

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

IN THE MATTER OF:



Reg. No: 201229407
Issue No: 2009
Case No: [REDACTED]
Hearing Date: April 11, 2012
Manistee 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 telephone hearing was held on Wednesday, April 11, 2012. Claimant appeared and provided testimony on his behalf.

The record was extended 90 days at claimants request for a 2nd SHRT review of additional medical reports introduced at the hearing (Claimant Exhibit A).

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 November 21, 2011 was denied on January 17, 2012 per BEM 260, with a hearing request on January 30, 2012.
2. Claimant was 51, with a 12th grade education, and history of semi-skilled/skilled work (Medical Packet, Page 256).
3. Claimant ended his last self-employment in 2008, and became an unemployment compensation benefits recipient (UCB) with exhaustion on December 15, 2010.
4. Claimant alleges disability based on a combination of multiple medically diagnosed physical disorders (Medical Packet, Page 74).

5. Medical reports state the Claimant on:
 - a. July 27, 2011, was alert, oriented, pleasant, well-developed, and well-nourished; that he demonstrates a good range of motion of both shoulders for alleviation and internal rotation; that he is non-tender to the touch; that he has good strength of his supraspinatus and infraspinatus; that he has mild acromioclavicular arthritis; and that he has good strength (Medical Packet, Page 54).
 - b. September 27, 2011 and November 14, 2011, he should limit his pushing and pulling to no greater than 10 pounds; and he should limit his lifting to greater than 10 pounds and holding above head for more than 10 minutes (Medical Packet, Page 60).
 - c. November 14, 2011, has a stable condition (Medical Packet, Page 18).
 - d. November 23, 2011, has moderate diskogenic degenerative change at C5-6 with disc space narrowing; that craniovertebral junction and cervical cord are normal; that spinal canal at C2-3, C3-4, and C4-5 are unremarkable; that at C6-7 there is moderately large left paracentral disk herniation; and that there is no abnormality at C-7-T1 (Medical Packet, Page 34).
 - e. February 25, 2012, has a stable condition (Claimant Exhibit, Page 87).

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 Claimant has the burden of proof to establish disability as defined above by the preponderance of the evidence of record and in accordance with the 5 step process below. 20 CFR 416.912(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).

Disability is not denied at Step 1. The evidence of record establishes that the Claimant has not been engaged in substantial gainful work since 2008.

Disability is denied at Step 2. The medical evidence of record does not establish, on date of application, the Claimant's significant inability to perform basic work activities

due to a combination severe physical impairment for a 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 medical reports of record are mostly examination diagnostic and treatment reports, and do not provide medical assessments of Claimant's physical limitations relative to inability to perform basic work activities, as defined above. 20 CFR 416.913(c)(1) and (2). Stated differently, does the combination physical impairment impair the Claimant slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The medical evidence of record established a combination non-severe impairment, as defined above. Therefore, a combination severe physical impairment meeting the one year continuous duration requirement, as defined above, has not been established.

Therefore, disability has not been established at Step 2 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: May 31, 2012

Date Mailed: May 31, 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:

