that musculoskeletal peripheral vessels were adequately felt; that muscles of the limbs were non-tender; that the rest of the sensory examination is normal; that ankle jerk is negative bilaterally; that straight leg raising test 30 degrees left, 70 degrees right with left hip pain (Medical Packet, Pages 33 and 34).
7. Medical exam on December 16, 2010, states that the Claimant is in discomfort, but not in acute distress; that heart had a regular rate and rhythm with no murmurs, rubs, or gallops; that neurologically his upper grip strength is normal; that lower extremities he was able to do straight leg raising; that he had slight decrease patellar reflex on the left; that he was able to extend his great toe; and that he appeared to have good strength with that (Medical Packet, Page 51).
8. SHRT report dated November 7, 2011, states the Claimant's impairments do not meet/equal the intent or severity of a Social Security listing (Medical Packet, Page 74).

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.

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. Claimant was absent from the hearing and whether he is employed is unknown at the time of the hearing.

Claimant has the burden of proof that on or after date of application he was not performing substantial gainful work. 20 CFR 416.912.

If disability had not been denied at Step 1, it would be denied at Step 2. The medical evidence of record does not establish a severe physical impairment, for the required duration of one continuous year, 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).

Most of the medical reports of record are in December 2010. They are mostly regarding medical examination, diagnostic, and treatment reports. None of these reports provide medical assessments of Claimants work limitations/restrictions for the required one year continuous duration.

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.

There is no medical evidence of record that establishes a severe impairment lasting the required one year continuous duration.

Therefore, disability would be denied again at Step 2.

If disability had not already been denied at Step 1, the analysis would proceed to Step 3 where disability would be denied again. At Step 3, the medical evidence of record does not establish a severe impairment meeting the durational requirement under a Social Security listing.

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 Step 1, it would be denied 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.

Claimant has the burden of proof to establish inability to do past work by the preponderance of the medical evidence of record. 20 CFR 416.912.

If Claimant had not already been denied at Step 1, he would be denied at Step 5. The medical evidence of record, on date of application, does not establish Claimant was without a residual functional capacity, despite his impairments, to perform any other work in the National Economy for the one 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 residual functional capacity for less strenuous type work than his past work, such as sedentary work, as defined above. Under the Medical-Vocational Guidelines, a younger individual, age 45, with a 12th grade education, and unskilled/semi-skilled work history who is limited to sedentary work is not considered disabled.

Therefore, disability has not been established, as defined above, at Step 1 and also at Steps 2, 4 and 5 by the competent, material and substantial material 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.

201153292/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:

