

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201135485  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: August 1, 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 August 1, 2011 from Detroit, Michigan. The Claimant appeared and testified; Carole Alberts 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 3/28/11, Claimant applied MA benefits including retroactive benefits for 11/2010-2/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/27/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 5/6/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 19-20) informing Claimant of the denial.

5. On 5/16/11, Claimant requested a hearing disputing the denial of MA benefits.
6. On 6/14/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 21) on the basis that Claimant retains the capacity to perform his past relevant work.
7. As of the date of the administrative hearing, Claimant was a 48 year old male (DOB 4/14/63) with a height of 5'8" and weight of 150 pounds.
8. There was no relevant history of tobacco, alcohol or drug abuse.
9. Claimant has a Bachelor of Art Degree (Engineering) and a Master's Degree.
10. Claimant has no current medical coverage and last received medical coverage in 2008.
11. Claimant claimed to be a disabled individual based on impairments and symptoms including: headaches, dizziness, cramps, lethargy, irritable bowel syndrome, skin eruptions, tendonitis, food allergies, asthma, hypothyroidism, depression, back pain and obsessive-compulsive disorder (OCD).

### **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 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

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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 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> Cir. 1986).

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.

Claimant presented a Medical Examination Report (Exhibits 8-9) dated 4/16/11. The examining physician diagnosed Claimant with: chronic fatigue, asthma, hypothyroidism, allergies, chronic headaches and chronic dizziness. It was noted that Claimant was capable of meeting his needs in the home. The examining physician only had a history with Claimant since 3/22/11 so no determination was made concerning whether Claimant's condition was improving, deteriorating or remaining stable due to the short time spent as Claimant's physician.

Lab tests were attached as Exhibits 10-11. The tests verified an over-active thyroid. Claimant's thyroid-stimulating hormone (TSH) was verified at a level of 5.53, well outside of the normal range of .4-4.00 uIU/ML. The results also verified high levels of cholesterol and LDL cholesterol levels. Both levels could contribute to Claimant's complaints of fatigue.

Claimant's gamma-glutamyltransferase (GGT) levels were measured at 356 based a reference range of 15-85 u/l. The submitted documents presented no particular explanation for the heightened GGT level. The undersigned understands that the level may be indicative of alcohol consumption or abuse, liver or pancreatic diseases or many other possible explanations.

Lab test results from 1/11/11 (Exhibits 41-42) and 9/13/10 (Exhibits 43-44) documented similar results for Claimant's cholesterol, GGT and TSH levels. Older test results (Exhibits 45-48) were also presented and verified comparable cholesterol levels though Claimant's TSH levels were within the normal range for results from 1/11/10 and 7/7/09.

Lab results from 3/31/09 (Exhibit 48) were presented. In response to Claimant's complaint of breathing difficulties, the physician found no notable pulmonary problems with Claimant.

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Claimant presented a record of his daily activities (Exhibits 12-16). The only notable evidence from the record was that Claimant decreased his overall activities. For example, Claimant stated he only now does laundry but used to perform all household chores and cooking.

Claimant also presented various medical records (Exhibits 22-48) from his appointments with Neighbors Caring for Neighbors Clinic. Based on the dates within the medical records, Claimant appeared to have received treatment over the last three years. The records mostly contain documentation of Claimant's prescription issuances.

The records tend to verify much of Claimant's testimony concerning his numerous physical obstacles. The records discuss Claimant's asthma, hyperthyroidism, anxiety and headaches among other issues. Claimant's asthma varied in stability; it was "well controlled" on 1/7/09, 5/19/09 but only under "fair control" on 9/5/10.

Claimant provided a litany of problems in an attempt to establish a severe impairment. There was medical evidence to support the existence of each problem but little medical evidence to support that any of the problems, by themselves, amount to a severe impairment. However, the undersigned can look at the sum of problems in determining whether Claimant established a severe impairment.

Claimant complaints of fatigue and headaches were well documented. Claimant testified that he was able to complete work despite the problems but that it took him much longer to do so; specifically, Claimant stated that he takes seven hours to complete mental work he previously performed in one hour. Claimant's non-exertional symptoms would affect basic work activities of concentration, judgment and carrying out instructions. It is found that Claimant met the de minimus standard of establishing a severe impairment based on the hyperthyroidism and/or related symptoms of headaches and fatigue. The analysis moves to step three.

The third step of the sequential analysis requires a determination whether Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, 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 the impairment is unlisted, then the analysis proceeds to the next step.

Based on the presented evidence, Claimant's best opportunity to meet a SSA listing would be for asthma. The applicable listing (Listing 3.03) requires asthma with:

- A. Chronic asthmatic bronchitis. Evaluate under the criteria for chronic obstructive pulmonary disease in 3.02A;
- OR

B. Attacks (as defined in 3.00C), in spite of prescribed treatment and requiring physician intervention, occurring at least once every 2 months or at least six times a year. Each in-patient hospitalization for longer than 24 hours for control of asthma counts as two attacks, and an evaluation period of at least 12 consecutive months must be used to determine the frequency of attacks.

The following information concerning asthma attacks is provided in 3.00C:

C. Episodic respiratory disease. When a respiratory impairment is episodic in nature, as can occur with exacerbations of asthma, cystic fibrosis, bronchiectasis, or chronic asthmatic bronchitis, the frequency and intensity of episodes that occur despite prescribed treatment are often the major criteria for determining the level of impairment.

Documentation for these exacerbations should include available hospital, emergency facility and/or physician records indicating the dates of treatment; clinical and laboratory findings on presentation, such as the results of spirometry and arterial blood gas studies (ABGS); the treatment administered; the time period required for treatment; and the clinical response.

Attacks of asthma, episodes of bronchitis or pneumonia or hemoptysis (more than blood-streaked sputum), or respiratory failure as referred to in paragraph B of 3.03, 3.04, and 3.07, are defined as prolonged symptomatic episodes lasting one or more days and requiring intensive treatment, such as intravenous bronchodilator or antibiotic administration or prolonged inhalational bronchodilator therapy in a hospital, emergency room or equivalent setting.

Hospital admissions are defined as inpatient hospitalizations for longer than 24 hours. The medical evidence must also include information documenting adherence to a prescribed regimen of treatment as well as a description of physical signs. For asthma, the medical evidence should include spirometric results obtained between attacks that document the presence of baseline airflow obstruction.

There is no evidence that Claimant suffers from chronic bronchitis or suffered asthma attacks as required in the above listing. It is found that Claimant does not meet an SSA listing for asthma.

The undersigned also considered whether Claimant's depression (Listing 12.04) and hyperthyroidism (listing 9.00) met any applicable SSA listings. There was insufficient evidence to find that Claimant met any of the above listings. Claimant's other complaints either were totally lacking in evidence, or have no applicable SSA listing. It is

accordingly found that Claimant failed to meet a SSA listing and the analysis may move 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 listed employment as a tech writer since 2004 (see Exhibit 7). Claimant testified he has held other tech writing employment over the past 15 years. He stated that his duties involved research, writing and computer programming. Claimant stated there was little physical labor involved in his employment. Claimant's description of his prior employment would place the employment as sedentary employment.

Claimant testified that his non-exertional symptoms of dizziness, headaches and fatigue render him incapable of performing his prior employment. He further testified that the sum total of his physical and psychological problems (depression, IBS, OCD et al) also render him incapable of performing his past employment.

Claimant's previous work required a high degree of "brain work". Fatigue and headaches would make it difficult for Claimant to perform efficient research and writing. The undersigned has no knowledge of computer programming but suspects that this work would be equally difficult work to perform under non-exertional impairments of fatigue and headaches. It is found that Claimant is not capable of performing his past relevant work because of his impairments. Accordingly, the analysis moves to step five.

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)

The fifth step looks at Claimant's capable level of work, age, education and type of previous work. These factors are matched up to a SSA Vocation-Rules. The rules are provided in grid format and are informally referred to as the Grid. The Grid provides the outcome as to whether the claimant is disabled or not.

At the fourth step, it was determined that Claimant was not capable of performing his past relevant work which was sedentary in nature. Claimant established sufficient barriers to this type of employment, but not necessarily all sedentary or light work employment.

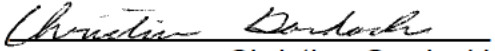
Claimant's fatigue and headaches would be problematic for any employment, but it is not believed that Claimant is incapable of unskilled light work. Claimant did not establish any that would prevent him from performing light work of an unskilled nature. These findings are made despite Claimant's litany of complaints.

As it was found that Claimant is not capable of skilled employment due to his impairments, the undersigned will make that consideration when placing Claimant on the GRID. Based on Claimant's age (48 years), education (high school graduate or more), work experience (unskilled due to Claimant's non-exertional obstacles) and capable work level (light), the undersigned finds that Vocational Rule 201.13 applies. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly denied Claimant's application on the basis that Claimant is not a disabled individual.

### **DECISION AND ORDER**

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

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

Date Signed: August 18, 2011

Date Mailed: August 18, 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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