

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

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No. 2011-18210
Issue No. 2009
Case No. [REDACTED]
Hearing Date: May 10, 2011
Wayne County DHS (Dist. #82)

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 May 10, 2011.

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

ISSUE

Did the Department of Human Services (the department) properly deny claimant's application for Medical Assistance (MA-P)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant is currently unemployed.
2. On November 11, 2010, the claimant left his last employment due to a stroke on the job.
3. Claimant's vocational factors are: age 54, 12th grade education, and past unskilled work in a produce store stocking shelves and loading/unloading trucks, construction general labor, loading empty boxes into trucks weighing half pounds, and semi-skilled loading machine operator.
4. On December 17, 2010, the claimant applied for Medicaid, was denied on January 1, 2011 per BEM 260, and requested a hearing on January 31, 2011.

5. Claimant alleges disability due to shortness of breath, hypertension, diabetes and cerebral vascular accident (CVA).
6. Medical exam on November 9, 2010, states the claimant's gait is normal, with symmetric stride length, some dyscoordination on turning around, toe walking, heel walking and tandem walking, able to do with difficulty; his strength is 5/5 in all groups; and that tone and bulk appear normal (Medical Packet, page 15).
7. Medical exam on November 12, 2010 states the claimant's gait is normal with symmetric stride length some dyscoordination on turning around, toe walking, heel walking and tandem walking, able to do with difficulty; that strength is 5/5 in all groups; and that tone and bulk appear normal (Medical Packet, page 11).
8. Medical exam on February 23, 2011 states the claimant can button his clothes and tie his shoe laces; and he has no sensory or motor deficits in the upper extremities; that pinch and grip strength are normal; that gait is normal; that there is no evidence of stumbling, lurching, or falling at this time; that he can heel-toe walk, get on and off the examination table; and that his pedal pulses are intact; that there is no evidence of arterial or venous insufficiency; that his range of motion of the cervical spine is normal; that lumbar spine, his flexion is zero to 80 degrees, extension is zero to 20 degrees, and right and left lateral flexion is zero to 20 degrees; that straight leg raising test is zero to 65 degrees on the left side and zero to 60 degrees on the right side; that his shoulder range of movement is normal; that elbows are normal; that hips have normal range of motion; that knees have normal range of motion, ankles, wrists, hands, and fingers have normal range of motion; that claimant had a stroke November 2010 with ptosis, had loss of balance and no problem with his speech; that at this time, he has no abnormality of balance and his gait was normal; that he has no weakness in either upper or lower extremities on the right side; that he has a history of IV drug abuse in the past and he has current cocaine abuse every other day; that at this time, there seems to be no evidence of chronic brain syndrome; that, so far as this patient is concerned, his main problem is drug addiction with cocaine for which he needs treatment before he can do anything physically (Medical Packet, pages 23 and 24).
9. Medical exam on February 23, 2011 states the claimant has a normal range of motion for the cervical spine, lumbar spine, shoulders, elbows, hips, knees, ankles, wrists, hands-fingers (Medical Packet, pages 25 and 26).
10. Medical exam on February 27, 2011 states that claimant's motor skills show weakness of the right upper extremity greater than the right lower extremity; that reflexes are symmetrical; and that sensation is intact (Claimant Exhibit A, page 16).

11. Medical exam on February 27, 2011 states the claimant's cardiovascular is normal at S1 and S2 (Claimant Exhibit A, page 15).
12. SHRT report dated May 20, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 28).

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 (PAM), the Program Eligibility Manual (PEM) 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.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 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, claimant is not engaged in substantial gainful activity and has not worked since November 11, 2010. Therefore, disability is not denied at this step.

At Step 2, claimant has the burden of proof of establishing that he has a severely restrictive physical impairment that has lasted or is expected to last for the duration of at least 12 months. There is insufficient objective clinical medical evidence in the record that claimant suffers a severely restricted physical impairment expected to last for the required duration.

In short, claimant has restricted himself from tasks associated with occupational functioning based upon his reports of a disabling condition rather than the medical findings. Reported symptoms are an insufficient basis upon which a finding that claimant has met the evidentiary burden of proof can be made. This Administrative Law Judge finds that the medical record is insufficient to establish that claimant has a severely restricted physical impairment. Therefore, disability is denied at this step.

If the claimant had not been denied at Step 2, the analysis would have proceeded to Step 3 where the medical evidence of claimant's condition does not give rise to a finding that he would be a statutory listing in the Code of Federal Regulations.

If claimant had not already been denied at Step 2, this Administrative Law Judge would have to deny him again at Step 4 based upon his ability to perform his past relevant work. There is no evidence upon which this Administrative Law Judge could base a finding that claimant is unable to perform work in which he has engaged in the past. Therefore, if claimant had not already been denied at Step 2, he would be denied again at Step 4.

The Administrative Law Judge will continue to proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in his prior jobs.

If the claimant had not already been denied at Steps 2 and 4, he would be denied again at Step 5. At Step 5, the objective medical evidence does not establish that the claimant is without a residual functional capacity for other work in the national economy.

...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).

Claimant has submitted insufficient objective medical evidence that he lacks the residual functional capacity to perform some other less strenuous tasks than in his prior employment or that he is physically unable to do sedentary tasks, as defined above, if demanded of him. Claimant has failed to provide the necessary objective medical evidence to establish that he has a severe impairment or combination of impairments which prevent him from performing any level of work for a period of 12 months. The claimant's testimony as to his limitation indicates that he should be able to perform sedentary work.

Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by the objective medical evidence that he cannot perform sedentary work even with his impairments. Under the Medical-Vocational Guidelines, a person approaching advanced age 54 with a high school education and past unskilled/semi-skilled work history who is limited to sedentary work is not considered disabled. Therefore, disability is denied at Steps 2, 4 and 5.

Therefore, the claimant has not established disability, as defined above, by the necessary 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: August 12, 2011

Date Mailed: August 15, 2011

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/tg

2011-18210/WAS

cc:

