

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201252269
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 30, 2012
County: Macomb DHS (36)

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 30, 2012 from Detroit, Michigan. Participants included the above named 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 2/24/12, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/10/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 58-57).
4. On 4/24/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 5/10/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 7/3/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 86-85), in part, by application of Medical-Vocational Rule 202.21.
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 170 pounds.
8. As of the date of the administrative hearing, Claimant had no known relevant history of tobacco, alcohol or other substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had no ongoing health coverage and had not received coverage since approximately 2/2012
11. Claimant alleged that he is disabled based on impairments and issues including: brachial plexus palsy (BPP) involving his right hand and carpal-tunnel syndrome (CTS) with his left hand.

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 the exhibits were page numbered going from bottom-to-top and are cited in a similar fashion.

A Social Summary (Exhibits 56-55) dated [REDACTED] was presented; Claimant's form was completed by a DHS specialist. It was noted that Claimant reported little-to-no use of his right hand since birth due to brachial plexus palsy, and that Claimant's left hand has been dysfunctional since 3/2011 due to CTS (despite surgery on the hand in 9/2011).

A Medical Social Questionnaire (Exhibits 54-52) 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 that his right arm and hand were crippled since birth and that his left and arm can't be moved without pain. Only one previous hospital encounter was noted- from 9/2011 due to CTS surgery. An operative note (Exhibit 15) concerning the surgery noted that Claimant tolerated the procedure well.

An urgent care document (Exhibit 2) dated [REDACTED] was presented. It was noted that Claimant had bronchitis and could return to work.

Various medical treatment documents (Exhibits 72-59 and 44-16) from 3/2011-9/2011 were presented. On [REDACTED], an x-ray of Claimant's left wrist led to a physician impression of mild degenerative arthritis of the left wrist and hand (see Exhibit 44). A document (Exhibit 39) dated [REDACTED] noted that an EMG nerve conduction test revealed some signs of bilateral CTS, but that Claimant's left side was symptomatic. A [REDACTED] dated treatment record (Exhibit 72) noted a physician impression of advanced CTS.

Treating physician documents (Exhibit 74-73) dated [REDACTED] was presented. It was noted that Claimant reported left shoulder pain while sleeping and CTS pain in his left hand. An impression was given of an onset of left-side CTS. It was noted that Claimant agreed to elective CTS surgery on his left hand to be done on [REDACTED]. It was noted that Claimant was given three days off of work for recovery from a cortisone injection. It was noted that Claimant would need 8-12 weeks off of work following CTS surgery.

A prescription (Exhibit 11) dated [REDACTED] was presented. The prescription was for a steering wheel assistance knob.

A document dated [REDACTED] was presented. It was noted that Claimant's first post-operative examination showed that Claimant's symptoms were improved.

A treating physician document (Exhibit 78) dated [REDACTED] was presented. It was noted that Claimant had left CTS.

A treating physician document (Exhibit 79) dated [REDACTED] was presented. A physical examination noted that Claimant showed paresthesias in his thumb, index and middle

fingers but there is improvement since a surgery. An impression was given of severe left CTS status post release and left shoulder capsulitis. It was noted that Claimant was to stay off of work.

A treating physician document (Exhibit 82; duplicated in Exhibit 13) dated [REDACTED] was presented. It was noted that a physical examination was performed on Claimant. An impression was given that Claimant's left shoulder adhesive capsulitis was improving after therapy.

A Physician's Statement (Exhibit 45) dated [REDACTED] was presented. Claimant's treating physician noted a diagnosis of left CTS with left shoulder adhesive capsulitis. It was noted a first treatment date of [REDACTED], an onset disability date of [REDACTED] and a probable disability end date of [REDACTED].

A treating physician document (Exhibit 84) dated [REDACTED] was presented. Following a physical examination, the physician impression given was post left carpal tunnel release with residual paresthesias and improving with left shoulder adhesive capsulitis. It was noted that Claimant was to remain off of work until a reevaluation in three months time.

A treating physician document dated [REDACTED] was presented. It was noted that Claimant complained of burning and decreased sensation in his left hand. It was noted that a bilateral positive EMG nerve conduction test on the left hand was positive for CTS. It was noted that Claimant could not work at that time and that he will be reevaluated in three months.

It was noted that a physical examination from [REDACTED] revealed 30 degree forward flexion in Claimant's right shoulder due to BPP. It was noted that Claimant lacked 40 degrees of full extension at the elbow. It was noted that Claimant had weak abduction and adduction of the fingers. It was noted that Claimant's right side showed intact thenar muscle strength but his left side showed paresthesias, decreased sensation in all four fingers and thumb. An impression was given that Claimant had "severe" CTS on the left with BPP since birth affecting his right. CTS was also noted on Claimant's right. The physician noted that Claimant was unable to work at that time.

Various work restriction documents were presented. A document dated [REDACTED] (Exhibit 6) noted Claimant could return to work on [REDACTED]. Documents (Exhibits 9 and 5) noted Claimant was unable to return to work beginning [REDACTED] until reevaluation in one month. A document (Exhibits 12) dated 1/2012 noted Claimant was unable to work from 9/23/12 until reevaluated in two months. Other work restriction documents were submitted (Exhibits 81, 80, 77, 75 and 70), but were too illegible to be considered.

Claimant completed an Activities of Daily Living (Exhibits 51-47) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted difficulty sleeping due to pain. Claimant noted difficulty with washing and dressing every morning. Claimant noted that he fixes his own meals. Claimant noted that he does very little cleaning because of problems

with his hands. Claimant noted that he is proud of maintaining seven years of sobriety. Claimant testified that he is “barely” capable of writing and is not capable of typing. Claimant stated that he drives but requires the use of a prescribed knob attached to the steering wheel.

It was well established by medical records that Claimant has limited use of his right hand and arm due to brachial plexus palsy and to his left arm due to CTS. The medical records from Claimant’s treating physician verified that the limited use of Claimant’s hands prevented Claimant from returning to Claimant’s employment as a chef. Other documents from the physician verified that Claimant was sufficiently restricted to be considered disabled. Based on the presented evidence, it can be presumed that Claimant is significantly limited in performing any basic work activities involving his hands and arms (e.g. writing, lifting and carrying).

The medical records established that Claimant had lifelong restrictions to his right arm. Concerning Claimant’s left side, the diagnosis of “advanced” CTS made in 6/2011 is sufficient evidence of an onset date of potential disability. The “probable” date of disability end (11/2012) is sufficient to establish that Claimant’s significant impairment to performing basic work activities has, and will continue for more than a 12 month period (see Exhibit 45).

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 primary impairment was limitations in use of his arms and hands caused by brachial plexus palsy and CTS. The most appropriate SSA listing would be for joint dysfunction. The listing for joint dysfunction reads:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

SSA states the following concerning the definition of inability to perform fine and gross movements in 1.00B2c as:

What we mean by inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

The record established that Claimant has problems with his hands and arms. The record was not definitive concerning Claimant's usage of his right side, but Claimant's testimony that he does everything with his left side was persuasive in establishing that Claimant's right side is incapable of performing fine and gross movements due to brachial plexus palsy. It must then be established whether Claimant's left side is as limited.

Claimant's treating physician considered Claimant to be disabled until a "probable" end of disability date of [REDACTED]. This is supportive in finding that Claimant cannot perform fine and gross movements with his left side.

Claimant stated that he is capable of cooking simple meals. The SSA listing specifically notes that a claimant incapable of performing fine and gross movements cannot even prepare a simple meal. It is also noted that another example is an inability to feed oneself, which is not known to be a problem for Claimant. Claimant also stated that he dresses and bathes himself, though with difficulty. Claimant is capable of driving, albeit with the help of an attached steering wheel knob. This evidence tends to support a finding that Claimant does not have an inability to perform fine and gross movements.

Claimant stated that he cannot carry a gallon of milk, can barely write or lift more than 5 pounds without pain. The diagnosis of "severe" CTS as recently as [REDACTED] is supportive of a finding that Claimant is disabled.

Though SSA cites specific examples of fine and gross movement inability which Claimant does not meet, the evidence tended to establish that Claimant's left side was sufficiently impaired that he either meets the listing or would be incapable of performing

any substantial gainful activity (SGA) because of his impairments to lifting, writing and typing. Based on the presented evidence, it is found that Claimant meets the SSA listing for joint dysfunction, and is therefore a disabled individual. It should be noted that if Claimant was found to not meet the SSA listing for joint dysfunction, he would have been found incapable of performing past relevant employment (step four) and then found to be incapable of performing SGA at step five.

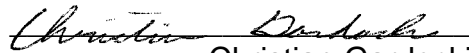
Typically, clients are given one year from the date of administrative decision prior to a redetermination of disability. Claimant's redetermination date shall be based on one year from the date of application due to the evidence establishing a probable end of disability in 11/2012.

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 2/24/12;
- (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 for 2/2013, if Claimant is found eligible for future MA benefit eligibility.

The actions taken by DHS are REVERSED.


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

Date Signed: August 13, 2012

Date Mailed: August 13, 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
Lansing, Michigan 48909-07322

CG/hw

cc:

