

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201130713
Issue No. 2009
Case No. [REDACTED]
Hearing Date: June 29, 2011
Oakland County DHS (02)

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 29, 2011 from Detroit, Michigan. The Claimant appeared and testified. 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) 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 11/18/10, Claimant applied for SDA and MA benefits including retroactive MA benefits from 8/2010-10/2010.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 2/18/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 2/23/11, DHS denied Claimant's application for MA and SDA benefits.
5. On 3/11/11, Claimant requested a hearing disputing the denial of MA benefits (not SDA benefits).

6. On 5/19/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 58-59).
7. As of the date of the administrative hearing, Claimant was a 58-year-old male [REDACTED] with a height of 5'6" and weight of 150 pounds.
8. Claimant has no relevant history of alcohol, smoking or drug abuse.
9. Claimant completed a Bachelor of Arts in Art and a Bachelor of Science in Education.
10. Claimant claimed to be a disabled individual based on a physical impairment of Irritable Bowel Syndrome (IBS).
11. Claimant also claimed to be a disabled individual based on a mental impairment of depression and/or schizophrenia.

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 2/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related

categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories. 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:

- the applicant dies (MA eligibility 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). BEM 260 at 1-2.

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 functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

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

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 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 earning amount varies depending 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; 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 twelve 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 impairment is a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by first reviewing Claimant's medical history.

Based on an [REDACTED] examination, Claimant was found to have a global assessment functioning (GAF) score of 50. The Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV) describes GAF as a scale used by clinicians to subjectively rate the social, occupational, and psychological functioning of adults. A score of 50 is representative of serious symptoms or any serious impairment in social, occupational, or school functioning. The score of 50 closely approaches a score range of 51-60 which is representative of moderate symptoms or any moderate difficulty in social, occupational, or school functioning. The examining psychiatrist found Claimant to be cooperative and more verbal than in prior meetings while recommending continued psychotherapy and medications with regular follow-up and vocational rehabilitation.

A [REDACTED] test (see Exhibit 25) indicated a high-density lipoprotein (HDL) count of 33.6 mg/dl with a corresponding reference range of 35 or greater being normal. All other blood counts were unremarkable. The blood test results were improved from 5/20/10 (see Exhibit 38).

On [REDACTED], Claimant was examined and scored for 20 categories of cognitive function (see Exhibits 8-9). Claimant was found markedly limited in two categories: the ability to understand and remember detailed instructions and the ability to work in coordination with or proximity to others without being distracted by them. Claimant was marked as moderately limited in five other abilities and not significantly limited in 13 other abilities.

On [REDACTED] Claimant was examined (see Exhibit 3-4) and diagnosed with irritable bowel syndrome, paranoid schizophrenia and as having migraine headaches. Claimant was deemed as capable of meeting his needs in the home and having a stable condition. It was also indicated Claimant suffered from fatigue. The same physician found Claimant was disabled indefinitely (see Exhibits 20-21) though there was little evidence supporting the basis of the physician's conclusion.

Based on the evidence of Claimant's physical impairments, the undersigned is not inclined to find that Claimant has a severe impairment. Though IBS is certainly an obstacle to daily life and employment, it was not established that it would significantly limit Claimant from performing any basic work activities. Claimant testified that approximately every two days he suffered from cramping requiring him to take longer bowel movements which averaged 15 minutes. Claimant's testimony was not verified by any medical records. Even accepting Claimant's testimony at face value, the undersigned could foresee that Claimant would need accommodation from any potential employer; however, the accommodation does not amount to a significant limitation on basic work activities.

Claimant testified concerning migraine headaches but there was no evidence of what caused the headaches. There was also little evidence of how the headaches would prevent Claimant from performing basic work activities. It is found that Claimant is not disabled based on a physical disability.

There was sufficient evidence to find that Claimant's paranoid schizophrenia was a sufficiently severe impairment to meet the requirements of step two of the disability analysis. Claimant's marked limitations in two areas of ability would affect basic work activities of responding to supervisors and coworkers. Further, a marked limitation in understanding and remembering instructions would naturally affect the work activity of understanding and remembering instructions. It is found that Claimant's mental impairments were sufficiently severe to meet the de minimus standard for step two. The disability analysis then proceeds 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 a listed impairment is not met, then the analysis moves to step four.

Claimant's testimony and medical records described many symptoms which pointed to several potential mental impairments. A Psychological Evaluation (Exhibits 10-12) dated [REDACTED] diagnosed a primary psychotic disorder with secondary bipolar disorder and tertiary schizophrenia. A second mental status examination (Exhibits 18-22) dated [REDACTED] diagnosed a mood disorder (see Exhibit 20). Based on the medical evidence, Claimant's best opportunity to meet a listed impairment would be the listing for psychotic disorders. The listing reads as follows:

12.03 Schizophrenic, paranoid and other psychotic

disorders: Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect;

OR

4. Emotional withdrawal and/or isolation;

AND

B. 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;

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Based on the evidence, Claimant does not meet the listing for psychotic disorders. The undersigned is not inclined to interpret the marked limitations on Claimant's abilities to remember and understand instructions as a marked difficulty in maintaining concentration. Claimant had only moderate (or less) limits in two other areas of concentration. Claimant also had marked limits in working with others but no significant limits in any of five areas involving social interaction (see Exhibit 9). Thus, Claimant cannot meet the criteria of section B (making section A irrelevant) of the psychotic disorder definition. There is no evidence to support that Claimant meets any of the requirements for C.

The undersigned also considered and rejected the listing for depression (Listing 12.04) for similar reasons. The listing for depression (i.e. affective disorders) has similar language to the psychotic disorder listing. The undersigned did not consider any impairments based on IBS as it was found to be not severe. It is found that Claimant failed to establish meeting a SSA listing for disability. Accordingly, the 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.

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 had zero employment history within the last 15 years. Claimant was last employed in [REDACTED] as a [REDACTED] for the [REDACTED]. Based on documentation from Claimant's employment (Exhibits 62- 63) it is not believed that

Claimant's [REDACTED] employment would have fallen within the prior 15 years from the date of the hearing. Because Claimant has not worked within the last 15 years, no analysis can be done to determine whether Claimant can return to his past employment and the analysis moves to step five.

In the fifth and final step of the disability analysis is an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). Disability is found if an individual is unable to adjust to other work. *Id.*

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).

An analysis was not made at step four as to the type of employment Claimant is capable of due to the lack of his employment history. One must be made for the step five analysis.

Claimant has no exertional impairments. There was no evidence that he had any physical restrictions to limit his employment opportunities. Thus, Claimant is capable of at least medium work.

The undersigned must also examine Claimant's non-exertional limitations. The undersigned previously discussed the accommodations needed for Claimant's IBS and determined that some accommodation would be necessary for potential employment for Claimant. The undersigned also cited Claimant's marked limitations in remembering and carrying out detailed instructions and working with others. Though it cannot be denied that Claimant has employment obstacles, the non-exertional limitations are not sufficient to significantly limit Claimant from potential employment. Thus, it is found that Claimant is capable of medium level work.

As a person of advanced age [REDACTED] high school graduate or further (Claimant has two bachelor degrees), with no employment history, the undersigned finds that Medical-

Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] Rule 203.14 controls. Medical-Vocational Rule 203.14 directs a finding that Claimant is not disabled. It is found that Claimant is not disabled for purposes of MA benefits and that DHS properly denied Claimant's application for MA benefits.

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 on the basis of 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: July 7, 2011

Date Mailed: July 7, 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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