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

IN THE MATTER OF:

[redacted]

Reg. No.: 201236258
Issue No.: 2009
Case No.: [redacted]
Hearing Date: May 23, 2012
County: Monroe DHS

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on May 23, 2012 from Monroe, Michigan. Participants included the above named claimant. [redacted] testified on behalf of Claimant. [redacted] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [redacted], Specialist.

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 8/1/11, Claimant applied for MA benefits including retroactive MA benefits from 7/2011.

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On 9/30/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 33-34).

4. On 12/15/11, DHS denied Claimant's application for MA benefits and mailed a notice (Exhibits 5-9) informing Claimant of the denial.

5. On 12/15/11, Claimant requested a hearing to dispute the denial of MA benefits.

6. On 3/13/12, SHRT determined that Claimant was a disabled individual, beginning 1/2012, based on information stemming from an application dated 1/20/12.

7. On 4/13/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 130-131) stemming from the application dated 8/1/11, in part, by application of Medical-Vocational Rule 202.17.

8. On 5/23/12, an administrative hearing was held.

9. At the administrative hearing, Claimant presented new medical records (Exhibits C1-C110).

10. The additional medical records were submitted to SHRT for reconsideration of Claimant's disability for the time of 7/2011-12/2011.

11. On 6/30/12, SHRT again denied Claimant's disability status from 7/2011 in part, by application of Medical-Vocational Rule 202.17.

12. As of the date of the administrative hearing, Claimant was a [redacted] year old male with a height of 5'7'' and weight of 155 pounds.

13. Claimant has no known relevant history of tobacco, alcohol or substance abuse.

14. Claimant's highest education year completed was 12th grade via obtainment of a general equivalency degree.

15. As of the date of the administrative hearing, Claimant had no medical health coverage

16. Claimant alleged that he is a disabled individual based on impairments and symptoms including: hypertension, back pain and neurological issues related to a stroke.

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.

Claimant was found to be disabled as of 1/2012 by SHRT; the approval was based on an application dated 1/2012. SHRT denied Claimant's disability status from 7/2011 resulting in a disputed period of disability between 7/2011-12/2011. The SHRT decisions equate to a finding that Claimant's disability onset date was 1/2012. Claimant contends his disability began in 7/2011 (or prior).

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 CRF 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. A hospital document noted that Claimant was a self-employed tree cutter (see Exhibit 4) as of 12/7/11. Claimant's income was not addressed at the hearing or in the record. Without income information, it cannot be stated with any level of certainty that Claimant was performing SGA as of 12/2011. 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 F2d 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 medical records presented at the hearing were chronologically numbered but will be prefaced with a "C" to distinguish them from previously submitted documents.

An undated Social Summary (Exhibit 45) was presented; the second page of the form was not presented. A Social Summary is a standard DHS form which notes alleged impairments and various other items; a patient rep completed the submitted Social Summary. It was noted that Claimant alleged impairments of coronary artery disease, renal insufficiency, hypertension and ruptured L5.

A Medical Social Questionnaire (Exhibits 46-48) dated [redacted] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant noted a hospital encounter from 7/2011 concerning heart and renal failure. Claimant also noted a hospital encounter from 7/2012 concerning heart issues.

Hospital records (Exhibits 50-129) from a hospitalization from [redacted] were presented. It was noted that Claimant presented to the hospital reporting episodes of fatigue, intense headache and hematuria. A significant history of CAD and hypertension was noted. It was noted upon discharge that Claimant had hypertensive crisis, chronic

kidney disease and transient ischemic attack. Claimant's ejection fraction was measured at 44% (see Exhibit 51).

Emergency room (ER) records (Exhibits 13-32) from 12/2011 were presented. It was noted that Claimant went to the ER on [redacted] complaining of left side weakness and slurred speech. The treating physician gave an impression of a cerebrovascular accident (i.e. stroke). A history of cerebrovascular accidents was noted. An impression of renal failure was also given based on Claimant's BUN and creatinine levels. Claimant's left-side weakness was noted.

Hospital records (Exhibits C1-C91) were presented. It was noted that Claimant was admitted to the hospital on [redacted] and that he was discharged on [redacted]. Diagnoses of acute renal failure, uncontrolled hypertension and left thalamic bleeding were provided. A mental status examination noted that Claimant's speech was 80% intelligible (see Exhibits C18-C19). Impressions were given of mixed dysarthria and communication deficits; it was also noted that Claimant was low risk for prandial aspiration.

Hospital records (C92-C108) from a [redacted] admission were presented. It was noted that Claimant had mild to moderate left artery disease. It was noted that Claimant's left artery had multiple lesions.

A Medical Examination Report (Exhibits C109-C110) dated [redacted] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on [redacted] and last examined Claimant on [redacted]. The physician provided diagnoses of cerebral bleeding, acute renal failure and depression. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant could not meet household needs. It was noted that Claimant was completely restricted from lifting or carrying weight. It was noted that Claimant was not capable of sitting, walking or standing for any lengthy periods.

Claimant testified that he was capable of walking 40 feet. Claimant stated that he is limited to 15 minutes of standing, but that he did not have any notable sitting restrictions. Claimant stated that he uses a cane to walk longer distances. Claimant stated he has his parents assist with daily activities such as showering.

As noted above, the present case is limited to determining Claimant's eligibility for Medicaid from 7/2011-12/2011. It was noted that Claimant's disability as of 1/2012 was based on a SHRT finding that Claimant met the requirements of a SSA listing (see Exhibit C111-C112).

Claimant's 4/2012 hospitalization established that Claimant had a stroke and suffered physical and verbal impairments. Claimant's hospital records from 7/2011 refer to Claimant having a transient ischemic attack (TIA). There was no evidence that Claimant suffered any permanent consequences as a result of the attack. Thus, the SHRT decisions appear to be, on their face, consistent with each other.

Claimant's testimony concerned his current limitations. It was not thought to distinguish between what Claimant could do at the time of the testimony from what Claimant was capable of in 7/2011. Thus, Claimant's testimony is of little probative value.

It is known that as of 7/2011, Claimant was hospitalized for hypertension and ischemic attacks. The five day hospitalization was evidence that Claimant's medical status was somewhat serious. There was evidence of chronic microvascular ischemia (see Exhibit 116) though the significance of the findings was not clear.

It is also known that Claimant complained of weakness and intense headaches. Both symptoms would affect Claimant's ability to perform basic work activities. The evidence was sufficient to establish a significant impairment to basic work activities.

The SHRT determination that Claimant was disabled as of 1/2012 is sufficient to presume that Claimant's symptoms from 7/2011 were expected to last for a period of 12 months or longer. It is found that Claimant established having a severe impairment and the disability analysis may proceed 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 the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's primary impairments involved hypertension and stroke-related symptoms. Neither impairment is directly covered by SSA listings. Neurological issues caused by a stroke are covered by SSA listings. The applicable listing reads:

> **11.04** ***Central nervous system vascular accident****.* With one of the following more than *3* months post-vascular accident:
> A. Sensory or motor aphasia resulting in ineffective speech or communication; or
> B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

The evidence was persuasive that Claimant suffered speech and motor deficits following the 4/2012 hospitalization (see Exhibit C18). The evidence was less persuasive of such a finding following Claimant's 7/2011 and 12/2011 hospitalizations.

Claimant's impairments following the 7/2011 hospitalization were described as a transient ischemic attack. The diagnosis tends to establish a lack of permanence to any dysfunction with Claimant's speech of motor function. It was not established that Claimant's speech or movements were affected after his hospitalization from 7/2011; thus, Claimant failed to meet an SSA listing for the period of 7/2011-12/2011.

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's testified he worked from 1993-2008 as a line worker (see Exhibit 48). Claimant stated that his job duties included attaching tires and car batteries on vehicles. Claimant stated that he could not perform the employment since 4/2011, the date of his first stroke.

It should be noted that Claimant failed to note any employment since his line worker employment. As noted in the step one analysis, a medical record (Exhibit 4) dated 12/2011, noted that Claimant was a self-employed tree cutter. The notation is presumed to be accurate. It is not known how often Claimant performed tree-cutting services or to what extent that Claimant exerted himself, but some amount of exertion is presumed. In the absence of any evidence of Claimant's tree cutting employment details, it will not be considered past relevant employment and no step four analysis shall occur for this employment.

There is sufficient medical evidence to presume that Claimant was not capable of performing his past employment as a line worker in 7/2011 because of stroke and hypertension related symptoms. Accordingly, the analysis may proceed 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).

As of the date of the administrative hearing, Claimant conceded having no sitting restrictions. This is persuasive evidence that Claimant was capable of sedentary employment as of 7/2011. It is also known that Claimant had ongoing issues with hypertension and a stroke which DHS conceded affected Claimant's abilities as of 1/2012, by virtue of the finding of disability.

There was ample evidence to suggest that Claimant was not disabled as of 7/2011. However, it is persuasive that Claimant had stroke-like symptoms only five months prior to the first month DHS certified Claimant as a disabled individual. The mere proximity in times between Claimant's hospitalizations is found to be the most persuasive evidence concerning Claimant's abilities. Though Claimant did not meet a SSA listing in 7/2011, Claimant's symptoms suggest that it would be unreasonable to have expected Claimant to perform any level of exertional employment at that time. It is not reasonable to have expected Claimant to maintain even sedentary employment during periods of verified stroke-symptom hospitalizations. It is found that Claimant was not capable of less than sedentary employment. A finding that Claimant is capable of even less than sedentary employment is akin to a finding that Claimant was disabled.

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 8/1/11 including Claimant's request for retroactive MA benefits from 7/2011;
(2) 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) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.

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

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: [redacted]