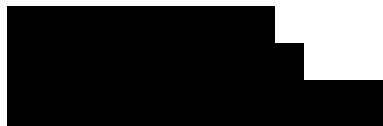


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No: 201149469
Issue No: 2009, 4031
Case No: [REDACTED]
Hearing Date: November 29, 2011
Wayne-18 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 phone hearing was held on Tuesday, November 29, 2011. Claimant appeared and provided testimony on his behalf.

ISSUE

Did claimant, on date of Medicaid/SDA application, establish a severe mental/physical impairment that had lasted, or was expected to last for one continuous year (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. Claimant never worked
2. On May 10, 2011 claimant applied for Medicaid/SDA based on a medical diagnosis of depression, migraines and allergies, was denied on July 19, 2011 per BEM 260/261, and requested a hearing August 18, 2011.
3. On date of Medicaid/SDA application claimant was aged 37 with a high school education, and no work experience
4. On March 10, 2010 medical exam stated the claimant was fully alert, well oriented x3 with good memory functions for remote and recent events; that his speech is normal; that musculoskeletal cervical spine range of motion is within normal limits; that he ambulates well and walked into examination room with a normal gait; that he has no sensory or motor deficits in the lower extremities; that his upper and lower extremities are within normal limits as to range of motion; and that range motion is normal for cervical

spine, lumbar spine, shoulders, elbows, hips, knees, ankles, wrists, hands-fingers (Medical packet, pages 42-46).

5. On November 17, 2010, medical exam states the claimant's GAF score of 55-60 (Medical Packet, page 51).
6. On June 27, 2011, medical exam states claimant's examination areas are all normal generally and for HEENT, respiratory, cardio-vascular, abdominal, musculoskeletal, neuro and mentally subject to the capacity to answer simple questions; that his condition is stable; and that he answers only the simplest questions, but can do what he is told and seems to understand (Medical Packet, pages 22-23).
7. On September 27, 2011 SHRT report states the claimant's impairments do not meet/equal a social security listing (Medical Packet, page 59).

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.

The burden of proof is on the claimant to establish disability in accordance with the 5 step process below. ...20 CFR 460.912(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. The evidence of record establishes that the claimant has never engaged in substantial gainful activity.

At step 2, disability is denied. The medical evidence of record does not establish that on date of application the claimant was significantly limited with a severe mental/physical impairment from performing basic work activities, as defined below, for the required duration of one **continuous** year, as stated 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 medical reports of record introduced by claimant are mostly examination, diagnostic, and treatment reports. They do not provide assessments of the claimant's work limitations/restrictions in order to determine whether he has a severe or non severe impairment (s) as defined above. Said 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.

The medical evidence of record establishes the claimant's GAF score of 55-60 in November, 2010. This score is related to persons who have non severe difficulty with job functioning. DSM-IV (Fourth edition-revised).

Medical disability cannot be established by the testimony alone of the claimant that he cannot do any work due to his multiple diagnostic impairments. There must be medical evidence of record supporting the inability to do any work on date of application.

It is the well settled law that Administrative Law Judge's (ALJ'S) are not permitted or allowed to speculate or guess at material facts in dispute. And it would only be a guess on the part of this ALJ in finding a severe impairment based on the medical evidence of record.

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.

You cannot be determined disabled without medically establishing the duration requirement. The medical evidence of record does not establish on date of application a severe impairment that has lasted or was expected to last one continuous year.

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, 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/SDA denial is UPHELD. .

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

Date Signed: April 25, 2012

Date Mailed: April 25, 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

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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/las

cc:

