

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201250204
Issue No: 2009
Case No: [REDACTED]
Hearing Date: July 10, 2012
Jackson 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, July 10, 2012. Claimant appeared with his [REDACTED], [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

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. Claimant's MA-P application on September 28, 2011 was denied on February 3, 2012 per BEM 260, with a hearing request on April 27, 2012.
2. Vocational factors: Age 49, with a 11th grade education, and history of skilled work (Medical Packet, Page 55).
3. Last employment ended June 2010.
4. Disability is alleged due to a combination severe physical impairment (Medical Packet, Page 61).
5. Medical reports state the Claimant on:
 - a. June 6, 2011, is a well-developed, well-nourished, and in no apparent distress; that musculoskeletally he has no gross

deformity; that neurologically is alert and oriented x3; and that motor and sensory are grossly intact (Medical Packet, Page 37).

- b. July 7, 2011, is negative for cardiovascular chest pains, that neurologically he has left-sided weakness; that he is well-developed, well-nourished, moderately obese and in no apparent distress; that he has normal muscle tone, bulk and strength in all of four extremities with exception of left lower extremity; that he was able to raise the left lower extremity at least to antigravity; that he is intact to light touch; that his coordination is intact on the right; that he had a limp on the left side; that his left eye weakness is largely improved (Medical Packet, Pages 41 and 42).
- c. August 8, 2011, has a deteriorating condition (Medical Packet, Page 18).
- d. October 13, 2011, is not in any acute distress; that his range of motion of the elbow and wrist is ok; that he can make a fist in both hands; that right are is normal; that on his abdomen there is a small scar, about a 6 inch area on the trunk as well as on the left side of his chest, there is some scarring present in the area for the 6 inches; that there is significant scarring on the entire thigh of the left leg; that his shins and lower extremities below the knees are fairly ok with normal skin; that cardiovascularly he has a regular rate and rhythm with no murmurs or gallops; that musculoskeletally he has a normal range of motion; that the left shoulder has a normal range of motion; that the right shoulder has 2+ tenderness of the AC joint but range of motion is normal although he winces on extreme abduction beyond a 130°-140° degrees; that bilateral knees, elbows, and wrists are normal; that the hands are normal; that he could ambulate fairly ok; that he could squat; that he could get on and of the table; that near vision (without glasses) of the right eye was 20/400, left eye was 20/200, that distant vision (without glasses) was 20/13 for the right eye and 20/40 for the left eye; that motor sensory, bulk and tone of the upper extremities are normal; that there is no evidence of sensory deficit; that Romberg sign is negative; that there was no evidence of incoordination; and that this burns are well healed (Medical Packet, Page 102).

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.

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 are used as a guideline and 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 established the Claimant has not been engaged in substantial gainful activities since June 2010.

At Step 2, disability is denied. The medical evidence of record, on date of application, does not establish the Claimant's significantly functional incapacity to perform basic work activities due to a combination severe physical impairment for a one year continuous duration, as define 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).

SEVERE IMPAIRMENT

To qualify for MA-P, claimant must first satisfy both the gainful work and the duration criteria (20 CFR 416.920(a)) before further review under severity criteria. If claimant does not have any impairment or combination of impairments which significantly limits physical or mental ability to do basic work activities, an ultimately favorable disability determination cannot result. (20 CFR 416.920(c)).

The Claimant testified that he helps out on the family farm doing daily chores, such as feeding the horses and taking them out to pasture; that he can lift/carry 25 pounds; and that he has the physical residual functional capacity (RFC) to perform sedentary physical work similar to the DHS representative at the hearing.

The medical reports of record are mostly examination, diagnostic, and treatment reports. They don't provide medical assessments of Claimant's mental/physical limitations relative to his functional incapacity to perform basic work activities, as defined above. ...20 CFR 416.913(c)(1) and (2). State differently, does the combination mental/physical impairment medically impair the Claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical evidence of record does not establish a combination severe mental/physical impairment meeting the one year continuous duration requirement. It established a non-severe impairment.

If disability had not already been denied at Step 2, it would also be denied at Steps 3, 4 and 5. The medical evidence or record, on date of application, for the required durations, does not establish Claimant's impairments meet/equal a Social Security listing at Step 3, inability to perform any past work at Step 4, and without a residual functional capacity (RFC) to perform any other work such as sedentary work, as defined below in the National Economy at Step 5.

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).

Therefore, disability has not been established at Step 2 and also has not been established at Steps 3, 4 and 5 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, MA-P denial is **UPHELD**.

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

Date Signed: August 28, 2012

Date Mailed: August 29, 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:

