

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

IN THE MATTER OF:



Reg. No. 201252929
Issue No. 2009
Case No. 1 [REDACTED]
Hearing Date: July 25, 2012
Wayne DHS (18)

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, a telephone hearing was held on July 25, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] testified 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 3/13/12, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 5/4/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 5/8/12, 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.

6. On 6/26/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 134-135), in part, by application of Medical-Vocational Rule 202.21.
7. On 7/25/12, an administrative hearing was held.
8. Claimant submitted additional medical documentation during and/or after the administrative hearing (Exhibits 136-150).
9. The additional medical documents were forwarded to SHRT along with the originally presented medical documentation.
10. On 9/6/12, SHRT determined that Claimant was not a disabled individual (see Exhibits 151-152), in part, by application of Medical-Vocational Rule 202.21.
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 220 pounds.
12. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
13. Claimant's highest education year completed was the 12th grade.
14. As of the date of the administrative hearing, Claimant had no ongoing medical coverage but was able to receive low-cost and/or free prescriptions through drug companies.
15. Claimant alleged that he is a disabled individual based on impairments and issues including: burning sensation in his arms, optic neuritis, spasticity in arms, spasticity in legs and multiple sclerosis.

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 2012 income limit is \$1010/month.

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 relevant submitted medical documentation.

A Social Summary (Exhibit 23) was presented. The second page of the Social Summary which includes a signature and date section was not presented. The presented page established that the form was created on [REDACTED]. Listed Claimant impairments included: MS, optic neuritis and spasticity in arms and legs.

A Medical Social Questionnaire (Exhibits 25-27) was presented. Claimant signed the form but did not date it. It is known the form was created by DHS on [REDACTED]. Claimant noted that he cannot walk or stand for very long. Claimant noted three emergency room trips from 11/2011-12/2011 involving complaints of: blurred vision, pins and needle feeling in his feet and for a brain MRI.

Physician treatment records (Exhibits 125-131) from 11/2011 and 12/2011 were presented. It was noted that Claimant reported two months of ongoing eye pain. It was noted that Claimant had progressive left optic neuropathy. It was noted that Claimant's visual acuity was 20/20 OU and near vision of J1+ OU. A conclusion was given that Claimant has bilateral optic neuropathy and it was opined that Claimant's vision was affected by an autoimmune disorder.

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Various radiology records (Exhibits 64-73) from 11/2011 and 12/2011 were presented. The records included MRI testing of Claimant's brain and spine.

A form dated [REDACTED] (Exhibit 63) noted that Claimant's neurologist restricted Claimant from returning to work until [REDACTED]. A second form (Exhibit 53) noted a return to work restriction until Claimant's next appointment on [REDACTED].

A letter (Exhibits 11-14; duplicated by Exhibits 58-61) from a neurologist dated [REDACTED] was presented. It was noted that the neurologist examined Claimant on the previous day. It was noted that Claimant reported a dull pain behind his eyes, muscle cramping and a loss of hand coordination. It was noted that Claimant felt very fatigued from taking medication. It was noted that claimant reported a total loss of vision in his left eye. It was noted that Claimant reported a pins and needles feeling in his face and toes. It was noted that Claimant reported difficulty with his balance. Neurological and physical examinations were performed with unremarkable findings. An impression was given for diagnoses of: MS, reactive depression and neurological pain associated with MS. It was noted that the neurologist reviewed Claimant's radiology records.

A prescription form completed by Claimant's neurologist dated [REDACTED] was presented. The document was a referral to a PhD for a consultation concerning depression, anxiety and adjustment.

A prescription form completed by Claimant's neurologist dated [REDACTED] was presented. The document listed the following work restrictions for Claimant: no lifting greater than 10 pounds, no standing for more than two hours, no walking longer than an hour, inability to manipulate small objects, inability to use hand tools and no driving longer than 30 minutes.

An office visit record (Exhibits 16-18) dated [REDACTED] were presented. It was noted that Claimant reported ongoing pain, stiffness and spasm in both of his shins and calves. It was noted that Claimant reported increased discomfort in his left leg after walking. It was noted that Claimant also reported ongoing stiffness, pain and restricted movements in each of his hands. Diagnoses were given for: MS, muscle spasms, limb pain and optic neuritis. An office visit record (Exhibits 19-21) dated [REDACTED] was also presented and showed little change from the subsequent office visit record.

A Medical Examination Report (Exhibits 28-29; duplicated by Exhibits 82-83) dated [REDACTED] was completed by Claimant's treating neurologist. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of: MS, neuropathic pain and spasticity. It was noted that Claimant had a loss of strength and coordination in his hands and weakness, numbness and pain in his legs. The physician also noted visual loss in the left eye. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant

needed some help to perform activities of daily living. It was noted that Claimant's gait was slow and wide-based. It was noted that Claimant had a flat affect. Medical testing records dated [REDACTED] (Exhibits 7-8; duplicated on Exhibits 49-50) and [REDACTED] (Exhibits 9-10) from the treating neurologist were also presented but not notable.

A Prescription Refill Request (Exhibit 46) dated [REDACTED] was presented. The request verified a request for Botox from Claimant's neurologist. Additional records (Exhibits 87-89, 92, 94-100) concerning the Botox prescription were presented.

A document signed by Claimant's neurologist on [REDACTED] verified a request for Copaxone (see Exhibit 86) on behalf of Claimant. Additional documents (Exhibits 104-111) related to the prescription were presented and noted a need for Copaxone due to a relapsing form of MS.

Additional prescription drug ordering documents (Exhibits 112-118) were presented. It was noted that prescriptions for Lyrica and Acthar gel were prescribed.

An MS questionnaire (Exhibits 136-141) dated [REDACTED] completed by Claimant's treating neurologist was presented. It was noted that Claimant suffered numerous problems including: fatigue, pain, poor coordination, weakness, unstable walking, numbness, sensory disturbance and muscle tension. Claimant's prognosis was guarded. It was noted that Claimant had significant and persistent motor dysfunction. It was noted that Claimant was capable of low stress jobs. It was noted that Claimant often experienced pain and fatigue. It was noted that Claimant could walk 1-2 blocks without rest. It was noted that Claimant could sit for 20-30 minutes before getting up. It was noted that Claimant was capable of walking and standing less than 2 hours in an 8 hour workday. It was noted that Claimant could stand for no longer than 10-15 minutes periods. It was noted that Claimant would require unscheduled breaks with up to one hour of break time if he attempted to work. It was noted that Claimant was rarely capable of lifting less than 10 pounds and never allowed to lift 10 pounds or more. It was noted that Claimant was to never: stoop, crouch, climb ladders, climb stairs. Claimant was restricted to rare twisting. It was noted that Claimant would have good and bad days. Claimant testified to having comparable restrictions for each of the above activities. Claimant also noted that his grip was limited due to cramps which caused him to drop items.

Claimant completed an Activities of Daily Living (Exhibits 31-35) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. It was noted that Claimant had difficulty sleeping due to cramping. Claimant noted that after waking he has to run hot water through his hands to decrease the cramping symptoms. Claimant also noted that he will sometimes take a bath to decrease right limb spasticity. It was noted that Claimant prepares simple meals for himself. It was noted that Claimant performs his own cleaning in 15-20 minute periods. Claimant noted that he does not go shopping due to walking difficulties. It was

noted that Claimant reads and socializes with friends and family. Claimant testified that he was able to bathe himself but had difficulty dressing himself when buttons were involved. Claimant noted he does not drive due to vertigo. It is worth noting that SHRT failed to acknowledge the questionnaire as new medical evidence in the decision dated [REDACTED].

The medical evidence was very persuasive in establishing numerous and significant work restrictions related to MS. The restrictions were well supported by the medical documentation which verified ongoing treatment for MS. It is found that Claimant has significant work impairments.

Claimant's neurologist established that Claimant's MS symptoms began in 12/2011 and that the symptoms are expected to last for a period of 12 months (see Exhibit 138). It is found that Claimant established the durational requirements for significant work impairments.

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 due to MS. Claimant would be disabled if the medical evidence supported:

11.09 Multiple sclerosis. With:

- A. Disorganization of motor function as described in 11.04B; or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

It was well established that Claimant's neurologist diagnosed Claimant with MS. There was medical evidence that Claimant's MS significantly affected his motor function, vision and neurological function. The analysis will begin with how Claimant's motor function was affected.

The “disorganization of motor function” described in 11.04B requires “significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).” SSA states the following in Listing 11.00C:

Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms.

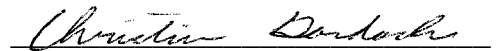
Claimant’s medical documentation verified ongoing problems with spasms and numbness in multiple extremities. The degree of interference to Claimant was such that he was significantly limited in walking, standing, lifting and virtually all other basic work activities. On top of Claimant’s physical restrictions, Claimant’s vision was also impacted. The evidence sufficiently established that Claimant has persistent disorganization of motor function to the extent that SSA listing 11.09 was met. Accordingly, Claimant is a disabled individual and it is found that DHS erred in denying Claimant’s MA benefit application by finding that Claimant is not a disabled individual.

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 3/13/12;
- (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 in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.


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

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Date Signed: September 19, 2012

Date Mailed: September 19, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

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