

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20121520
Issue No: 2009
Case No: [REDACTED]
Hearing Date: December 21, 2011
Calhoun 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 Wednesday, December 21, 2011. Claimant appeared with his authorized representative, [REDACTED]

Medical reports (Claimant Exhibit A) submitted at the hearing for a second SHRT review delayed the decision and order 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 December 16, 2010, claimant applied for MA-P (and 3 months retro), was denied on June 24, 2011 per BEM 260, and requested a hearing on September 21, 2011.
2. Claimant was age 45, and had a high school plus education, with work experience as an unskilled retail furniture store-warehouse loading/unloading trucks, security guard, hardware store [REDACTED], and sales and unloading trucks, and semi-skilled baker of cakes at [REDACTED].
3. In September 2005, claimant quit his last job due to medical reasons.

4. In November 2010, claimant alleges disability due to heart, musculoskeletal and shoulder disorders.
5. Medical exam on November 22, 2010, states the claimant is a well-developed male in obvious acute distress; that his cardiovascular heart sounds were regular, and normal S1, S2; that neurologically he is intact; and that the balance of the physical exam was otherwise unremarkable (Medical Packet, Page 185).
6. Medical exam on May 11, 2011, states the claimant's physical condition is stable (Medical Packet, Page 220).
7. Medical exam on June 17, 2011, states the claimant has non-healing surgical wounds status post incision and drainage; that he is making some progress; that he still has some tenderness at the gluteal fold; that he is ambulatory; that his pain is a 2 on a scale 0-10, so mild; and that wound number 1 is the right buttocks at the gluteal fold (Claimant Exhibit A, Page 17).
8. Medical exam on June 24, 2011, states that the buttocks wound appears to be doing well (Claimant Exhibit A, Page 6).
9. Medical exam on July 8, 2011, states that the claimant continues to make significant progress with his wound; that pain has diminished; that drainage has also diminished; that he will be seen back in a week's time; and that hopefully he will be entirely healed especially if he makes as much progress as he has in the last week (Claimant Exhibit A, Page 20).
10. Medical exam on August 30, 2011, states the claimant is in no acute distress, although he relates a pain level of 4 on a 10-point scale in the buttocks area (Claimant Exhibit A, Page 19).
11. SHRT report dated January 26, 2012, states the claimant's impairments do not meet/equal a social security listed impairment.

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 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. Claimant has not been engaged in substantial gainful work since September 2005.

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 all cases for the Administrative Law Judge is whether the claimant's medically diagnosed disorders and disabling complaints significantly limit his ability 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 evidence of record establishes a non-severe physical impairment.

Most of reports of record were examination, diagnostic and treatment reports, and do not provide medical assessment evaluations of claimant's basic work limitations/restrictions, as defined above.

Therefore, a severe physical impairment was not established on date of application.

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 established a severe impairment, as defined above, before the claimant's application, but not on date of application 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 listed for the required duration.

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 the 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 where the medical evidence of record, on date of application, does not establish the claimant was without a residual functional capacity (RFC), 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 of record, on date of application, does not establish that the claimant was without a RFC for less strenuous work than his past work, such as sedentary work, as defined above. Under the medical-vocational guidelines, a younger individual age 45, with a high school education, and 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 at Steps 4 and 5, 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 denial is **UPHELD**.

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

Date Signed: April 6, 2012

Date Mailed: April 6, 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:

