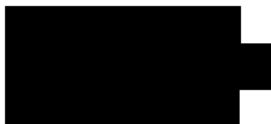


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201145095
Issue No.: 2009
Case No.:
Hearing Date: November 7, 2011
Oakland County DHS ()

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 November 7, 2011 from Detroit, Michigan. The claimant appeared and testified; appeared and testified as Claimant's authorized hearing representative (AHR). and also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), , Specialist, appeared and testified.

ISSUE

The issue is 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 1/14/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/20/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibits 10-11).
4. On 4/26/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 6-7) informing Claimant of the denial.

5. On 7/19/11, Claimant requested a hearing disputing the denial of MA benefits.
6. On 8/30/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 124-125) based, in part, on application of Vocational Rule 203.28 and a determination that Claimant has the ability to perform a wide-range of unskilled work.
7. As of the date of the administrative hearing, Claimant was a 25 year old male (DOB 2/8/86) with a height of 5'8" and weight of 212 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. Claimant currently receive health insurance through [REDACTED], and has received ongoing medical coverage for some unspecified period of time.
11. Claimant stated he is a disabled individual based on impairments related to cognitive functioning and anxiety.

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 CFR 413.913. An individual's subjective pain complaints

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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, there was some evidence that Claimant works weekends for a nail salon owned by his parents. Claimant testified that he worked only on Saturday and Sunday for ten hours each day.

Claimant testified that he assisted his parents with make telephone appointments and various minor janitorial jobs needed in the salon. Claimant stated that he takes two 15 minute breaks during his shifts.

Claimant's brother provided testimony disputing whether Claimant performed 20 hours of actual work activities. Claimant's brother stated that Claimant is very limited in what he can do and often disappears for extended periods when he is anxiety-ridden.

Unfortunately, there was no evidence concerning Claimant's hourly wage or income. The evidence tended to indicate that Claimant received some sort of weekly income from his parents, but it was unclear whether the income was intended to be wage income or gift income.

The evidence tended to support a finding that some of Claimant's income was wage income and some was subsidized income (gift income in the form of wage income in an effort to support independence). Employees are generally not allowed by their employers to regularly leave an employment setting to address anxiety flare-ups. Also, employment income from parents tends to indicate subsidized income rather than wage income.

DHS did not allege that Claimant received income above presumptive SGA income levels. Claimant's AHR at least minimally denied that Claimant received income that exceeded SGA income levels. Based on the presented evidence, it is found that Claimant is not performing SGA. Accordingly, Claimant passes step one and 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 may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were deemed irrelevant to the disability analysis; thus, not all exhibit numbers may necessarily be cited.

It was not disputed that Claimant deals with learning disabilities that render him relatively lower in cognitive functioning. The testimony established that Claimant finished high school, but did so only by completing special education classes. Throughout his life, Claimant participated with various programs to assist him with

progress in his cognitive abilities. Claimant currently works with Community Living Services (CLS).

Various progress notes (Exhibits 19-50) from Claimant's CLS social worker were presented. The notes refer to Claimant's goal of achieving independence from his parents and progressing in developing social relationships. The notes discuss various activities enjoyed by Claimant including participation in recreational activities and traveling with his family. The notes were only notable in demonstrating that Claimant is a social, optimistic and well-adjusted individual.

A Clinical Study/Mental Exam Report (Exhibits 15-18) from a 3/14/11 dated examination was presented. The report was signed by a licensed psychologist. Claimant was tested on the Wechsler Adult Intelligence Scale III (WAIS3). The WAIS4 is an IQ test which measures verbal and performance IQ. The verbal IQ test included six categories including: information, similarities, arithmetic, digit scan, information and comprehension. The performance IQ tested five categories including: picture completion, digit symbol-coding, block design, matrix reasoning and picture arrangement. Claimant's full scale IQ was measured as 65 which placed Claimant in the "mildly mentally retarded range of intellectual functioning."

Based on the above test and other questioning posed to Claimant, the evaluator concluded that Claimant was able to acquire and use information. Claimant's social behavior was appropriate and he appeared to be able to care for himself, ask questions when needed and had the ability to follow simple directions. The evaluator concluded that Claimant would be "generally restricted to performing simple, routine, repetitive, concrete, tangible tasks" and that he would need assistance in managing his own funds.

It should be noted that Claimant's performance IQ diminished slightly from a WAIS3 test administered 4/18/05 through Claimant's school district (see Exhibits 53-55). Claimant's 2005 performance IQ was measured as 70. It was noted that Claimant's score of 70 placed Claimant in the "borderline range of intellectual ability".

A Medical Examination Report (Exhibits 65-66; duplicated in Exhibits 95-96 and 121-122) dated 6/24/10 from Claimant's treating physician was presented. A diagnosis of mild cognitive impairment was provided. It was noted that Claimant was limited in comprehension. Claimant was not noted as limited in the following areas: sustained concentration, reading/writing, social interaction, memory or following simple directions.

A Psychiatric/Psychological Examination Report (Exhibits 66-67; duplicated in Exhibits 97-98 and 123) dated 9/1/10 was presented. It was noted that Claimant does not take any medications. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th 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.

Axis I noted a diagnosis of mild mental retardation. Axis II and Axis III were noted as "none". Axis IV noted social, interpersonal, dependent and adaptive behavior. Claimant's GAF was noted as 57. A GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

A Mental Residual Functional Capacity Assessment (Exhibits 68-69; duplicated in Exhibits 99-100) was provided. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation; a therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Claimant was noted as markedly limited in the following abilities: remembering locations and work-like procedures, understanding and remembering detailed instructions, carrying out detailed instructions, maintaining concentration for extended periods and responding appropriately to changes in the work setting.

It should be noted that the Medical Examination Report (MER) somewhat contradicted the Mental Residual Functional Capacity Assessment (MRFCA) concerning Claimant's ability to sustain concentration. The MER found Claimant with no limits in sustaining concentration while the MRFCA noted marked limitations in sustaining concentration for extended periods. The forms were completed by different assessors. The difference may be clarified by the MRFCA specifically addressing concentration for "extended periods".

It was not disputed that Claimant has no physical limitations that would affect basic work activities. The evidence also strongly established lifelong cognitive impairments, though it was less clear how that limitation affected Claimant's ability to perform basic work activities.

Claimant was not limited in understanding and carrying out simple one or two step instructions. It was noted that Claimant is markedly limited in following detailed instructions though this is not a listed by SSA as an example of a basic work activity.

The evidence also established that Claimant had no relevant social limitations. The MRFCA noted there was no evidence that Claimant was limited in any of the five listed abilities involving social interaction; the same was noted on the MER. It was noted on

the MRFCA that Claimant had “limited social skills” though there was no elaboration. The bulk of evidence tended to demonstrate that Claimant was a very well-adjusted, cooperative and friendly individual. Claimant’s employment answering the telephone for his parents’ business would tend to support a finding that Claimant has no significant social limitations.

There was also no evidence that Claimant’s judgment is impaired. This was confirmed by the MRFCA which indicated that there was no evidence of limitation concerning making simple work-related decisions.

The MRFCA noted that there was a lack of evidence concerning limitations to Claimant’s ability to complete a normal workday without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. This was persuasive evidence that Claimant may not have notable impairments to basic work activities.

Claimant’s therapist noted Claimant’s marked restrictions in dealing with workplace changes. This was also listed as a limitation on the MER. SSA specifically cited this ability as a basic work activity example. This evidence was bolstered by documentation and testimony which supported that Claimant suffers anxiety in certain circumstances; the details of Claimant’s anxiety shall be discussed below.

Based on the presented evidence and applying a de minimus standard, there was a sufficient amount to find that Claimant has cognitive impairments that would significantly limit Claimant’s ability to perform basic work activities. Accordingly, 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.

Mental impairments are described under listing 12.00. There is evidence to consider two possible mental impairments, one for mental retardation and one for anxiety-related disorders. The mental retardation listing reads:

12.05 Mental retardation: Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

Looking at Part A, there is no evidence that Claimant has any problems performing personal needs such as bathing, eating or any other daily activities, other than transportation. Claimant does not meet Part A of the listing.

Claimant's full scale IQ was measured at 65 in 3/2011. A test from 2005 measured Claimant's IQ as 70 though the more recent test score is a more appropriate gauge of Claimant's current circumstances. There is no evidence to support that the IQ 65 is anything other than an accurate representation of Claimant's cognitive abilities.

Applying an IQ score of 65 to the above listing would allow Claimant to potentially meet Part C or D of the listing for mental retardation. SSA states the following concerning Part C:

For paragraph C, we will assess the degree of functional limitation the additional impairment(s) imposes to determine if it significantly limits your physical or mental ability to do basic work activities, i.e., is a "severe" impairment(s), as defined in §§ 404.1520(c) and 416.920(c). If the additional impairment(s) does not cause limitations that are "severe" as defined in §§ 404.1520(c) and 416.920(c), we will not find that the additional impairment(s) imposes "an additional and significant work-related limitation of function," even if you are unable to do your past work because of the unique features of that work.

It should be noted that § 416.920(c) is the regulation that is applied in step two of the disability analysis. Thus, the issue whether Claimant meets the SSA listing for retardation becomes whether Claimant has an impairment that significantly affects the ability to perform basic work activities other than mild retardation. Claimant's AHR contended that Claimant's anxiety is such an "additional and significant work-related limitation".

It should be noted that anxiety disorders should be considered separately from cognitive function. Though both involve mental impairments, they fall under separate SSA listings. Thus, Claimant should not be prevented from contending that anxiety is a separate impairment from retardation.

There was anecdotal evidence that Claimant suffers anxiety. Claimant's AHR relied on interactions when Claimant expressed discomfort in talking with various persons. One cited example was Claimant stating that he was nervous talking to DHS about his MA benefit application when he perceived the calling specialist to be angry with him. Claimant reported the anxiety to his social worker and inquired whether it would be acceptable to refer future DHS telephone calls to his sister.

Another example cited by Claimant's AHR was when Claimant appeared to be uncomfortable speaking with previous teachers when they inquired if he was employed outside of his parents' salon. Claimant expressed discomfort in responding. The noted reason for Claimant's discomfort was some apparent guilt because Claimant thought that he should have been employed by someone other than his parents.

The two anecdotes were marginally persuasive but fell far short of establishing anxiety as a severe impairment. The best evidence demonstrating Claimant's anxiety was in the examination report from 3/14/11.

The examiner noted that Claimant displayed no signs or symptoms of anxiety but also noted that Claimant endorsed "feelings of worry and anxiety about what will happen". Claimant seemed to "be obsessed with possibly being in a car crash, even though he doesn't drive". And most persuasively, Claimant is "easily stressed out by conflict, such as work, and he can't handle too much stress".


Based on the presented evidence, there is a sufficient amount to find that Claimant meets the requirements to establish that anxiety is an issue which would impair his basic work activities. Accordingly, Claimant meets Part C of the SSA listing for mental retardation and therefore is a disabled individual. As the DHS determination denying Claimant's MA benefit application was based on a determination that Claimant was not a disabled individual, the finding is appropriately reversed.

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 benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 1/14/11;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA 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 benefits, to schedule a review for MA benefits for one year from the date of this administrative decision.

The actions taken by DHS are REVERSED.


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

Date Signed: November 14, 2011

Date Mailed: November 14, 2011

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,

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- 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 to:

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

CG/hw

cc:

