

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 201145852  
Issue No: 2009  
Case No: [REDACTED]  
Hearing Date: November 17, 2011  
Kalamazoo 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 Thursday, November 17, 2011. Claimant personally appeared with his authorized representative, from [REDACTED]

Medical Reports (Claimant Exhibit A) submitted at the hearing for second 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 March 11, 2011 claimant applied for MA-P (and 2 months retroactive), was denied on April 27, 2011 per BEM 260, and requested a hearing on July 22, 2011.
2. Claimant's vocational factors on date of application are: age 46, 12<sup>th</sup> grade education, and work experience as an unskilled car dealer miscellaneous type work, and semi-skilled work in construction of buildings and roads.
3. In 2006, claimant's last employment ended due to his job quit and thereafter he became an unemployment compensation benefit recipient from 2007 to 2008. After 2006, claimant alleges disability due to back pain, arthritis, shortness of breath, and kidney disease.

4. On December 9, 2010, the claimant's strength was good in both hip flexors, quadriceps, plantar, flexors, and dorsiflexors bilaterally; that he could walk and heel walk; that his reflexes are normal at the patella and normal at the ankle jerk (Medical Packet, page 41).
5. Medical exam on March 8, 2011, states that the claimant's strength is okay in his leg; that he has a steroid, states the claimant under went a redo left sided L5-S1, laminectomy and diskectomy on January 31, 2011; that he is back for his first post operative visit; that he is doing fairly well but continues to have a fair amount of left leg pain; but he feels it is better from before surgery; that his strength is okay in that leg; that he has no weakness in plantar flexion or dorsiflexion; that he can walk on his toes; that his incision is clean, dry and intact (Medical Packet, page 59).
6. Medical exam on March 22, 2011, states the claimant is in no acute distress; and that he is alert and oriented times three (Medical Packet, page 61).
7. Medical exam on June 2, 2011, states the claimant's strength is still normal in both hip flexors, quadriceps, plantar flexors and dorsiflexors; that he does continue to have some periodic numbness which involves all ten toes on the left-hand side; and that he is walking with the assistance of a cane (Claimant's Exhibit A, page 1).
8. Medical exam on July 12, 2011, states the claimant's A & Ox3, CN states II-XII is grossly intact; and that no motor weakness is noted and intact sensation bilaterally; that back has no point of tenderness (Claimant Exhibit A, page 4).
9. SHRT report dated September 1, 2011 states the claimant's impairments do not meet/equal a Social Security Listing (Medical Packet, page 76).

### **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.

...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 in accordance with the five 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 due to claimant's unemployment on date of application.

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 physical work 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 in this case is whether the claimant's medically diagnosed disorders significantly limit his ability, on date of application, 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 ALJ finds a non-severe impairment has been established.

### **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.

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 been denied at Step 2, the analysis would proceed to Step 3, where the medical evidence of record does not establish a severe physical impairment meeting/equaling a Social Security listing for the required duration.

Claimant introduced no evidence of record by a treating, examining, or non-examining physician addressing a Social Security listing(s) and to the contrary a SHRT medical consultant addressed and found insignificant medical evidence that claimant's impairments meet/equal a Social Security listing.

If disability had not already been denied at Step 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 Step 2, it would be denied at Step 5 as the medical evidence of record, on date of application, does not establish that the claimant was without a residual functional capacity, 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.

**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, on date of application, does not establish that the claimant was without a residual functional capacity for less strenuous work than his past work, such as sedentary work defined above.

Under the Medical Vocational Guidelines, a younger individual, age 46, with a 12<sup>th</sup> grade education, and an unskilled/semi-skilled work history who is limited to sedentary work is not considered disabled.

Therefore, disability has not been established at Step 2 and also Steps 4 and 5, as defined above 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.

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Accordingly, Medicaid denial is UPHELD.

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

Date Signed: January 23, 2012

Date Mailed: January 24, 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:

