

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201135499
Issue No.: 2009; 4031
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; [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) 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 3/30/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 5/12/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 5/18/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 5/23/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 6/13/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 34) on the basis that Claimant failed to establish an impairment that significantly limits his ability to work.
7. As of the date of the administrative hearing, Claimant was a 59 year old male (DOB 10/1/51) with a height of 6'1" and weight of 196 pounds.
8. There was no evidence of a relevant history of tobacco, alcohol or drug abuse by Claimant.
9. Claimant's highest education year completed was the 12th grade.
10. Claimant last received medical coverage in 2009.
11. Claimant claimed to be a disabled individual based on impairments related to an eroding esophagus, acid reflux, hypertension, migraine headaches and fibromyalgia.

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 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 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 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.

A Medical Examination Report (Exhibits 8-9) dated 4/1/11 from Claimant's primary physician was presented as evidence. The examining physician diagnosed Claimant with chest pain, poorly controlled hypertension, acid reflux and migraine headaches. Claimant's condition was considered stable. Lab reports were attached which demonstrated high cholesterol (263 mg/dl), high LDL cholesterol (194 mg/dl) and low HDL cholesterol (40mg/dl).

A radiology report dated 3/12/11 was presented as Exhibit 12. The report verified an x-ray of Claimant's chest revealed no apparent problems with Claimant's lungs or heart.

Claimant described his daily living activities on Exhibits 13-17. Claimant noted that he only slept for 45 minute periods due to chest pain. Claimant indicated he used to perform housework such as washing dishes, laundry, lawn care and snow removal, but now cannot due to the chest pain.

Medical records were also presented from four different doctor visits from 4/12/10, 4/13/10, 5/10/10 and 6/9/10. Claimant noted that the doctor visits occurred in the State of Washington, and were not with a physician familiar with Claimant's history. The examinations verify that Claimant had a chronic coughing problem for the previous five years. Claimant had not been a smoker so this was ruled out as an explanation for the coughing. Gastroesophageal reflux disease (GERD) was noted in the 6/9/10 report as a problem. This would appear to be an explanation for the cough, though it was not identified as such. To help control the GERD, the examiner recommended lifestyle changes for Claimant such as limiting alcohol consumption and caffeine, dietary changes and stress management.

Hypertension and hyperlipidemia were also noted in the reports. No evidence was provided concerning the severity or consequences of either. Prescriptions were offered

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for each, though it is unknown whether Claimant was able to obtain the prescriptions due to his lack of insurance.

Lab results dated 4/12/10 were presented. The results verify Claimant's high cholesterol blood levels. The report also indicated out of range levels of hemoglobin, hematocrit, platelets, CO2 and BUN but the significance of these levels was not established.

Medical records from 7/2011 were also submitted. Most notably, a note dated 7/29/11 from Claimant's physician stated "Patient is unable to work at any job due to fibromyalgia, migraine headaches, neuropathy and hypertension with chest pain."

Overall, Claimant's medical records were less than compelling. The records established a history of high cholesterol but nothing that would contribute to a finding of disability.

Hypertension was also indicated as an ongoing problem. However, the records merely prescribed medication and a plan of treatment and did not specify the severity of the hypertension or how it would affect Claimant's ability to work.

The GERD appears to be Claimant's most debilitating impairment. Claimant described being very physically limited due to the GERD. Claimant described that the slightest amount of exertion causes Claimant to vomit. In walking, Claimant testified he is limited to 50-100 feet before he starts feeling chest pain which could lead to vomiting. Claimant made similar complaints about bending and squatting. Claimant also testified he had sitting limitations of 20-30 minutes before starting to feel nauseous which requires him to stand for a few moments so he can feel better. Claimant testified that standing still was generally okay and that he was occasionally capable of lifting 10 pound weights without getting sick.

Claimant stated that his condition has worsened over the last few months and may not be well reflected in the presented medical documentation. He stated he was limited in his sleep to two hours per night because of the physical discomfort of his stomach and chest.

There was simply zero evidence to support a finding that Claimant suffers from a severe impairment related to fibromyalgia or headaches. The medical records are silent as to both.

The hypertension appears to be a problem for Claimant. A 4/2011 report noted Claimant's blood pressure at 192/104. The blood pressure was noted as poorly controlled. However, there was no evidence that the hypertension caused a limit on Claimant's abilities to perform basic work activities.

Claimant's GERD, acid reflux and eroded esophagus seem to be intertwined. Claimant credibly testified that they were a primary factor in his vomiting after minor exertion. The testimony established that Claimant had a severe impairment to all physical basic work activities.

Based on the evidence, there was a sufficient amount to meet the de minimus standards required to meet the severe impairment requirement of step two. The analysis may then 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 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 a listed impairment is not met, then the analysis moves to step four.

Claimant established a severe impairment for the combination of the GERD, chest pain and eroding esophagus. These impairments do not fall under a SSA listing.

Claimant also stated he suffers from hypertension. There was some evidence to support Claimant's testimony. Hypertension, by itself, is insufficient to meet a SSA listing.

It is found that Claimant failed to assert an impairment that meets any of the SSA listings. Accordingly, the analysis 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 from the previous fifteen years partially consisted of working as a machinist from 1995-2007. Claimant testified that his employment involved lifting large items to place into a machine which he operated. He stated he was routinely expected to lift 50-200 pound parts.

Claimant's employment also consisted of working as an electrician from 2008-2009. Claimant testified that he helped install the wiring for new buildings. His duties included digging trenches, running wire and performing the necessary connections. Claimant stated he routinely was expected to carry large spools of wire and other items weighing 30-35 pounds while occasionally needing to carry 80-100 pounds. Claimant stated that toward the end of the employment, he was laid off because the employer was no longer able to accommodate his diminishing abilities.

Based on Claimant's description, Claimant's previous employment would best be characterized as heavy work. It must then be determined at what level Claimant can perform work.

Claimant's testimony that he is incapable of the slightest physical exertion before needing to vomit would point to a level of less than sedentary employment. Claimant also presented a witness who provided first-hand accounts of Claimant's struggles with the slightest physical exertion. The undersigned is inclined to believe Claimant's testimony, but only to a point. At some point, medical documentation must support the testimony.

The undersigned accepts that Claimant established that he is severely impaired in the performance of basic work activities. However, there is an absence of medical evidence as to how much that Claimant is impaired. The undersigned appreciates that as a person without health insurance, Claimant is also severely impaired in the ability to obtain medical documentation.

Based on the presented evidence, the undersigned is inclined to find that Claimant is capable of performing a level of sedentary work. Such work requires minimal amounts of labor such as lifting, standing and pulling. The ten pound weight limit would be within Claimant's stated capabilities. It is found that Claimant is capable of sedentary work.

Based on the previous finding that Claimant's former employment involved heavy work, it is found that Claimant is not capable of performing past employment. Accordingly, the analysis may move 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 maintain 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.

The finding within step four that Claimant is capable of sedentary work applies to the step five analysis. Based on Claimant's age (59 years), education (high school completion but no direct entry into skilled employment), work experience (semi-skilled and skills not transferrable) and capable work level (sedentary), the undersigned finds that Vocational Rule 201.06 applies. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that Claimant is a disabled individual and that DHS improperly denied Claimant's application for 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

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- 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).

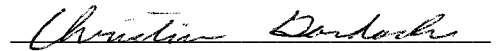
The undersigned already found Claimant to be disabled for purposes of MA benefits. The analysis and finding applies equally to the SDA benefit analysis. It is found that DHS improperly terminated Claimant's SDA benefits.

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 for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's SDA and MA benefit application dated 3/30/11;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA and SDA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA and SDA benefits, to schedule a review for MA and SDA benefits for 8/2012.

The actions taken by DHS are REVERSED.


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

Date Signed: August 19, 2011

Date Mailed: August 19, 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.

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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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