

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 20135711
Issue No: 2009
Case No: [REDACTED]
Hearing Date: February 26, 2013
County: Oakland County DHS #02

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 Tuesday; February 26, 2013. Claimant appeared and provided testimony on his behalf. 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. On May 24, 2012 Claimant applied for Medicaid (and three months retro), was denied on July 31, 2012 per BEM 260, and requested a hearing on October 15, 2012.
2. Vocational factors: Age 49, high school education, and past 15-year work experience as a skilled cook with school training in the Army for eight weeks.
3. Claimant's last employment ended one year ago.
4. Claimant's medically diagnosed disorders are scoliosis and spondylosis with degenerative disc disease. (DHS Exhibit A, Pg. 41).
5. Claimant's disabling symptoms are chronic lower back pain and radiating pain from knees to feet.

6. Medical reports of examinations state the claimant on:
 - a. June 22, 2011: Has a normal range of motion of the lumbar spine and knees; that he is able to shut and close, tie shoes, dress-undress, dial telephone, open door, make a fist, pick up coin, pick up pencil, write, get on and off exam table, and climb stairs; that he is able, for a few minutes, to sit, stand, bend, stoop, carry, push, and pull; that he cannot walk on heels and toes in tandem; that his gait is stable and within normal limits; that there is no evidence to support the need for a walking aid; that grip strength is 5/5. (DHS Exhibit A, Pgs. 36-39).
 - b. June 29, 2011: His lumbar spine indicates *mild* levoscoliosis of L5 with *moderate* spondylosis and degenerative disk disease a L4-5 and L5-S1; that he currently takes no medications; that he is able to get off and on the examination table independently; that he walked around the examination room favoring his right leg; that his gait was *stable*; that there is no clinical evidence that would support the need for a walking aide; that straight leg raising in the supine position complaints of pain at 40 degrees of elevation that was quite severe; that in the supine position he was *able* to hold his knees in the *fully* extended position of 90 degrees for a *prolonged* period of time; that knee tendon reflexes are symmetric in the four extremities; that give way weakness was seen in the lower extremities; that range of motion in both knees was *full*; and that there was no clinical evidence for knee range, (DHS Exhibit A, Pgs. 34 & 35)
7. State Hearing Review Team decision dated December 17, 2012 states the Claimant's impairments do not meet/equal a Social Security listing for the required duration. (DHS Exhibit A, Pg. 41).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department

policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 by the objective medical evidence of record that he is disabled in accordance with the five step sequential evaluation below. ...20 CFR 416.912(a).

The burden of proof shifts to the DHS at step five20 CFR 416.994 (b)(1)(v).

Acceptable medical sources about your impairments are an M.D. or D.O. or fully licensed psychologist. BEM 260. Medical reports would include:

- Your ability to do work-related activities such as sitting, standing, moving about, lifting, carrying, handling objects, hearing, speaking, and traveling.
- In cases of mental impairments, your ability to reason or make occupational, personal, or social adjustments. ...20 CFR 416.913(a)(b)(1) and (2).

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).

Step 1, disability is not denied. The objective evidence of record established the Claimant has not been engaged in substantial gainful activities since one year ago. Therefore the sequential evaluation is required to continue to the next step.

Step 2, disability is denied. The object medical evidence of record, on date of application, does not establish the Claimant's significant functional incapacity, based on the de minimus standard, to perform basic work activities due to a severe physical impairment in combination 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 medical reports of record are mostly examination, diagnostic, treatment and progress reports. They do not provide medical assessments of Claimant's basic work limitations for the required duration. Stated differently, how do the Claimant's medically diagnosed disorders significantly incapacitate her functional ability to perform basic work activities for the required duration? Do the disorders impair the Claimant's ability slightly, mildly, moderately (non-severe impairment, as defined above) or severely, as defined above?

The Claimant's disabling symptoms (Findings of Fact #5) are not supported by the objective medical evidence of record (Findings of Fact #6).

The medical evidence states the Claimant had a *normal* and *full* range of motion of the lumbar spine and knees; that his gait was *stable*; that there was no clinical evidence that would support the Claimant's need for a walking aide; that he was *able* to hold his knees in a fully extended position of 90 degrees for a *prolonged* period of time; and that his lumbar spine had a *mild* (non severe) levaccoliosis LF with *moderate* (not severe) spondylosis and degenerative disc disease at L4-5 and L5-S1.

The medical evidence of record states the Claimant is able to sit, stand, bend, stoop, carry, push, for a two minutes. This is a conclusion and not supported by the other medical evidence of record.

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

Claimant claims disabling chronic low back pain and radiation from knees to feet.

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

Administrative law judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals. Delegation of Hearing Authority, July 13, 2011, per PA 1939, Section 9, Act 280.

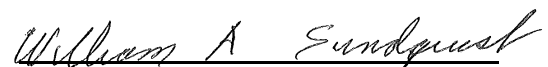
Therefore, the sequential evaluation is required to stop at Step 2.

The Claimant has not sustained his burden of proof to establish disability, 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 disability was not medically established.

Accordingly, MA-P denial is **UPHELD** and so ORDERED.



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

Date Signed: April 24, 2013


Date Mailed: April 25, 2013

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/hj

cc:

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