

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201243911
Issue No: 2009
Case No: [REDACTED]
Hearing Date: June 20, 2012
Ingham 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 3-way telephone hearing was held on Wednesday, June 20, 2012. Claimant appeared with his authorized [REDACTED]. The Department's witness was [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. MA-P application on July 22, 2011 was denied on December 28, 2011 per BEM 260, with a hearing request on March 20, 2012.
2. Vocational factors: Age 54, 9th grade education, and semi-skilled work history.
3. Last employment ended in 2005.
4. Disability is alleged due to a combination physical impairment (Medical Packet, Page 3).
5. Medical reports state the Claimant on:
 - a. July 18, 2011, musculoskeletally denies weakness, wasting, myalgias and arthralgias; and that he is well-developed, well-

nourished, and in no apparent distress; that cardiovascularly he has S1, S2, regular rate and rhythm with no murmurs, rubs or gallops; that neurologically his cranial nerves are normal; that he has good reflexes and normal motor strength in all four limbs (Medical Packet, Pages 32, 42 and 52).

- b. August 24, 2011, has no acute distress, well-nourished, well-developed, and cooperative; that cardiovascularly he has normal S1, S2; that he has no murmurs, rubs, or gallops; that musculoskeletally he shows a normal spine alignment and range of motion with no deformities; and that neurologically his exam is intact (Medical Packet, Page 79).
 - c. September 30, 2011, has regular heart rate and rhythm without ectopy or significant murmur; that he has mild cardiomyopathy (Medical Packet, Page 55).
 - d. October 19, 2011, has a stable condition; that he has no limitations from a cardial standpoint; that he can frequently lift/carry 50 pounds or more; that he can stand and/or walk about 6 hours in an 8 hour workday and sit about 6 hours in an 8 hour workday; that he needs no assistive device for ambulation; that he is able use his extremities for a repetitive actions (Medical Packet, Page 20).
6. SHRT decision dated May 10, 2012 states the Claimant's impairments do no meet/equal a Social Security listing (Medical Packet, Page 88).

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).

At Step 1, the evidence of record established that the Claimant has not been engaged in substantial gainful work since 2005.

At Step 2, the medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity 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).

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 admitted at the hearing that he had the residual functional capacity (RFC) for light work, such as landscaping work 10 hours a week; and that he could lift 15 to 20 pounds.

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls.... 20 CFR 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. 20 CFR 416.967(b).

The medical reports of record are mostly examination, diagnostic and treatment reports. They do not provide medical assessments of Claimant's physical limitations relative to his functional incapacity 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 does not establish a combination severe physical impairment meeting the one year continuous duration requirement. It establishes a non-severe impairment.

Therefore, disability is denied at Step 2.

If disability had not been denied at Step 2, the analysis would proceed to Step 3. The medical evidence of record does not establish the Claimant's impairments meet/equal a Social Security listing for the required duration.

If disability had not already been denied at Step 2, it would be denied at Step 4. 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. 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, an individual closely approaching the age of 54, with a 9th grade education, and 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 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: June 25, 2012

Date Mailed: June 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 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:

