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

IN THE MATTER OF:

[redacted]

Reg. No. 2011-36717
Issue No. 2009; 4031
Case No. [redacted]
Hearing Date: August 29, 2011
Wayne County DHS (76)

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 29, 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), Renee Jones, Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. On 1/8/11, Claimant applied for SDA and MA benefits including a need for retroactive MA benefits from 10/2010-12/2010.

2. Claimant's only basis for MA and SDA benefits was as a disabled individual.

3. On 4/25/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibits 4-5).

4. On 5/17/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/2/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.

6. On 7/4/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 36-37), in part, by application of Vocational Rule 202.18.

7. On 8/29/11, an administrative hearing was held and Claimant presented new medical evidence.

8. On 11/30/11, SHRT evaluated the new medical evidence and determined that Claimant was not disabled, in part, using Vocational Rule 201.25 as a guide.

9. As of the date of the administrative hearing, Claimant was a 41 year old male ([redacted]) with a height of 5'11 '' and weight of 243 pounds.

10. Claimant smokes approximately 10 cigarettes per day and has no known relevant history of alcohol or illegal drug abuse

11. Claimant's failed to complete high school but subsequently obtained a general equivalency degree.

12. As of the date of the hearing, Claimant received Adult Medical Program benefit coverage

13. Claimant stated that he is a disabled individual based on impairments of: torn ligaments in the right knee, depression, prostate cancer, neck pain, back pain and foot pain.

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 controlling DHS regulations are those that were in effect as of 1/2011, the month of the application which Claimant contends was wrongly denied. 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 though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits 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).

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 SSI 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 CRF 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).

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).

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

On 1/26/11, Claimant was physically examined by a DHS assigned examiner; the report was presented as Exhibits 6-10. Claimant attended the appointment utilizing two crutches and a knee immobilizer. Claimant was able to squat and recover and bend and recover at 40% and 75% range of motion respectively. It was noted that Claimant reported right leg ligament damage since 12/2009 and back pain. Claimant reported the knee and back pain worsened when standing or walking for prolonged periods. An impression was given that Claimant's right knee required further investigation to determine the extent of Claimant's injury. The examiner also gave an impression that Claimant would have difficulties with prolonged standing, stooping, squatting, lifting and bending.

Claimant completed a Medical Social Questionnaire (Exhibits 13-15) dated 4/13/11. The DHS standardized form is intended to be completed by clients so that general information about their claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history may be obtained. Claimant reported impairments of neck, back and right knee pain and numbness of the right toe. Claimant reported a one day hospitalization from 1/7/10

related to a vehicle accident which Claimant contended was the cause of his knee problems.

A Medical Examination Report (Exhibits 16-17) dated 4/13/11 was completed by Claimant's treating physician. A diagnosis of damage and chronic right knee tendonitis was provided. Claimant's condition was noted as stable. It was noted that Claimant can meet his household needs.

An annual Psycho-Social Assessment (Exhibits 23-34) dated 2/11/11was provided by a physician from Claimant's psychological treatment provider. Claimant reported a history of depression symptoms (feeling hopeless, irritable, feeling angry, crying spells, decreased concentration, insomnia, panic attacks and decreased appetite). Claimant denied suicidal ideation. Claimant also reported using illegal drugs last in 9/2008. Claimant was not considered a risk to himself or others. Claimant was also not considered violent or unable to care for his basic needs.

It was noted that Claimant wore a brace on his right leg due to pain. Claimant also reported having asthma and neck pain and back pain. It was noted that Claimant took Flexril for his pain.

The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4^{th} edition) (DSM4). Axis I represents the acute symptoms that need treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale.

An Axis I primary diagnosis of Depressive disorder was given; an SA primary diagnosis of polysubstance disorder was also provided. The Axis II diagnosis was "No diagnosis or condition". An Axis III diagnoses of neck and back pain, asthma and right knee pain was given. Axis IV noted economic, healthcare, educational, occupational, legal, other environmental and primary support group problems. Claimant was assessed a GAF of 65. A GAF score within the range of 61-70 is representative of a person with "Some mild symptoms OR some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships." A prognosis to remain stable was good if Claimant was able to comply with mental health treatment modalities and remained drug-free.

An initial Psychiatric Evaluation (Exhibits 30-34) dated 9/27/08 was provided. The evaluation noted comparable information to the evaluation dated 2/11/11 though Claimant's GAF was scored as 55. Claimant was given a fair prognosis.

A Medical Activity Ticket (Exhibit 35) dated 2/17/11 from Claimant's treating therapist. It was noted that Claimant still feels depressed. In response, Claimant was issued a prescription for Celexa (20 mg qam). Claimant was advised to follow-up in four weeks.

The final six of seven pages (Exhibits 38-43) dated 7/27/11 from a physical examination report were provided. Claimant's gait was noted as antalgic and favoring the right side. It was noted that Claimant used a cane and knee brace. Claimant's back was noted as tender at T12-L1 extending to L3-L4. Claimant presented the examiner with an MRI of the right knee date 5/26/11 (See Exhibit 41) and an MRI of the lumbar spine (Exhibit 42) dated 5/26/11.

A diagnosis of traumatic internal derangement of the right knee with medial joint tenderness was provided. It was also noted that Claimant had residual atrophy in the right quadricep. Claimant was also diagnosed with traumatic dorsolumbar back pain and traumatic cervical spine pain, maximally at C6-C7 on the left. It was recommended that Claimant required further orthopedic surgical consultation.

The examining physician noted Claimant was to do no squatting, crawling, kneeling, climbing ladders or other activities stressful to Claimant's right knee. Claimant was limited to standing no more than two hours or walking more than 30 minutes without a sit/stand option. Claimant was also limited from prolonged sitting- no more than two hours within an 8 hour day and no more than 30 minutes at a time without a sit/stand option. Claimant was limited to lifting no more than 10 pounds and no reaching above shoulder level on a repetitive basis for more than 60 minutes per eight hour day. Claimant's asthma restricted Claimant from working around dust, fumes and gases.

Various physician statements and disability certificates (Exhibits 45-58) were presented. The statements varied in date from 1/2010-5/2011. The treating physician noted that Claimant was disabled from 12/2009 to an indeterminate date based on knee and back injuries. Work restrictions were noted and generally consistent with the examiner's restrictions from the 7/27/11 dated examination.

The medical evidence established that Claimant is limited in the performance of physical activity activities. Claimant's total restrictions from performing activities heavily relying on the right knee (e.g. squatting and kneeling) are significant impairments. Further, Claimant has restrictions on his ability to walk and sit for prolonged periods.

The evidence also established that Claimant's injuries stem from a 12/2009 vehicle accident that occurred during the course of Claimant's employment as a valet driver. Medical records established that Claimant has been injured for a period of two years as of the writing of this decision and that they are not likely to improve. It is found that Claimant's impairments meet the durational requirement for a severe impairment and significantly limits Claimant's ability to perform basic work activities. Accordingly, it is

found that Claimant established having a severe impairment and the disability analysis may proceed to step three.

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

> **1.02** ***Major dysfunction of a joint(s) (due to any cause)***: Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
> A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
> OR
> B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

As indicated above, the ability to ambulate effectively is defined by SSA in 1.00B2b. This definition reads:

> Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Further guidelines are provided in 1.00B2. This section reads:

> To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or

> uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

Part B of the above listing involves upper extremity joints. There was some medical evidence that Claimant has upper extremity limitations such as the limitation of 1 hour in an eight hour work day of repetitive reaching above the shoulder. Claimant was not physically limited from performing fine or gross movements in his arms or hands. It is found that Claimant failed to establish meeting Part B of the above listing.

Regarding lower extremities, Claimant established experiencing significant pain and restrictions due to a right knee impairment. It was established that Claimant took pain relief and muscle relaxer medications (perhaps for his back as well). More importantly, Claimant was limited in use of his right knee in ambulation.

Claimant was medical prohibited from performing prolonged walking and limited to walking two hours within an eight hour day. Claimant's use of a knee brace and a cane at all of his medical appointments tended to support a finding that he had notable difficulties in ambulation. Claimant's testimony that he is limited to using a motorized scooter when shopping was consistent with medical restrictions. Claimant's antalgic gait also tended to support problems with ambulation.

Generally, the listing for joint dysfunction requires use of multiple canes to meet the definition of ineffective ambulation; Claimant uses one cane to ambulate. However, Claimant established sufficient restrictions and limitations to satisfy the above listing. It is found that Claimant meets the listing for joint dysfunction in the right knee and is therefore a disabled individual. It should be noted that even if Claimant was found to not satisfy the above listing, Claimant would have been found disabled at step five of the disability analysis based on a combination of his walking and sitting restrictions.

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).

It has already been found that Claimant is disabled for purposes of MA benefits based on the finding that Claimant meets the SSA listing for joint dysfunction. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly denied Claimant's application for SDA benefits on the basis that Claimant is not a disabled individual.

It should be noted that the above finding of disability only applies to Claimant's application for MA and SDA benefits; the finding is only valid for one year from the date of this decision. Future findings of disability shall be redetermined by DHS in accordance with their policies.

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 MA and SDA benefit application dated 1/8/11 including retroactive MA benefits from 10/2010;
(2) 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) schedule a review of benefits in one year from the date of this administrative decision if Claimant is found eligible for future MA or SDA benefits.

The actions taken by DHS are REVERSED.

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

201136717/CG

Date Signed: 12/29/11

Date Mailed: 12/29/11

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/sm

cc: [redacted]
Wayne County DHS [redacted]
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SHRT
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