

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201227560
Issue No. 2009
Case No. [REDACTED]
Hearing Date: April 18, 2012
Wayne DHS (15)

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 18, 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], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. On 7/7/11, Claimant applied for MA benefits including a request for retroactive MA benefits for 6/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/26/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3), in part, by finding that Claimant's impairments failed to meet the durational requirement to establish disability.
4. On 10/31/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 1/19/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 3/6/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 17), in part, by application of Medical-Vocational Rule 203.16.
7. On 4/18/12, an administrative hearing was held and Claimant presented new medical documents (Exhibits A1-A36).
8. On 4/24/12, the newly submitted medical documents were forwarded to SHRT for a reconsideration of disability.
9. On 5/31/12, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 203.12.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'11" and weight of 185 pounds.
11. Claimant has a relevant history of alcohol and cocaine abuse.
12. Claimant's highest education year completed was the 11th grade.
13. As of the date of the administrative hearing, Claimant had ongoing medical coverage through the Veteran's Administration.
14. Claimant alleged that he is a disabled individual based on impairments and issues including: left hand numbness, right calf pain, left shoulder pain, seizures and various psychological problems.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The controlling DHS regulations are those that were in effect as of 7/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

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

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

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

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

Substantial gainful activity means a person does the following:

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

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints 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. The DHS presented hearing documents were marked Exhibits 1-17. Claimant's medical documents presented at the hearing were marked Exhibits A1-A36.

A Social Summary (Exhibits 4-5) dated [REDACTED] was presented. A Social Summary is a standard DHS form to be completed by DHS specialists which notes alleged impairments and various other items of information. The presented Social Summary was completed by a Medicaid Advocate rather than a DHS specialist. It was noted that Claimant reported impairments of: seizures, peripheral neuropathy, cerebellar atrophy and hypertension. It was noted that Claimant was admitted to the hospital for seizures and alcohol intoxication. It was also noted that Claimant reported that he was hit by a motor vehicle several years ago and since is unable to stand or walk for long periods, or to lift or carry objects more than 5 pound.

A Medical Social Questionnaire (Exhibits 7-9) dated [REDACTED] was presented. The Claimant completed form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history; Claimant's form was completed by an unidentified Medicaid Advocate. It was noted that Claimant had a treating physician through his veteran insurance

coverage. It was also noted that Claimant had a hospital encounter in 6/2011 due to acute seizure alcohol intoxication; no other hospitalizations were noted.

A hospital discharge summary (Exhibits 12-13) was presented. It was noted that Claimant was admitted to the hospital on [REDACTED] and discharged on [REDACTED]. A principal diagnosis of acute mental status change secondary to alcohol withdrawal seizure was given. The following secondary diagnoses were also provided: hypertension secondary to medication complication, alcohol intoxication, anemia and elevated creatine phosphokinase secondary to mild muscle breakdown. It was noted that Claimant went to the hospital with an elevated alcohol level and had been drinking regularly. It was noted that Claimant was not on seizure medication. A CAT Scan of Claimant's brain showed no acute intracranial process. Claimant was discharged in a medically stable condition.

Medical records from [REDACTED] (A21-A35) were presented. The records established that Claimant had ongoing problems with unexpected seizures. An EEG Consult Report noted that the abnormal EEG was indicative of epilepsy (see Exhibit A33).

A Radiology Report (Exhibits A1-A2) for a brain MRI dated [REDACTED] was presented. It was noted there was no evidence of diffusion restriction or other diffusion abnormality. It was noted that midline structures showed normal morphology. A first impression of acute intracranial process was provided.

Medical records (Exhibits A16-A20) dated [REDACTED] were presented. It was noted that Claimant reported suffering 2-4 seizures per month. It was noted that Claimant's seizures reportedly involved staring and falling down, followed by incontinence and occasional tongue biting. Claimant reported no seizures since [REDACTED]. It was noted that Claimant drank two pints of alcohol per week. It was noted that Claimant's seizure medication was recently doubled, but that Claimant was taking the old prescribed dosage. It was noted that Claimant was not to drive until he was six months seizure-free.

On [REDACTED], it was noted that following the [REDACTED] doctor appointment, Claimant began taken the prescribed double dosage of Keppra resulting in a seizure 2-3 days later but no seizures thereafter (see Exhibits A10-A11). It was also noted that Claimant was trying to reduce his alcohol intake and that he now drinks one pint per week. It was noted that Claimant was forgetful.

Claimant was also neurologically examined on [REDACTED] (see Exhibits A10-A13). It was noted that Claimant's alcohol intake could exacerbate his reported seizures. It was noted that Claimant was to continue taking Keppra and that he was to keep a record of his seizures. Claimant was restricted from driving for six months. It was noted that

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seizure precautions included not working at heights, climbing ladders or working with heavy machinery.

Claimant provided a handwritten list of his current prescriptions. The list included medication for: Amlodipine, Levetiracetam, Cyclobenzaprine, Etodolac and Tramadol.

Claimant's primary impairment involved unexpected seizures. The medical records established that Claimant last had a seizure in 10/2011 (see Exhibit A10). When Claimant's medication was adjusted, Claimant's seizures apparently ended, at least as verified by medical record. Perhaps not coincidentally, Claimant's alcohol intake was reduced at the same time.

It was established that seizures prevented Claimant from the following: driving until seizure free for six months, working with heavy machinery or working at heights. Activities such as driving, working on ladders or heights and working with heavy machinery are verified restrictions but not basic work activities. There is no medical evidence to suggest that seizures impaired Claimant's ability to walk, stand lift push or any other basic work activity.

It is plausible that Claimant has non-exertional impairments which may amount to significant impairment of basic work activities. The medical records reference that Claimant is a poor historian (see Exhibit A19). A statement that Claimant is a poor historian is insufficient to draw any conclusions concerning Claimant's ability to use judgment, remember information or other cognitive-based work activities.

It was noted that Claimant complained of left side weakness (see Exhibit A17). It was also noted that Claimant had an upcoming appointment for the issue. No other medical evidence was presented concerning this impairment.

There is no medical evidence that Claimant is restricted in performing any activities other than driving, working at a height or working with heavy machinery. Claimant's restrictions may slightly limit his employment options, but these are not significant restrictions. Even applying a de minimus standard, the evidence does not establish significant impairments to the performance of basic work activities. It is found that Claimant is not a disabled individual. Accordingly, the DHS denial of MA benefits is found to be proper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's application for MA benefits dated 7/7/11 based on a determination that Claimant was not disabled.

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The actions taken by DHS are AFFIRMED.



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

Date Signed: June 14, 2012

Date Mailed: June 14, 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

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cc:

