

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201237758
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 28, 2012
Wayne County DHS (41)

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 June 28, 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 1/12/12, Claimant applied for MA benefits including a request for retroactive MA benefits from 10/2011-12/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 2/14/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).
4. On 2/23/12, DHS denied Claimant's application for MA benefits and mailed a notice informing Claimant of the denial.

5. On 2/29/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 4/24/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 40), in part, by application of Medical-Vocational Rule 202.20.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'7" and weight of 262 pounds.
8. Claimant has no known relevant history of alcohol, tobacco or drug abuse.
9. Claimant's highest education year completed was high school, though Claimant testified that he is illiterate.
10. As of the date of the administrative hearing, Claimant had no medical coverage and has not had coverage since 2003.
11. Claimant alleged that he is a disabled individual based on impairments including: asthma, headaches, sleep apnea and cardiac issues.

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 1/2012, 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

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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. A Social Summary is a standard DHS form to be completed by an interviewer which notes alleged impairments and various other items of information; Claimant's form was completed by a Medicaid Advocate. It was noted that Claimant had impairments including a heart condition and other pain. Signs of pain and fatigue were noted. It was noted that Claimant had abdominal pain after he eats.

A Medical Social Questionnaire (Exhibits 7-11) 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. One previous hospitalization from 11/2011 was noted.

Various medical reports from 11/2011 were presented (see Exhibits 15-39). The reports stem from Claimant's presenting at the emergency room with complaints of lightheadedness and intermittent bouts of shortness of breath. It was noted that Claimant was admitted on [REDACTED] and discharged on [REDACTED].

Medical center documents (see Exhibits 22-24) dated [REDACTED] noted Claimant was placed on a cardiac monitor revealing no ectopy or dysrhythmia. Claimant's oxygen saturation was noted as 98%, which was noted as adequate.

A consultation report dated [REDACTED] from a medical center was presented (Exhibits 12-14). It was noted that epigastric pain was relieved following a GI cocktail. The following impressions were noted: hypertrophic cardiomyopathy, elevated cardiac enzymes, epigastric pain, hyperlipidemia, acute intermittent dyspnea and obesity.

A consultation report dated [REDACTED] from a medical center was presented (Exhibits 15-17). It was noted that Claimant was high risk for sudden death due to a severely thick ventricular septum. It was noted that there was no evidence of arrhythmias. It was noted that Claimant denied past syncopal episodes.

A consultation report dated [REDACTED] from a medical center was presented (Exhibits 18-19). Impressions of dyspnea, cardiomyopathy and probable obstructive sleep apnea were given. A physical examination noted Claimant's heart was regular with no murmurs.

A report dated [REDACTED] of a CAT scan of Claimant's brain was presented (see Exhibits 27-28). An impression of no acute process and a right maxillary mucous retention cyst were given.

A report dated [REDACTED] 1 of a chest radiogram was presented (see Exhibits 29-30). An impression of interval placement of a left-sided one lead power pack and low lung volumes were given.

A report dated [REDACTED] 1 of a chest x-ray was presented (see Exhibits 31-32). An impression of mild cardiomegaly was noted.

A letter from a nurse practitioner (Exhibit 39) dated [REDACTED] was presented. It was noted that Claimant was healing properly from an ICD implant. Claimant was advised that he could resume driving and performing light activity.

Claimant testified that he had a half block walking limit before he suffered breathing problems. Claimant stated that his left hand is unable to grip for unspecified reasons. Claimant stated that he is unsure if he could sit for 7.5 hours out of an 8 hour day. Claimant stated that he cannot lift anything heavy but was unsure of a weight limit.

Claimant stated that he can bathe himself but needs help with putting on his shoes. Claimant stated that he does not cook, clean, shop or do laundry but it was uncertain whether he was physically unable to do so or because his girlfriend and children did the tasks for him.

Claimant testified that he suffers daily headaches. He stated that the headaches last for 3-4 hours and that he requires approximately two hours of rest before the headache dissipates. Claimant described the pain as a 9/10.

The evidence established that Claimant has various heart problems. It was established that Claimant had a pacemaker. It was also established that Claimant had at least one incident involving breathing problems. Based on the presented evidence, some probability that Claimant is limited in walking and lifting could be presumed. Such

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restrictions are considered to be significant impairments to the performance of basic work activities.

The medical evidence also established that Claimant has had heart problems since at least 11/2011. The nature of Claimant's heart problem and restrictions are such that they are likely to continue for no less than a 12 month period.

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 deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

The impairment for which Claimant most persuasively established involved heart problems. Cardiac impairments are covered by listings in 4.00. None of the cardiac listings were found to apply to Claimant. Claimant did not establish any of the following: chronic heart failure, arrhythmias, myocardial ischemia, venous insufficiency, arterial disease or any other problems related to cardiac listings.

A listing for sleep apnea (Listing 3.10) was considered. This listing was rejected because there was no medical evidence concerning arterial problems related to cor pulmonale.

A listing for asthma (Listing 3.03) was considered. This listing was rejected as there was no evidence of any respiratory testing results.

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 relevant past employment included employment as a housekeeper and laborer. Claimant stated that his housekeeping employment involved pushing heavy carts up a hill at a motel; he also stated that he was required to carry broken beds. Claimant stated that his laborer employment involved heavy lifting as well. Claimant stated that he could no longer perform the heavy lifting required for his past relevant employment. Claimant's testimony was credible. It is found that Claimant cannot perform past relevant employment. Accordingly, the disability 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

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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 complained of chronic headaches. There was one reference to headaches in the medical records, that Claimant did not have headaches (see Exhibit 22). It was odd that a medical record noted Claimant did not complain of headaches while proceeding to describe the headaches in detail; it is possible that the record intended to state that Claimant was complaining of headaches. Even if it conceded that the record intended to state that Claimant was complaining of a headache, a single reference to headaches from a medical document is far from establishing that headaches affect Claimant's potential employment. The records failed to establish the frequency and degree of

Claimant's headaches. It is found that headaches are not a factor in Claimant's ability to perform SGA.

A reference was made to a secondary diagnosis for a general anxiety disorder. There is no further evidence of any psychological problems for Claimant. Claimant does not see a therapist, has never been hospitalized due to psychological symptoms and he does not take medication for psychological problems. There is insufficient evidence to find any restrictions to Claimant's potential employment due to psychological problems.

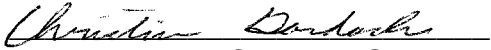
Claimant alleged that he has asthma. There was no verification of such a diagnosis in the medical packet. Claimant may have presumed an asthma diagnosis based on breathing difficulties. It is believed that Claimant has respiratory limitations, possibly related to his heart problems.

It was established that Claimant had problems with his heart. Medical records verify that Claimant was restricted for light activities due to his cardiac problems. For purposes of this decision, it will be presumed that Claimant's restriction to light activities was ongoing. There is no basis to presume any further restrictions related to Claimant's heart impairment.

Based on Claimant's exertional work level (light), age (younger individual), education (illiterate despite graduation from high school) and employment history (unskilled), Medical-Vocational Rule 202.16 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly 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 properly denied Claimant's MA benefit application dated 1/12/12, including retroactive MA benefits for 4/2010, based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.


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

Date Signed: July 9, 2012

Date Mailed: July 9, 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:



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