

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201252909
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 25, 2012
County: Wayne DHS (19)

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, a telephone hearing was held on July 25, 2012 from Detroit, Michigan. Participants included the above named claimant; [REDACTED] appeared on behalf of Claimant. 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 3/15/12, Claimant applied for MA benefits including a request for retroactive MA benefits from 12/2011-2/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/16/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).
4. On 4/26/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 5/14/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibits 2-3).
6. On 6/27/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 35), in part, by finding that Claimant's basis for disability was not expected to last 12 months or longer.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 6'1" and weight of 260 pounds.
8. As of the date of the administrative hearing, Claimant drank alcohol daily and stopped a pack/day cigarette habit approximately 90 days prior to the hearing.
9. Claimant's highest education year completed was the 12th grade (via general equivalency degree).
10. As of the date of the administrative hearing, Claimant had no ongoing health coverage and had not been covered by health coverage since approximately 1986.
11. Claimant alleged that he is disabled based on impairments and issues including: anxiety, shortness of breath, bipolar disease and obsessive-compulsive like behavior.

CONCLUSIONS OF LAW

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

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

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

program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

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

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

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

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

Substantial gainful activity means a person does the following:

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

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of

disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2011 monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

A Social Summary (Exhibits 6-8) dated [REDACTED] was presented. A Social Summary is a standard DHS form which notes alleged impairments and various other items of information; the Social Summary was completed by a Medicaid advocate. It was noted that Claimant alleged disability based on shortness of breath, back pain and arthritis. Claimant testified that he does not have arthritis.

A Medical Social Questionnaire (Exhibits 9-13) completed by a Medicaid advocate and dated [REDACTED] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. It was noted that Claimant had heart issues, breathing issues and anxiety. A single prior hospital encounter was noted.

Hospital records (Exhibits 14-28) from an admission date of [REDACTED] were presented. Claimant was discharged on [REDACTED]. It was noted that Claimant presented with complaints of SOB and dyspnea. Claimant reported a long history of anxiety and panic attacks. It was noted that Claimant smoked one pack of cigarettes per day and drank six beers per day. An impression was given of atrial fibrillation and suspected excessive ethanol intake.

Claimant completed an Activities of Daily Living (Exhibits 29-31) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted that he jumps up some nights when sleeping. Claimant noted that he had panic attacks. Claimant noted that he quit smoking six weeks ago. Claimant noted that he has a phobia about germs. Claimant noted that he drives minimally.

Claimant and his daughter testified that Claimant has panic attacks 3-4 times per week. Claimant said he sweats and his heart races when he has an attack. Claimant's daughter stated that Claimant tries to avoid people and crowds.

The testimony established a probability that Claimant has some type of psychological obstacles. However, there was no medical evidence to support how Claimant is affected by the obstacles. Claimant has never been psychologically hospitalized. Claimant has not sought psychological treatment. Claimant stated he takes a prescription for Xanax but this alone is not sufficient to verify any degree of psychological impairment. Based on the presented evidence, Claimant failed to establish a severe psychological impairment.

Claimant also alleged a physical impairment based on shortness of breath. It is known that Claimant was hospitalized for a period of two days related to SOB. It is also known that a diagnosis of atrial fibrillation was given. No medical records were presented to establish ongoing respiratory problems for Claimant. No medical records were presented to establish work restrictions for Claimant. A two day hospitalization for SOB and a diagnosis of atrial fibrillation is insufficient to establish that Claimant has a significant impairment to performing basic work activities. There is equally insufficient evidence that Claimant's condition was, or is, expected to last for a period of 12 months. Based on the presented evidence, it is found that Claimant does not have a severe impairment to performing basic work activities; accordingly, it is found that DHS properly denied Claimant's application for 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 application dated 3/15/12 requesting MA benefits. The actions taken by DHS are AFFIRMED.



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:

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- 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:

