

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

IN THE MATTER OF:



Reg. No.: 201136174
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 15, 2011
Wayne County DHS (82)

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 15, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], [REDACTED], Manager, 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 3/14/11, Claimant applied for MA benefits including retroactive MA benefits from 3/2011.
2. Claimant's only basis for receiving MA benefits was as a disabled individual.
3. On 3/29/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 4/4/11, DHS denied Claimant's application for MA 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 MA benefits.

6. On 6/29/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 70) based, in part, that Claimant's condition is improving and not expected to last 12 months.
7. As of the date of the administrative hearing, Claimant was a 42 year old male (DOB 10/9/68) with a height of 5'11" and weight of 275 pounds.
8. There was no evidence showing a relevant history of tobacco, alcohol or other drug abuse by Claimant.
9. Claimant's highest education year completed was the 9th grade.
10. Claimant received ongoing Adult Medical Program (AMP) benefit coverage for the last 5-6 years.
11. Claimant claimed to be a disabled individual based on impairments of congestive heart failure, sleep apnea, asthma, hypertension, depression and blood pressure related abnormalities.

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 4/2011, 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; AMP is only periodically open to new applicants. 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.
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any 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

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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 (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, all relevant evidence can be considered. The analysis will begin by reviewing Claimant's medical documentation.

On 2/27/11, Claimant went to a hospital concerning complaints of dyspnea, and chest tightness over a four day period. Complaints of wheezing, coughing and brownish sputum were noted. The accompanying hospital report (Exhibits 7-10) dated 3/2/11 was presented. The report noted Claimant's medical history involving: hypertension, asthma, hyperlipidemia, sleep apnea and depression. Acute asthma exacerbation was noted as a likely cause as was moderate systolic and diastolic heart failure. Claimant's left ventricular ejection fraction (LVEF) was noted as 30% (as opposed to 45% five years earlier). Eleven different medications were prescribed to Claimant upon his discharge (see Exhibits 12-14). Claimant was discharged on 3/2/11 and discharge instructions were provided to Claimant (see Exhibits 15-25).

Claimant's lab test result history was presented as Exhibits 28-40. The results cover several tests over a period from 5/6/06-3/1/11. Most notably, the results repeatedly found Claimant indeterminate for myocardial damage. Also notable was Claimant's BNP level. On 2/27/11, Claimant's BNP measured 139 pg/ml. A BNP level between 50-200 pg/ul is indicative of possible CHF.

A clinical impression dated 2/28/11 was provided by one of Claimant's hospital physicians (see Exhibit 66). The physician gave an impression of "acute myocardial infraction with elevated markers and no ST elevation (NSTEMI).

Claimant testified that he has a walking limitation of two blocks before his breathing becomes too heavy to continue. Claimant stated that standing is easier than walking because it requires less exertion. Claimant also testified that he has a lifting limit of 20 pounds, again due to his breathing difficulties. Claimant stated that he sometimes uses a cane to walk but did bring one to the administrative hearing. Claimant testified that he has restrictions in bending and squatting due to his breathing difficulties. He stated that he does not drive, but due to reasons unrelated to his physical limits.

Claimant currently sees a physician once per month and takes several medications. His medications include: metoprolol (100mg@ 2x/day) for his CHF, proair for his asthma, prednisone (400mg@1x/day) as a blood thinner, seroquel (40mg@1x/day) an antidepressant, wellbutrin (150-800@1x/day) an antidepressant, sertraline (50mg@1x/day), children's aspirin for his blood pressure, amlodipine (5mg@1x/day) for his heart and lisinopril (40mg@1x/day) to treat his hypertension.

Claimant's medical history established serious heart problems which would impair Claimant's physical work activities. Claimant's testimony that he is limited in walking, lifting, squatting and other physical activities is supported by the medical documentation. Claimant's ejection fraction measurement verified serious heart limitations which supported Claimant's testimony.

There is no reason to believe that Claimant's heart condition or asthma is expected to notably improve within 12 months. Based on the presented evidence, Claimant established sufficient physical impairments to meet the de minimus standard of step two of the disability analysis.

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.

The listed impairment Claimant is most likely to meet concerns Claimant's heart impairment. Cardiovascular impairments are covered by Listing 4.00. Claimant's congestive heart failure is best covered by Listing 4.02 which reads:

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction

during a period of stability (not during an episode of acute heart failure);
AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or
2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or
3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:
 - a. Dyspnea, fatigue, palpitations, or chest discomfort; or
 - b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or
 - c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or
 - d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

Beginning the analysis with Part A, Claimant's ejection fraction (EF) results from 2/2011 appear to meet the requirements for the listing. Claimant's left ventricle was measured at performing at less than 30%. The medical evidence supported that Claimant's hospital stay was a result of complications with his asthma, which may have exacerbated his heart problems. SSA defines a period of stability as "not during an episode of heart failure" in Listing 4.01. Thus, the undersigned is not inclined to interpret a hospital stay caused primarily by asthma issues as one caused by heart failure (i.e heart attack). Accordingly, Claimant's EF is found to have occurred during a time of

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stability. Accordingly, Claimant satisfied Part A of the above listing and the analysis moves to Part B.

The medical records were silent concerning Claimant's ability to complete an exercise test. It is unknown whether Claimant's physicians purposely avoided giving Claimant such a test, or whether one was given and there was a failure to submit the medical records. Without any evidence concerning Claimant's ability to complete an exercise test, Claimant can not meet Parts B(1) or B(3) of the above listing.

It is known that Claimant did not present evidence of three or more separate episodes of acute CHF. Claimant debatably verified one hospital stay which involved a possible diagnosis of CHF but more likely due to hypertension complications. Without three episodes of heart failure, Claimant can not meet Part (B(2) of the above listing. As it was already found that Claimant did not meet Parts (B(1) or B(3) of the above listing, it is found that Claimant failed to establish meeting the above listed impairment.

The undersigned also considered and rejected Claimant met the listed impairment for depression (Listing 12.04) and asthma (Listing 3.03). Claimant's other complaints (hypertension, sleep apnea and high blood pressure) are unlisted impairments. Accordingly, Claimant failed to meet a SSA impairment 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 described his prior job title as a general laborer. Claimant stated that he typically lifted approximately 40-50 pounds. The employment involved routinely swinging a sledgehammer. Claimant testified he stood approximately 7 of 8 hours of his workday. Based on claimant's description, his prior employment would closely resemble heavy work. It must now be considered whether Claimant is capable of performing his past employment.

Claimant's exertional impairments included limits to his walking, lifting, bending and squatting. Claimant stated he can lift up to 20 pounds though not routinely because of the breathing problems that lifting such a weight would cause. Accepting Claimant's testimony as accurate would place Claimant at the sedentary work level.

Claimant's non-exertional limitations would not appear to lower Claimant's work level. It was well established that Claimant suffers from depression based on his prescriptions. However, there was little evidence that Claimant suffers any non-exertional impairments from depression. In other words, Claimant's depression seems to be controlled. There is no evidence that Claimant requires any regular psychological counseling or that Claimant suffers any impairment which would prevent him from performing at a sedentary work level. Based on Claimant's exertional and non-exertional impairments, it is found that Claimant is capable of performing work at a sedentary work level.

It is found that Claimant is not capable of performing past relevant employment as his past work duties exceed Claimant's capable work level. Accordingly, the disability analysis may move to the final step.

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.

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At the time of the administrative hearing, Claimant was a younger individual (aged 18-44). He has a history of unskilled employment and an education level of less than high school. Claimant is literate and able to communicate in English. Based on Claimant's information, Vocational-Rule 2.01.24 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.


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

Date Signed: August 26, 2011

Date Mailed: August 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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cc:



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J. Richardson
Administrative Hearings