

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201125611
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: June 14, 2011
Wayne County DHS (18)

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 June 14, 2011 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

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

FINDINGS OF FACT

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

1. On 8/2/10, Claimant applied for SDA and MA benefits (no retroactive MA benefits sought).
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 12/17/10, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-3).
4. On 12/29/10, DHS denied Claimant's application for MA and SDA benefits and mailed Claimant a Notice of Case Action informing Claimant of the denial.

5. On 3/23/11, Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On 4/13/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 27-28) using Vocational Rule 201.21 as a guide.
7. On 6/14/11, an administrative hearing was held concerning Claimant's eligibility for MA and SDA benefits.
8. Additional medical documents were presented following the hearing.
9. On 8/17/11, SHRT determined Claimant was capable of sedentary employment and was not a disabled individual using Vocational Rule 201.21 as a guide.
10. As of the date of the administrative hearing, Claimant was a 47 year old male (DOB 6/5/64) with a height of 6/0" and weight of 321 pounds.
11. Claimant is a 10-cigarette-per-day smoker and stopped smoking marijuana and consuming alcohol approximately 6-9 months prior to the administrative hearing.
12. Claimant's highest education year completed was 12th grade.
13. Claimant received ongoing medical insurance coverage (Adult Medical Program benefits) since 10/2010.
14. Claimant claimed to be a disabled individual based on impairments of problems associated with his legs, depression and hypertension.

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 12/2010, 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. It was not disputed that Claimant's only potential category for Medicaid would be as a disabled individual.

Disability is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

It was not disputed that none of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A nearly identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927.

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)

- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

In determining whether Claimant's impairments amount to a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by reviewing Claimant's medical documentation.

Claimant was examined on 11/13/10 by a DHS referred examiner (see Exhibits 4-11). A medical history of hypertension, chronic headaches, chronic back and leg pain and depression were noted. No remarkable findings were made concerning vital signs, respiratory, cardiovascular, skin, gastrointestinal (Claimant was positive for obesity), or extremities. It was noted that Claimant used a cane, had a slow gait and walked with a slight limp. Claimant was able to squat and recover at 80% from a full range of motion. Claimant's bending range of motion was limited to 90%.

A 10/11/10 examination was documented in a Medical Examination Report (exhibits 12-13). Claimant was given current diagnoses of uncontrolled hypertension, COPD (chronic obstructive pulmonary disease), and a third problem which could not be determined due to illegible writing. Claimant's condition was noted as deteriorating.

Claimant noted on a Social Questionnaire (Exhibits 16-18) that he was unable to stand for more than 15 minutes at a time. Claimant was also noted as arriving to the administrative hearing with the use of a cane to help him walk. Claimant noted problems sleeping in a form documenting his daily activities (Exhibits 19-23). Claimant indicated on this form that his left leg was broken in 2007 and healed improperly, which is a factor

in his ambulation today. Claimant noted he can shop but has a one hour time limit; Claimant noted that he utilizes a scooter to assist in shopping.

As previously noted, additional medical records were submitted following the hearing. The records were numbered 1-25. To distinguish the records from previously submitted records, the second set of records shall be prefaced by a "B".

Progress notes (Exhibits B2-B6) from Claimant's treating physician were submitted. The notes are dated from 3/18/11-6/10/11. It was noted that Claimant uses a canes and walks with a limp. On 3/18/11, Claimant was noted as being morbidly obese due to an inability to exercise or control diet and leg pain. On 5/13/11, it was noted that Claimant lost 28-30 pounds.

An examination report dated 3/11/11 was presented (Exhibit B10). The examiner gave an impression of degenerative changes in the left knee.

A medical record (Exhibit B11) dated 5/12/11 from Claimant's treating physician noted small effusion of the left knee. Claimant's range of motion was unchanged.

An examination dated 4/15/11 noted an old fracture of the proximal shaft of the fifth metatarsal (see Exhibit B12). There was no evidence of acute fracture, dislocation or bony destruction. Mild degenerative changes were noted at the mid-foot level.

An initial evaluation report (Exhibit B20) dated 6/9/11 was submitted. The evaluation was in response to Claimant's complaints concerning his right leg. It was noted that Claimant's left knee was becoming increasingly problematic for him. The examiner found Claimant to be a candidate for reconstructive surgery to realign his tibia and fibula. The examiner also noted Claimant was at high risk for arthritis of the ankle and subtalar joint.

A letter from an orthopedic surgeon addressed "Dear doctors" was presented as Exhibits B22-B23. Claimant's left knee was noted as having arthritis. The physician recommended surgery for Claimant.

Based on the totality of evidence, Claimant established a severe impairment. Claimant's usage of a cane is persuasive evidence that he has ambulation problems. Heavy breathing and a limp were also noted as reoccurring problems for Claimant. All of these issues would impact an ability to perform any physical basic work activities. Though the heavy breathing may be affected by Claimant's smoking, it is not believed that the impairment would be absent if the smoking were not a factor. It is found that Claimant established a severe impairment. Accordingly, the analysis moves to step three.

Claimant's primary impairment appears to be problems with his leg. Musculoskeletal issues are covered by Listing 1.00. Claimant's impairment does not appear to be specifically diagnosed so the most relevant listing would be for joint dysfunction. The listing reads:

- 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 and is not relevant to Claimant's circumstances. Part A is relevant and will be considered.

The analysis as to whether Claimant meets the above listed impairment will begin with an analysis as to whether Claimant has an inability to ambulate effectively. There are no direct statements from Claimant's physicians that Claimant has an inability to ambulate effectively. Claimant's use of a cane is insufficient to meet the above listing which requires the use of two canes to establish ineffective ambulation. There was some testimony by Claimant that he has struggles with ambulation such as his limitations on shopping and a two block walking limit, however, there was not sufficient limitation shown to meet the above listed definition concerning ineffective ambulation. It is found that Claimant does meet the listing based on joint dysfunction.

Listings 12.04 (depression) was also considered and rejected as a listed impairment. Claimant's hypertension does not qualify as an SSA listing. It is found that Claimant does not meet a SSA-listed impairment. Accordingly, 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 testified that his work history involved various types of self-employment. Claimant presented a list of his employment history (Exhibit 18) for the prior 18 years.

Only a small amount of testimony was presented concerning each type of job that Claimant had, but it does not require significant imagination to determine that each job required a large amount of physical labor. Claimant listed his type of work as a: roofer, different periods as a drywall and painter, siding installer and performing body work on vehicles. All of the types of employment involved significant standing. All of the types of employment required various degrees of significant lifting. All of the types of employment required a full range of body movement such as kneeling, squatting and bending.

There were no medical records specifically outlining Claimant's physical limitations. It is known that the examination report dated 11/13/10 outlined Claimant was capable of squatting and recover at an 80% point in the distance and 90% in bending. A limit in Claimant's straight leg raising was noted as 0-50 degrees from a lying position and 0-90 degrees from a sitting position. It was also noted that Claimant limps and walk with a cane.

There was no particular medical evidence which would indicate Claimant is incapable of occasionally lifting weights up to ten pounds. There was no particular medical evidence indicating Claimant is not capable of occasional standing and walking. Based on the totality of medical evidence, it is found that Claimant is capable of a sedentary level of employment. As Claimant's previous employment duties required a level of work beyond sedentary, it is found that Claimant is not capable of performing his past employment. Accordingly, the analysis moves to step five.

At the fifth step in the analysis, the burden shifts from Claimant to DHS to present proof that Claimant has the residual capacity to 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 a claimant is disabled or not.

At the time of the administrative hearing, Claimant was a younger individual (aged 45-49). He has an education level of high school or more. Claimant has a history of skilled or semi-skilled employment (not transferable). Based on Claimant's information, Vocational-Rule 201.21 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.

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).

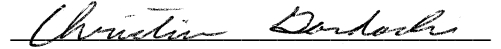
The undersigned already found Claimant to be not disabled for purposes of MA benefits based on a finding that Claimant is capable of performing other types of employment after considering Claimant's age, education and work history. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly denied Claimant's application for SDA 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 and SDA benefits to Claimant on the basis

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that Claimant was not a disabled individual. The actions taken by DHS are AFFIRMED.


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

Date Signed: September 1, 2011

Date Mailed: September 1, 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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