

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201124680
Issue No. 2009
Case No. [REDACTED]
Hearing Date: June 9, 2011
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 June 9, 2011. The claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED] Specialist, appeared and testified.

ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA) benefits on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 1/14/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 2/22/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 2/24/11, DHS denied Claimant's application for MA benefits.
5. On 3/7/11, Claimant requested a hearing disputing the denial of MA benefits.

6. On 4/4/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 37).
7. As of the date of the administrative hearing, Claimant was a 21 year old male ([REDACTED]) with a height of 6'2" and weight of 250 pounds.
8. Claimant has no relevant history of smoking, alcohol or drug abuse.
9. Claimant's highest education year completed was the twelfth grade.
10. Claimant claimed to be a disabled individual based on an enlarged scrotal mass.

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). DHS (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 2/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories. It was not disputed that Claimant's only potential category for Medicaid would be as a disabled individual. It was also not disputed that if Claimant is not disabled, then Claimant would be ineligible for AMP due to a freeze on enrollment for that program.

Disability is established if one of the following circumstances applies:

- the applicant is dead (applicable for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits through the Social Security Administration (SSA);
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances). BEM 260 at 1-2.

It was not disputed that none of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) 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. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927.

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities includes:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience

were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended “to do no more than screen out groundless claims.” *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

In determining whether Claimant’s impairment is a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by first reviewing Claimant’s medical history.

On 1/13/11, Claimant went to [REDACTED] concerning treatment of the scrotal mass (see Exhibits 17-36). The examining physician concluded Claimant’s “scrotum was markedly enlarged with the posterior portion being larger” (Exhibit 28). A “final result” report (Exhibits 38-39) from this hospital visit concluded Claimant’s left testicle was 4.2 cm in greatest sagittal dimension and 3x2.1 cm, in transverse dimensions. Claimant’s right testicle was 3.6 cm in greatest sagittal dimension and 2.9x1.9 in transverse dimensions.

The “final result” report and Claimant’s testimony agreed that Claimant’s impairment was an enlargement within the scrotal sac but had no impact on Claimant’s testicles. The “fat like material within the scrotal sac” was recommended to be treated by an “MRI on a nonemergent basis” with a “surgical consultation”.

On 1/25/11, Claimant was examined by a physician at [REDACTED] (see Exhibit 16). The examining doctor concluded Claimant was “unable to sit, stand or walk without discomfort due to a large scrotal mass which requires surgical treatment as soon as possible”. The physician further concluded Claimant was disabled from manual and sedentary employment until definitive surgical treatment of the mass.

Claimant described his impairment as a grapefruit sized enlargement within his scrotum. Claimant testified that the enlargement affected all of his physical movements and even his stationary positions. Claimant described any physical movement caused him discomfort and even sitting was uncomfortable unless he was sitting back with his legs up.

Based on the presented evidence, there was a sufficient basis to find that Claimant’s basic work activities were affected by the scrotal enlargement. Claimant’s testimony concerning his discomfort in even a sitting position was graphic and persuasive. It is found that Claimant has a severe impairment to pass the de minimus standards of step two. Accordingly, the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant’s impairment, or combination of impairments, is listed in Appendix 1 of Subpart

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Part 404.20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If a listed impairment is not met, then the analysis moves to step four.

Claimant's impairment of scrotal sac enlargement is not covered by a SSA listing. Thus, it can only be found that Claimant cannot be deemed disabled at step three and the process may proceed to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though 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. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant's employment history consists mostly of employment involving physical labor. Claimant listed employment (see Exhibit 7) as a laborer from 2/2007-5/2007 and as a mover from 6/2007-8/2007. Claimant also testified that he has held extensive employment involving working with concrete. He stated that this employment involved a lot of physical movements including lengthy periods of lifting, bending, standing and walking. Claimant stated that the job typically required lifting heavy items such as broken pieces of concrete. Claimant also stated that he worked for a resale shop for four months where he was expected to move furniture. Claimant also stated that he tried to work for one week in 4/2010 but had to quit due to his inability to perform the physical aspects of the job.

It is reasonable to believe that the furniture and broken concrete carried and moved by Claimant would weigh up to 100 pounds. It is equally reasonable to expect that the jobs required significant lifting and standing. Based on the evidence, the undersigned finds that Claimant's past employment would be characterized as heavy work.

It must also be determined how, if at all, Claimant's impairment would affect a return to his past employment. Claimant stated the growth affected his walking, standing and lifting. Claimant credibly described an inability to perform physical activities for any lengthy period of time due to the scrotal sac enlargement. Claimant described pains of chaffing, rubbing and awkwardly moving his body when he has attempted to work around the impairment. He also testified that he could not adjust himself to make the physical labor tolerable.

As part of the basis for finding that Claimant was not disabled, SHRT relied on the 1/13/11 medical examination which quoted Claimant as stating that Claimant had no pain except when sitting on the scrotum (see Exhibit 27). Though the undersigned has no doubt that Claimant made such a statement, the undersigned doubts whether Claimant intended the statement to apply to physical labor. At the time of the statement, Claimant had not worked for several months.

Based on the significant physical labor involved in Claimant's past employment, the undersigned could easily imagine how the impairment would prevent Claimant from performing heavy physical work. It is found that Claimant is incapable of performing his past employment. Accordingly, the disability analysis may proceed to step five.

In the fifth and final step of the disability analysis an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 48 years, thus, considered to be a younger individual for purposes of disability. Claimant has a high school education and a work history of unskilled work. Disability is found if an individual is unable to adjust to other work. *Id.*

At the fifth step in the analysis, the burden shifts from Claimant to DHS to present proof that Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c)

No finding was made in step four concerning what level of work Claimant is capable of performing. As stated previously, an examining physician concluded Claimant was unable to sit, stand or walk without discomfort and deemed Claimant to be disabled from manual and sedentary employment until definitive surgical treatment of the mass.

SHRT indicated that Claimant's growth was improving or expected to improve within 12 months. The undersigned finds no evidence to support this assertion. The physician responsible for Claimant's 1/25/11 examination recommended a finding of disability until surgery, not disability until a natural shrinking of the enlargement. The physician's diagnosis unequivocally supports a finding that Claimant is incapable of even sedentary employment. However, the diagnosis was not the only one in the file.

Also, the 1/13/11 examination study result found Claimant's impairment to be "slowly increasing in size recently" (see Exhibit 34). This tends to show that the growth is getting bigger, not smaller.

A hospital discharge document dated 1/13/11 categorizes Claimant's impairment as "not serious" (see Exhibit 18) though the undersigned believes that statement concerned whether the growth was cancerous. The undersigned is not terribly persuaded that the discharge document's statement affects the determination whether Claimant is capable of employment.

Based on the totality of the evidence, there is sufficient evidence to find that Claimant's impairment prevents him from performing even sedentary employment. Even if Claimant could find a job which allowed lengthy periods of sitting, Claimant's testimony and the medical conclusions support that Claimant is not even capable of lengthy periods of sitting. It is found that Claimant is not capable of sedentary employment and accordingly, is a disabled individual for purposes of MA benefits.

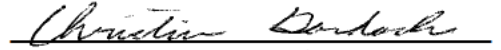
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application requesting MA benefits. It is ordered that DHS:

- reregister Claimant's application dated 1/14/11 for MA benefits;
- process Claimant's application based on the finding that Claimant is a disabled individual; and
- supplement Claimant for any benefits not received as a result of the improper denial.

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The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services



Date Signed: June 29, 2011

Date Mailed: June 29, 2011

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.

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cc: 
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Christian Gardocki
Administrative Hearings