

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

IN THE MATTER OF:



Reg. No.: 201243654
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 28, 2012
County: Wayne 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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on June 28, 2012 from Detroit, Michigan. Participants included the above named claimant; [REDACTED] appeared as Claimant's authorized hearing representative (AHR). 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 11/30/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 1/13/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).
4. On 1/19/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial (see Exhibit 3).

5. On 4/4/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 2).
6. On 5/9/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 203.26 (see Exhibit 21).
7. On 6/28/12, an administrative hearing was held.
8. Claimant presented new medical evidence at the administrative hearing.
9. The new medical evidence was forwarded to SHRT.
10. On 8/8/12, SHRT denied disability, in part, by finding that drug and alcohol abuse were material to the determination and that Claimant was noncompliant with medication (see Exhibit C11).
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'11" and weight of 137 pounds.
12. As of the date of the administrative hearing, Claimant had a history of marijuana and alcohol abuse.
13. Claimant's highest education year completed was the 10th grade.
14. As of the date of the administrative hearing, Claimant had no ongoing health coverage and had not received coverage since the 1980s.
15. Claimant alleged that he is disabled based on impairments and issues including: seizure disorder, lower back pain and short term memory loss.

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. It should also be noted that exhibits presented at or after the hearing are prefaced with a "C" to distinguish them from previously submitted exhibits.

A Social Summary (Exhibits 6-7) dated [REDACTED] was presented. The form was completed by a Medicaid advocate. Claimant's listed impairments included chronic airway obstruction, seizures, broken neck from 2000 and chronic obstructive pulmonary disorder (COPD).

A Medical Social Questionnaire (Exhibits 9-11) 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's form was completed by a Medicaid advocate. A hospital encounter from 10/2011 was noted.

Hospital documents (Exhibits 14-15) from [REDACTED] were presented. It was noted that Claimant had alcohol on his breath when he was found sleeping on the ground. A CT scan of Claimant's head showed no acute process. It was noted that Claimant was prescribed Dilantin and phenobarbital for his seizures but that he stopped taking both; it was not stated why Claimant stopped taking the medications. It was noted that Claimant had frequent seizures. Claimant's attention span and concentration were noted as intact. An impression of seizure disorder, alcoholism and depression were given. It was noted that the seizure disorder could be related to alcoholism. It was noted that Claimant had a longstanding history of alcoholism and seizure disorder. It was noted that Claimant smoked four packs of cigarettes per day, drank four cases of beer per day and used marijuana. It was also noted that Claimant continued to drink while it was noted elsewhere that Claimant weaned himself off of drinking.

A hospital document (Exhibit C10) was presented. The document noted a [REDACTED] admission. Assessments were given for: seizures, acute alcohol intoxication and chronic back pain.

Hospital documents (Exhibits C1-C4 and C8-C9) were presented. It was noted that Claimant was admitted to a hospital on [REDACTED] and discharged on [REDACTED]. It was noted that Claimant was drinking alcohol when he suffered a seizure. Claimant was also positive for marijuana and barbituates. It was noted that Claimant fell down and became unresponsive after the seizure occurred. It was noted that Claimant could not state how much that he drank. A history of back pain from cervical vertebrae fractures was noted. It was noted that Claimant smoked one pack of cigarettes per day and drank alcohol periodically. It was noted that Claimant was not taking Dilantin. Impressions were given of: episode of fall with syncope and closed head injury, seizures, alcohol intoxication, elevated liver enzymes, lumbosacral radiculopathy and cervical radiculopathy. It was recommended that Claimant have physical therapy. A CT scan of Claimant's spine showed osteophyte formation but no stenosis. It was noted that Claimant was in the hospital two weeks earlier for the same problem. It was noted that Claimant promised to stop drinking.

A Nursing Follow-Up document dated [REDACTED] was presented. It was noted that Claimant had trouble getting meds.

Hospital documents (Exhibits C6-C7) were presented. It was noted that Claimant was admitted on [REDACTED] and discharged on [REDACTED]. It was noted that Claimant fell down at the store due to a seizure. A second seizure occurred on the way to the hospital. Claimant had an alcohol level more than 300. It was noted that Claimant was not compliant with medications. A CT of the cervical spine noted radiolucent lesions and degenerative changes at C4-C5, C5-C6 and C6-C7.

Claimant completed an Activities of Daily Living (Exhibits 16-19) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble sleeping on some nights. Claimant noted that he used to do lawn care, household repairs and shoveling of snow. Claimant noted he needs help shopping because of vision problems.

A letter (Exhibit 20) to DHS dated [REDACTED] from Claimant was presented. Claimant noted that he is homeless and living on the street or in a garage.

Claimant testified that he is able to walk, sit and stand. He stated that he is able to perform all daily activities including: bathing grooming, cooking, cleaning, laundry and shopping. Claimant stated that he cannot drive due to seizures and stated that he has not driven since 1989.

Claimant has a long history of seizures. Medical documentation confirmed that Claimant had seizures in 10/201, 1/2012, 3/2012 and 5/2012. Claimant testified that he had other seizures which did not lead to hospital trips. Claimant's seizures were established to be sufficiently frequent that they would be an impairment to performing basic work activities. The seizures were established to be a significant impairment to performing basic work activities for a period of more than 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 deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be a general seizure disorder. The most applicable SSA listing would be for epilepsy which reads:

11.02 Epilepsy - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

- A. Daytime episodes (loss of consciousness and convulsive seizures) or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

This listing for epilepsy was rejected because it was not verified that Claimant had three months of prescribed and compliant treatment. A listing for non-convulsive epilepsy (Listing 11.03) was rejected for the identical reason. Thus, Claimant does not meet the SSA listing for epilepsy.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's cervical and LBP complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for COPD (Listing 3.02) was considered. This listing was rejected due to a lack of medical evidence concerning Claimant's lung capacity.

A listing for affective disorder (Listing 12.04) was considered based on a diagnosis of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

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 he has done odd jobs for the last 15 years. Claimant stated that he had one full-time job as a roofer. Claimant stated that the job required working on a ladder and at heights. Claimant's reoccurring seizures would prevent Claimant from performing the employment. It is found that Claimant is unable to perform past relevant employment.

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).

Looking at all of Claimant's impairments outside of a seizure disorder, there was little evidence to establish that Claimant was significantly impaired. It was established that Claimant had respiratory and back problems but the medical evidence failed to establish any restrictions to Claimant's abilities. Claimant did not cite any restrictions in his testimony. The mere diagnoses would probably lead to some restrictions in Claimant's employment abilities. For purposes of this decision, it will be presumed that Claimant is capable of performing medium work.

Based on Claimant's exertional work level (medium), age (younger individual aged 45-49), education (less than high school), employment history (unskilled), Medical-

Vocational Rule 203.25 is found to apply. This rule dictates a finding that Claimant is not disabled.

The above analysis did not factor Claimant's established seizure disorder. Based on the frequency and severity of Claimant's seizures, it is found that Claimant is not reasonably capable of maintaining any level of employment. However, Claimant's drug and alcohol use must be factored in the determination.

When drug usage is relevant to an impairment then an additional analysis must be performed. SSA provides guidance on disability findings that may be impacted by substance abuse. Social Security Rule 82-60 states:

Where the definition of disability is met in a title XVI claim, and there is evidence of drug addiction or alcoholism, a determination must also be made as to whether the drug addiction or alcoholism was a factor material to the finding of disability for purposes of applying the treatment and representative payee provisions. In making this decision the key issue is whether the individual would continue to meet the definition of disability even if drug and/or alcohol use were to stop. If he or she would still meet the definition, drug addiction or alcoholism is not material to the finding of disability and the treatment and representative payee provisions do not apply. The drug addiction and alcoholism requirements are imposed only where (1) the individual's impairment(s) is found disabling and drug addiction and/or alcoholism is a contributing factor material to the determination of disability, and (2) the same impairment(s) would no longer be found disabling if the individual's drug addiction or alcoholism were eliminated, as, for example, through rehabilitation treatment.

Medical documentation confirmed that Claimant had seizures in 10/2011, 1/2012, 3/2012 and 5/2012, each leading to a hospitalization. Each of the hospitalization documents noted alcohol usage by Claimant. The hospital documents from 10/2011 specifically noted that Claimant's seizures could be related to his alcoholism.

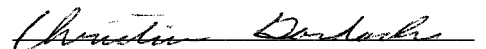
Based on the medical documentation, the link between Claimant's alcohol usage and seizures is very apparent; when Claimant is hospitalized for a seizure, he drank alcohol first. It is also of concern that Claimant continued to drink after promising to stop. The importance of the need to stop drinking by multiple physicians is persuasive evidence that Claimant's drinking is a contributing factor to his seizures.

Claimant stated that he has a history of seizures, but he also has a history of alcohol abuse. Claimant also noted that a year he spent in jail included multiple seizures; Claimant made the point that he was not allowed to drink while incarcerated, yet still had seizures. It cannot be stated with absolute certainty that Claimant's seizures would cease if he quit drinking alcohol. However, Claimant's continued abuse creates considerable doubt that the seizures are occurring independently from Claimant's alcohol consumption. It is reasonable to presume that Claimant's seizures would

decrease, either in frequency or severity, if he stopped abusing alcohol. The answer cannot be known with certainty until Claimant stops abusing alcohol. Based on the presented evidence, it is found that Claimant's alcohol abuse is material to the disability and that Claimant is therefore not disabled.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA benefits to Claimant 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: August 17, 2012

Date Mailed: August 17, 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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639

201243654/CG

Lansing, Michigan 48909-07322

CG/hw

cc:

