

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201133693
Issue No. 2009; 4031
Case No. [REDACTED]
Hearing Date July 13, 2011
Wayne County DHS (43)

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 July 13, 2011 from Detroit, Michigan. The claimant appeared and testified. 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) and State Disability Assistance (SDA) 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 3/11/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 5/6/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-7)
4. On 5/12/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 3-5) informing Claimant of the denial.

5. On 5/16/11, Claimant requested a hearing (see Exhibit 2) disputing the denial of SDA and MA benefits.
6. On 6/7/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 124) based, in part, on Vocational-Rule 202.21.
7. As of the date of the administrative hearing, Claimant was a 48 year old male (DOB 10/3/62) with a height of 6'1" and weight of 194 pounds.
8. Claimant has no relevant his history of tobacco, alcohol or drug abuse.
9. Claimant's highest education year completed was the 12th grade.
10. Claimant received medical coverage (Adult Medical Program) benefits since approximately 12/2010.
11. Claimant claimed to be a disabled individual based on impairments associated with a stroke and injuries to his foot and leg.

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 5/2011, the estimated 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.

Disability is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- 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).

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 nearly 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

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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 include:

- 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 F2d 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).

Claimant testified that he is disabled based on his right ankle being crushed from a fall he took from a ladder. The surgery required to repair the ankle kept Claimant hospitalized from 10/2010-12/2010. Claimant also stated in 1/2011, he suffered a stroke and has deteriorated dexterity as a result.

In determining whether Claimant's impairments amount to a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by reviewing Claimant's medical documentation.

The Social Summary (Exhibits 15-16) completed by the testifying DHS specialist noted on 4/5/11 that Claimant walked with crutches and had a brace on his right foot. No other relevant observations were noted.

A Medical Examination Report (Exhibits 17-18) noted several items, many were illegible. Claimant was suspected of having a neurological disorder. Claimant's condition was noted as stable.

Discharge instructions were presented from Claimant's initial hospital entry immediately following his ladder fall (Exhibits 30-32) Claimant was admitted on 10/16/10 and discharged on 10/27/11. It was noted that Claimant was scheduled for discharge on 10/21/10 but extended due to his homelessness.

A discharge summary from Claimant's right ankle fusion was submitted (Exhibits 27-29). The discharge recommendations included: showers but not baths (to prevent Claimant's right foot cast from getting wet), a follow-up appointment with a doctor on 12/14/10 and various medications including a pain reliever and stool softener.

Additional hospital records concerning Claimant's hospital admission were included as Exhibits 33-52. The undersigned found no notable information within these documents.

There was a total absence of evidence that Claimant suffered a stroke or suffered any consequences from a stroke. The undersigned is not inclined to find a disability based on a stroke without the support of medical records.

Based on the above noted medical records, it was established that Claimant was disabled and had a severe impairment. Claimant's physical basic work activities would have been completely impaired by Claimant's serious foot injury. However, it must be determined whether the disability was expected to have a 12 month duration.

Surgical follow-up documents were presented. A 1/13/11 document (Exhibits 55-56) noted Claimant would be unable to place weight on his leg and a note was written for Claimant to be off work until 3/2011. A 2/10/11 dated examiner recommended a four week extension of non-weight-bearing on Claimant's foot (see Exhibit 54). A 3/1/11 document (Exhibit 53) noted Claimant would be transitioned partial weight-bearing in a walking cast.

Reports covering examinations that occurred prior to 1/13/11 were also presented (Exhibits 57-65). The undersigned is inclined to rely on the more recent reports to evaluate Claimant's impairments.

Hospital test notes dated 3/1/11 noted that Claimant was ambulatory and provided with a cast shoe. Claimant attended the appointment by himself and was discharged to home. Older hospital documents were included as Exhibits 72-119.

Claimant was examined on 4/12/11 (Exhibits 8-14) by a DHS referred physician. Claimant was noted by the examiner as walking with a cane and wearing a special shoe on his right foot. The examiner noticed "not much limping". It was also noted that Claimant was able to walk into the evaluation room without use of the cane or shoe. The examiner noted Claimant could work eight hours day. Claimant was medically approved to sit, stand and walk for short periods with minimal bending. Claimant was recommended to avoid crouching, crawling and squatting. Claimant was also noted as being capable of lifting 5-10 weights without difficulties.

Claimant was adamant that he was completely reliant on friends and or family members to help him with basic daily activities. Claimant's statements concerning his daily living activities are documented (Exhibits 22-26). Claimant noted that he needs help with housework, fixing meals since he broke his foot. Claimant testified that he cannot even take a bath without needing someone else to help him get out of the bathtub. If Claimant's testimony was supported, it would be persuasive evidence that Claimant still suffers from a disability. However, there is an absence of medical records supporting Claimant's testimony. Claimant was given the option to extend the record for the submission of further medical evidence but declined.

Based on the totality evidence, there is insufficient evidence whether Claimant established a disability for a twelve month period. Though Claimant suffered a severe impairment by breaking his foot, the medical records do not establish any significant impairment beyond six months from the date of the injury. It is found that Claimant failed

to establish a severe impairment expected to last 12 months. Accordingly, it is found that DHS properly denied Claimant MA benefits.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

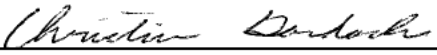
A failure by Claimant to establish disability for MA benefits does not preclude a finding of disability for SDA benefits. If it is found that Claimant was disabled for a 90 day period, then Claimant could be eligible for SDA benefits.

The undersigned is inclined to find that Claimant was disabled at least through 2/2011. The records verify that Claimant's treating physician provided Claimant with a note excusing him from work until at least 3/2011; unfortunately, the records are silent about further work excuses.

Based on the presented medical records, there is simply no basis to find a disability beginning 3/2011. As Claimant's application was submitted on 3/11/11, there would be no basis to issue SDA benefits for a time Claimant was not disabled. Accordingly, for purposes of Claimant's application dated 3/11/11, it is found that DHS properly denied SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA and SDA benefits to Claimant on the basis of a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.


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

Date Signed: July 26, 2011

Date Mailed: July 26, 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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