

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201224482
Issue No. 2009
Case No. [REDACTED]
Hearing Date: April 9, 2012
Wayne County DHS (57)

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, an in-person hearing was held on April 9, 2012 from Detroit, Michigan. The claimant appeared and testified. [REDACTED] appeared as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), [REDACTED], Manager, 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 6/29/11, Claimant applied for MA benefits including a request for retroactive MA benefits from 4/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/11/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).
4. On 10/13/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 1/6/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 2/28/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 23), in part, by application of Medical-Vocational Rule 203.11.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 6'1" and weight of 160 pounds.
8. Claimant has a history of alcohol abuse.
9. Claimant's highest education year completed was the 11th grade
10. As of the date of the administrative hearing, Claimant had no health insurance coverage, and has not had medical coverage since approximately 10/2010.
11. Claimant alleged that he is disabled based on impairments and issues including hypertension, deep venous thrombosis, back pain and diabetes.

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).

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 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 2011 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).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other 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 exhibits numbers.

A Social Summary (Exhibits 5-6) dated [REDACTED] was presented. Claimant's form was completed by a Medicaid Advocate on [REDACTED]. It was noted that Claimant alleged impairments of diabetes, hypertension, back pain and left leg pain.

A Medical Social Questionnaire (Exhibits 7-9) dated [REDACTED] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. It was noted that Claimant was hospitalized in 4/2011 due to acute phlebitis of the left leg.

An Activities of Daily Living (Exhibits 16-20) dated [REDACTED] was presented; Claimant's form was completed by an unspecified relative. It was noted that Claimant works around the house doing laundry, lawn care, washing dishes, shoveling snow and household repairs; it was noted that Claimant does not receive help with this work. It was noted that Claimant does his own shopping.

A discharge summary (Exhibits 17-19) from a hospital was presented. It was noted that Claimant was admitted to a hospital on [REDACTED] after presenting with complaints of left leg pain. It was noted that Claimant had extensive DVT. It was noted that Claimant had no respiratory issues. Claimant was discharged with prescriptions for Lovenox and Coumadin, to be taken daily. Hypertension and diabetes were also part of the discharge diagnoses.

The analysis of whether Claimant has a significant impairment to the basic work activities is hindered by the fact that a consultative examination report was ordered by this office. DHS was given 90 days to schedule and pay for the examination and to forward the corresponding report as an exhibit. No consultative examination report was received by this office. DHS was sent a follow-up email concerning the absent submission and no response was received. All appearances point to a DHS failure to comply with the administrative order. This raises the question of what consequence should result for the apparent DHS failure to comply.

The purpose for scheduling the consultative examination was to give Claimant an opportunity to submit up-to-date medical evidence. Without the consultative examination report, Claimant's only medical evidence is a 4/2011 discharge summary. A proper consequence for the DHS failure to submit a consultative examination report would be to find that Claimant's testimony to be verified, as long as the testimony could have been verified by the consultative examination report.

Claimant testified that he is restricted to half of a mile in walking before his legs hurt. Claimant estimated that he could stand 1-1.5 hours but that his legs hurt after 30 minutes of standing. Claimant testified that he has no sitting or lifting restrictions.

Even conceding Claimant's testimony to be verified, there is little evidence to support a finding that Claimant has a significant impairment to performing basic work activities. Claimant testified that he is capable of performing daily activities of: bathing, grooming, cooking, cleaning, laundry and shopping. Claimant even noted that he performs yard work and snow removal on the Activities of Daily Living.

A half mile walking restriction could reasonably be interpreted as a significant impairment to basic work activities. It was not established what level of rest is required for Claimant to continue to walk further. Though walking is certainly a basic work activity, a half mile walking limit does not seem to be a significant impairment as most jobs would likely not require such continuity in walking. Similarly, Claimant's self-imposed 1-1.5 hour limit in standing also does not appear to be a significant limitation.

As noted above, step two requires a de minimus standard. Applying a de minimus standard and finding Claimant's testimony to be verified based on the failure by DHS to submit a consultative examination report, it is found that Claimant established a significant impairment to performing basic work activities.

Claimant testified that he had ongoing back pain since 2006. Claimant testified that he had circulation problems in his legs for a few months; presumably at least since his 4/2011 hospitalization. It is found that Claimant established having impairments that have, or will last, for 12 months. As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move 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 to be deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

One of Claimant's primary impairments involved leg pain from DVT/PE. Cardiovascular impairments are covered by Listing 4.00. Vein deficiencies are best covered by Listing 4.11 which reads:

4.11 Chronic venous insufficiency of a lower extremity with incompetency or obstruction of the deep venous system and one of the following:

A. Extensive brawny edema (see 4.00G3) involving at least two-thirds of the leg between the ankle and knee or the distal one-third of the lower extremity between the ankle and hip.

OR

B. Superficial varicosities, stasis dermatitis, and either recurrent ulceration or persistent ulceration that has not healed following at least 3 months of prescribed treatment.

As noted above, SSA defines brawny edema in Listing 4.00G3. This section reads:

3. *What is brawny edema? Brawny edema* (4.11A) is swelling that is usually dense and feels firm due to the presence of increased connective tissue; it is also associated with characteristic skin pigmentation changes. It is not the same thing as pitting edema. Brawny edema generally does not pit (indent on pressure), and the terms are not interchangeable. Pitting edema does not satisfy the requirements of 4.11A.

The record was close to barren concerning medical evidence of Claimant's disability. The only presented evidence verified acute DVT problems. No evidence of brawny edema or other evidence concerning the severity of venous insufficiency was presented. Claimant failed to establish meeting the listing for chronic venous insufficiency.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's back pain complaints. The record was completely devoid of medical record verification of back pain. This listing was rejected due to a lack of evidence and a failure to establish a spinal disorder resulting in a compromised nerve root or any other relevant diagnosis.

Claimant's alleged impairments of diabetes and hypertension are not covered by SSA listings. There was no evidence to justify considering symptom related listings (e.g. Listing 11.14, the listing for peripheral neuropathies, a possible diabetes symptom).

It is found that Claimant failed to establish meeting a SSA listing. 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.

Claimant stated that his only past relevant employment consisted of working as a maintenance man at a steel plant. Claimant stated that his job involved standing and/or walking at least six of eight hours per workday. Claimant testified that he could no longer perform the standing and/or walking necessary to perform the employment. Claimant's testimony was not verified but is reasonably possible based on the DVT diagnosis and his self-imposed restrictions. Claimant's testimony will be given maximum consideration in light of DHS' failure to provide a consultative examination report. It is found that Claimant is not capable of performing past relevant employment and the analysis moves to step five.

In the fifth step in the process, 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).

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.* 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).

Claimant did not testify to having any sitting or lifting restrictions. This justifies a finding that Claimant is minimally capable of sedentary employment.

It was not established by Claimant or by medical records how long Claimant could reasonably be expected to stand during an eight hour work day. Claimant testified that he was capable of standing 1-1.5 hours and only 30 minutes before his leg would hurt. Claimant stated that he could not stand and/or walk for 6 of eight hours in a workday. Claimant stated he could walk half of a mile before his legs would hurt and sitting would be required. As noted above, Claimant's testimony will be given maximum consideration due to the DHS failure to provide a consultative examination report. Claimant self-imposed restrictions would reasonably lead to a conclusion that Claimant is capable of light work.

Based on Claimant's exertional work level (light), age (advanced), education (limited or less), employment history (semi-skilled- not transferrable), Medical-Vocational Rule 202.02 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

DECISION AND ORDER

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

- (1) reinstate Claimant's MA benefit application dated 6/29/11 including a request for retroactive MA benefits from 4/2011;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA benefits, to schedule a review of benefits in one year from the date of this administrative decision.

The actions taken by DHS are REVERSED.



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

201224482/CG

Date Signed: July 30, 2012

Date Mailed: July 30, 2012

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,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

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

CG/hw

cc:

