

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201151434
Issue No. 2009
Case No. [REDACTED]
Hearing Date: December 5, 2011
Oakland County DHS (04)

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 December 5, 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, and [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) 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 3/24/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 5/16/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibits 1-2).
4. On 8/15/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 8/24/11, Claimant requested a hearing disputing the denial of MA benefits.

6. On 10/24/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (See Exhibits 18-19), in part, by application of Vocational Rules 203.28 and 202.20.
7. As of the date of the administrative hearing, Claimant was a 32 year old male ([REDACTED]) with a height of 5'8 " and weight of 180 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or illegal substance usage.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of hearing, Claimant was not receiving medical coverage and last received coverage in approximately 2010.
11. Claimant stated that he is a disabled individual based on impairments of asthma, leg problems and keratoconus.

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 3/2011, the month of the application which Claimant contended 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, 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 exhibit numbers.

A Social Summary (Exhibits 3-4) dated 3/30/11 from Claimant's DHS specialist was provided. It was noted that Claimant reported having: various allergies, asthma since he was 12 years, memory problems and heart palpitations. A corneal transplant surgery from 10/2010 was noted. Claimant testified that he had surgery on both of his corneas but stitches have only been removed from one of his corneas.

An Eye Examination Report (Exhibits 5-6) dated 3/1/11 from Claimant's treating ophthalmologist was presented. Corneal transplants from 3/8/08 and 10/27/10 were noted. The physician provided a diagnosis of keratoconus. The physician limited Claimant from activities where Claimant could be hit in the eye. Without correction, Claimant's left eye was 20/25 and his right eye was 20/200. With correction, Claimant's right eye improved to 20/40. The left eye "with correction" field was blank.

A Medical Social Questionnaire (Exhibits 7-9) dated 4/7/11 from Claimant was presented. Claimant did not list any hospitalizations other than those needed for his corneal transplants. Claimant noted that he took medication for allergies and asthma.

An examination report dated 7/9/11 from a SSA examining physician (Exhibits 15-17) was presented. An eye examination revealed the right eye was corrected with pinhole 20/125. It was also noted that Claimant had uncorrected 20/80 vision in the left eye. Claimant's vital signs, skin, neck, chest, heart, abdomen, neurology and musculoskeletal were all examined without any notable findings. The examiner provided an impression that Claimant's corneal transplants were successful and that Claimant can perform daily activities. It was noted that Claimant performed activities requiring visual acuity during the appointment. The physician noted that the status of Grave's disease was unclear.

Claimant completed an Activities of Daily Living (Exhibits 10-14) dated 4/7/11, a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble sleeping due to eye pain. Claimant also noted that he needs help shopping. Claimant noted he liked to play drums and that he often visits with friends and family.

Claimant also noted having memory problems and feeling depressed in the Activities of Daily Living. Both problems were referenced in passing. There was no medical support for finding that either of these are an impairment for Claimant. The same is true of an unidentified leg problem that Claimant spoke of at the beginning of the hearing.

There was some medical support that Claimant suffered from asthma and allergies. However, Claimant received medication for both and there is little evidence that either presents Claimant any ongoing problems.

Claimant's vision presented the only potential basis for establishing a severe impairment. Claimant testified that his current vision is the equivalent of seeing underwater with lights. Claimant testified that he can't distinguish between cereal boxes and his visual images are distorted.

Claimant underwent corneal transplants for each of his eyes. As a result of the surgeries, Claimant's vision was not substantially off from normal vision. Claimant testified that his vision has worsened since the surgery. Claimant's statement tended to be supported by the decreased eye function from 3/2011 to 7/2011 based on his physician's testing and the SSA examiner's testing.

Based on the presented evidence, Claimant's vision is found to be an impairment to the performance of basic work activities. Visual acuity is as fundamental to the performance of these activities as it is to day-day living. The evidence established that Claimant has suffered or will continue to suffer from the condition for a period exceeding 12 months. It is found that Claimant established a severe impairment. Accordingly, the analysis moves 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.

The impairment for which Claimant most persuasively established was for loss of visual acuity. The applicable listing reads

2.02 Loss of Visual Acuity. Remaining vision in the better eye after best correction is 20/200 or less.

Claimant submitted two verifications of vision. On 3/1/11, Claimant's vision was 20/25 in his best eye after correction. On 7/9/11; Claimant had 20/80 vision in his best eye before correction. Both tests are far below the vision loss required to meet an SSA listing.

A listing for asthma (Listing 3.03) was also considered. This listing was rejected as there was no evidence of asthma attacks, bronchitis or breathing testing that resulting in SSA prescribed subnormal levels.

It is found that Claimant failed to meet a SSA impaired listing. Accordingly, the disability analysis moves 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.

Clients are expected to list employment from the last 15 years on the Medical Social Questionnaire (Exhibits 7-9); Claimant listed none. Claimant testified that he worked as a security guard for one year approximately 8-10 years ago. Claimant recalled that he performed traditional security duties but also was responsible for completing logs and other documents. Claimant stated that his vision would preclude him from obtaining and maintaining such employment. Claimant's testimony was reasonable. Though poor vision would impact many types of employment, it would seem to be especially important to a security guard. It is found that Claimant is not capable of performing past relevant employment and the analysis moves on to the fifth and final step.

In the fifth step of the disability analysis, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. 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)

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 non-exertional. 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.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

The medical records do not specify any exertional limits to Claimant's RFC. Claimant did not assert having any exertional limits. It is found that Claimant does not have any exertional limitations.

Claimant has one severe non-exertional impairment, his lack of visual acuity. Claimant testified that glasses do not improve his vision though this statement seems contradicted by the medical evidence. On 3/1/11, Claimant's treating physician noted improvement in Claimant's right eye from 20/200 uncorrected to 20/40 with best correction. The only reasonable interpretation, based on the evidence, is that "best correction" means correctable with glasses/lenses.

The only limitations given by Claimant's physician were a need for eye protection and no activity where he could be hit in eye. Neither of these limits would affect Claimant's RFC.

Though Claimant established subnormal visual acuity and some limitations, there is insufficient evidence to find that the non-exertional impairment notably reduces Claimant's employment opportunities so that disability is established. Accordingly, Claimant failed to establish any impairments to RFC.

It should be noted that the finding at step two that Claimant had a severe impairment based on a lack of visual acuity was based on a de minimus standard. To comply with the standard, evidence will generally be interpreted favorably for a claimant, for that

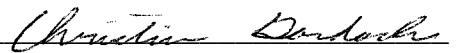
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step. The step five disability analysis has no such de minimus standard and therefore requires no preferential treatment of the evidence.

Based on Claimant's age (younger individual), education (high school completion) and work history (unskilled), Vocational Rule 203.28 is found to apply. This rule directs a finding that Claimant is not disabled. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits 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: 12/22/11

Date Mailed: 12/22/11

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,

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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

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cc:

[REDACTED]

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