

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201133670
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: July 13, 2011
Wayne County DHS (43)

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 July 13, 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) 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 8/31/10, Claimant applied for SDA and MA benefits including retroactive MA benefits from 5/2010-7/2010.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 3/15/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).
4. On an unspecified date, 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 5/12/11, Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On 6/17/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 115-116) using Vocational Rule 202.17 as a guide.
7. As of the date of the administrative hearing, Claimant was a 40 year old male (DOB 10/19/70) with a height of 6/1" and weight of 290 pounds.
8. As of the date of the hearing, Claimant had no relevant history of tobacco, alcohol or drug abuse.
9. Claimant's highest education year completed was 11th grade.
10. Claimant's last medical coverage occurred when Claimant was approximately 18 years old.
11. Claimant claimed to be a disabled individual based on physical impairments of: enlarged heart, arthritis and gout.
12. Claimant also claimed to be a disabled individual based on a mental impairment of depression.

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 3/2011, the estimated 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.

On 11/29/10, Claimant was psychologically examined by a DHS referred examiner concerning Claimant's mental status (See Exhibits 7-10). The Claimant was diagnosed with "adjustment disorder with depressed mood". The examining physician concluded Claimant had a global assessment function (GAF) score of 48. 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 within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job)." The examiner noted Claimant's depression started after his heart condition. It was further noted that the symptoms of depression "are not very severe and independently should not cause problems in doing simple jobs." (Exhibit 8).

Claimant presented a Medical Examination Report (see Exhibits 11-12) dated 8/31/10. The physician completing the form noted Claimant had several heart problems though made reference to attached hospital documents. The physician also noted that Claimant had not been examined in his office.

A separate examination also occurred on 8/31/10 (see Exhibits 13-14, 24-26 and 48-51). Claimant was diagnosed by the examiner as having gout and hypertension. A third diagnosis was made (possibly "omp") though the undersigned could not fully decipher the writing.

Hospital discharge documents (Exhibits 15-23) refer to implantation of a pacemaker. The date of admission was 8/12/10. A discharge date was not noted. Six medications were prescribed to treat Claimant's heart condition including: carvedilol, hydralazine and lisinopril. A similar, though not identical, set of discharge instructions were included for the same admission date (Exhibits 28-39).

A "finalized" discharge summary (see Exhibits 75-103) was submitted as part of the 8/12/10 hospital admission. It was noted that Claimant's left ventricle was mildly enlarged. It was also noted that there was severe global impairment in the left ventricle contractility and that the estimated ejection fraction was less than 20%. Claimant's right atrium was also noted as mildly enlarged.

In response to Claimant's complaints of chest discomfort, Claimant was examined on 8/13/10 (see Exhibits 24-26). The examining physician gave impressions that Claimant suffers from elevated blood pressure, dyspnea and an increasing level of breathing problems.

Claimant was again examined on 8/14/10 (see Exhibits 43-51). Ejection fraction was noted at 20% and blood pressure was "remarkably elevated".

On 2/8/11, a DHS referred examining physician reported (see Exhibits 63-75) Claimant's blood pressure was controlled and showed no signs of congestive heart failure and no paroxysmal nocturnal dyspnea. Claimant had full range of motion of all tested extremities and joints.

A 3/26/11 examiner in a report (see Exhibits 107-114) dated 3/26/11 considered Claimant's heart condition, and other medical history. The examiner concluded Claimant would have significant limitations working secondary to his morbid obesity and cardiomyopathy. Claimant was limited to carrying, pushing or pulling any weight greater than five pounds and traveling a distance longer than one block. A sitting job involving his hands was deemed "reasonable and possible".

Claimant documented his daily activities in a report (Exhibits 55-59) dated 9/6/10. Claimant noted that he did not shop, clean, cook. Claimant also claimed that he required a chair for bathing. Claimant testified that he does his own cooking, though his child's mother does his cleaning because Claimant gets too tired from cleaning. Claimant states he spends the bulk of his day watching television and talking on the telephone.

Claimant denied suffering from hallucinations, delusions or panic attacks. Claimant stated that he suffers frequent crying spells due to his depression. Claimant has never been hospitalized for his depression.

Based on the totality of the evidence, Claimant established a severe impairment. Claimant's inability to carry, push or pull five pounds is a dramatic impairment to Claimant's basic work activities. Claimant was also very limited in walking and climbing stairs. The undersigned need not even consider Claimant's mental state yet because Claimant's physical limitations established a severe impairment by themselves. It is found that Claimant has a severe impairment; accordingly, the disability 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 the 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.

Claimant established a severe impairment based on depression. Mental impairments are described under listing 12.00. Claimant's only relevant mental impairment diagnosis was for depression. Depression falls under affective disorders; the listing reads:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. 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 of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or

- d. Inflated self-esteem; or
- e. Decreased need for sleep; or
- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

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 affective 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.

The undersigned will begin the analysis for depression with Part B. Claimant debatably established a marked restriction in daily activities. Claimant testified that he was unable to perform many basic activities such as shopping and cleaning though the restriction was based on Claimant's heart issues, not depression. It should be noted that other documents noted no restrictions on Claimant's daily activities. Even conceding that Claimant was markedly limited in daily activities, there was no evidence that Claimant had marked limitations in social functioning or maintaining concentration. There was similarly no evidence that Claimant suffered repeated episodes of decompensation other than his crying spells; the spells were not noted in Claimant's history. Claimant

was never psychologically hospitalized and there was no evidence that Claimant had notable periods of decompensation. It is found that Claimant failed to meet the listing for affective disorders.

There was also sufficient evidence of Claimant's heart problems to consider whether Claimant met a listing for heart problems. Heart impairments are found in Listing 4.00. The undersigned will consider whether Claimant's symptoms met the listing for chronic heart failure which reads:

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or
2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12

hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:

a. Dyspnea, fatigue, palpitations, or chest discomfort; or

b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or

c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or

d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

Beginning the analysis with Part A, Claimant's ejection fraction (EF) results from 8/2010 appear to meet the requirements for the listing. Claimant's left ventricle was measured at performing at less than 20%. There was no evidence that the performance was measured during a period of instability. The EF was more a result of cardiomyopathy, an ongoing heart muscle condition, rather than other variables.

Concerning Part B, there are substantial medical records, but an absence of information concerning an exercise test. It does not appear that Claimant was given an exercise tolerance test. Similarly, there is no evidence as to why one was given. It is known that Claimant was measured with an EF percentage of less than 20% during a period of stability. It is also known that Claimant's heart symptoms (e.g. lifting restrictions, walking restrictions, shortness of breath) and Claimant's diagnosis of cardiomyopathy would be likely explanations for a failure to give Claimant an exercise test. Though a specific recommendation from a cardiologist is preferable to the findings of the undersigned, there is enough evidence to believe that Claimant was not given an exercise test because of his heart condition. It is found that Claimant's heart condition meets a listing for chronic heart failure. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in finding that Claimant was not a disabled individual.

It should be noted that had the undersigned found that Claimant failed to meet a listed impairment, Claimant would have been found capable of less than sedentary employment based on the combination of his exertional and non-exertional impairments. Such a finding under a full analysis would have rendered a finding of disability at the fifth step of the analysis.

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 has already found Claimant to be disabled for purposes of MA benefits by finding that Claimant has impairments expected to last one year or more. This finding makes Claimant automatically eligible for SDA benefits based on the lesser 90 day durational requirement. It is found that DHS improperly denied Claimant's SDA benefit application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 8/31/10 for MA and SDA benefits;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA and SDA benefits on the finding that Claimant is a disabled individual;
- (3) if Claimant is eligible, supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA and SDA benefits, to schedule a review for MA and SDA benefits for 7/2012.

The actions taken by DHS are REVERSED.


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

201133670/CG

Date Signed: July 22, 2011

Date Mailed: July 22, 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.

CG/hw

cc:

