

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201154221  
Issue No: 2009, 4031  
Case No: [REDACTED]  
Hearing Date: December 8, 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, a telephone hearing was held on Thursday, December 8, 2011. Claimant appeared and provided testimony on his behalf

**ISSUE**

Did Claimant, on date of application, establish severe physical impairment that had lasted or was expected to last for a one year **continuous** duration (MA-P) and 90 days (SDA)?

**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 November 2009, Claimant ended his last job.
2. On March 2, 2011, Claimant applied for MA-P/SDA based on medical diagnoses of pain in his neck and back, was denied on August 10, 2011 per BEM 260/261, and requested a hearing on September 15, 2011.
3. On date of application, Claimant was age 39, with a GED, and work experience as an unskilled restoration worker of buildings, semi-skilled as a general laborer, and skilled worker as a machine operator, roofer, house construction, and head cook for [REDACTED].
4. Medical exam on March 17, 2010, states the Claimant's neck was supple without masses or tenderness; that musculoskeletally there is no swelling, dislocation in the muscles, joints, bones etc. (medical packet, page 23).

5. Medical exam on May 4, 2010, states the Claimant's neck was supple without masses or tenderness; that musculoskeletally there is no swelling, dislocation in the muscles, joints, bones etc.; that cardiovascular is normal; that neuro/psychiatrically is normal; that extremities are normal (medical packet, pages 26-27).
6. Medical exam on July 12, 2010, states the Claimant is well-developed, well-nourished, and in no apparent distress; that musculoskeletally the Claimant has a normal gait, tone and strength, 5/5 strength in bilateral C5-T1 and L2-S1; that neurologically he is normal; that psychiatrically his mood-effect is appropriate (medical packet, page 70).
7. Medical exam on October 18, 2010, states the Claimant's neck was supple without masses and tenderness; that musculoskeletally there is no swelling, dislocation in muscles, joints, bones etc; that neuro/psychiatrically he is normal; and that his extremities are normal (medical packet, page 46).
8. Medical exam on January 24, 2011, states the Claimant is well-developed, well-nourished and in no apparent distress; that musculoskeletally he has a normal gait, tone and strength, 5/5 strength in the bilateral C5-T1 and L2-S1; that neurologically he is normal; and that psychiatrically his mood and effect are appropriate (medical packet, page 65).

### **CONCLUSIONS OF LAW**

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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 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 that the Claimant's diagnosed impairments severely and significantly limit his physical ability to do basic work activities, as defined below, for the required duration of one year continuous duration.

### **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).

Medical reports of record are mostly examination, diagnostic and treatment reports. They do not provide medical assessments of Claimant's work limitations/restrictions in order to determine whether Claimant has a severe impairment or non-severe impairment relative to performing basic work activities, 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 Claimant's testimony alone. There must be supporting medical evidence.

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

### **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 physical impairment that had lasted or was expected to last for a one year continuous duration.

The department's Program Eligibility Manual contains the following policy statements and instructions for caseworkers regarding the State Disability Assistance program: to receive State Disability Assistance, a person must be disabled, caring for a disabled person or age 65 or older. BEM, Item 261, p. 1. Because the claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not establish that claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for State Disability Assistance benefits either.

Therefore, disability has not been established Step 2, as defined above, based on 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.

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Accordingly, Medicaid/SDA denial is **UPHELD**.

/s/

William A. Sundquist  
Administrative Law Judge  
For Maura D. Corrigan, Director  
Department of Human Services

Date Signed: May 7, 2012

Date Mailed: May 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.

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:

