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

IN THE MATTER OF:

[redacted]

Reg. No.: 201268870
Issue No.: 2009
Case No.: [redacted]
Hearing Date: December 5, 2012
County: Wayne DHS (49)

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 December 5, 2012, from Detroit, Michigan. Participants included the above-named claimant. [redacted] appeared as Claimant's authorized hearing representative. [redacted] and [redacted] testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included [redacted], Medical Contact Worker/ 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 2/27/12, Claimant applied for MA benefits, including retroactive MA benefits from 11/2011.

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On 5/3/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-1).

4. On 5/3/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 1-4 - 1-5) informing Claimant of the denial.

5. On 7/31/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 9/21/12, SHRT determined that Claimant was not a disabled individual (see Exhibits 3-18), in part, by application of Medical-Vocational Rule 202.17.

7. On 12/5/12, an administrative hearing was held.

8. Claimant presented new medical documents at the administrative hearing.

9. The new medical documents were forwarded to SHRT.

10. On 3/18/13, SHRT determined that Claimant was not a disabled individual (see Exhibits A111-A112), in part, by application of Medical-Vocational Rule 202.17

11. As of the date of the administrative hearing, Claimant was a 44 year old male with a height of 5'8'' and weight between 280-290 pounds.

12. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.

13. Claimant's highest education year completed was the 11th grade.

14. As of the date of the administrative hearing, Claimant had no medical coverage.

15. Claimant alleged impairments and issues including: diabetes, high blood pressure, osteoarthritis, blood clots, heart problems, left arm numbness, pancreatitis, sleep apnea, headaches and stomach pain.

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 CRF 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. 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 F2d 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.

Hospital documents (Exhibits 2-35 – 2-62) dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal discomfort, nausea and vomiting. It was noted that radiology was performed on Claimant's chest and head with no evidence of abnormalities. A discharge date was not readily found, but appears to have been on [redacted] the last date when notes were made.

Hospital documents (Exhibits 2-17 – 2-33) were presented. It was noted that Claimant was admitted on [redacted] after presenting with complaints of chest pain, nausea and vomiting. It was noted that Claimant's blood pressure was high on the date of admission. It was noted that chest x-rays were negative. It was noted that Claimant was treated for acute gastritis due to ibuprofen use. It was noted that Claimant stopped taking HBP medication, due to a lack of insurance. Discharge diagnoses included: uncontrolled hypertension, morbid obesity and gastritis secondary to ibuprofen use.

Hospital documents (Exhibits 2-63 – 2-79) were presented. It was noted that Claimant presented on [redacted] with complaints of chest pain, nausea and vomiting. It was noted that a catheterization was performed which verified a 50% blockage of the LAD. It was noted that Claimant's ejection fraction measured at least 60%. It was noted that diagnoses of supraventricular tachycardia and acute colitis were resolved at discharged. Other discharge diagnoses included acute non-ST myocardial infarction, coronary artery disease, HTN, diabetes and hyperlipidemia. It was noted that Claimant had intractable gastroparesis. It was noted that Claimant was discharged on [redacted]

A consultative examination report (Exhibits A101-A110) dated [redacted] was provided. It was noted that Claimant reported complaints of diabetes, heart disease, osteoarthritis and hyperlipidemia. It was noted that Claimant was limited in recovery, following bending and squatting. It was noted that an x-ray was taken of Claimant's lumbar spine, which revealed minimal degenerative osteoarthritic changes and minimal narrowing of the disc space ay L5-S1. It was noted that Claimant needed long term ongoing care and monitoring for HTN and diabetes, which appeared to be under only fair control.

Hospital documents (Exhibits 3-9 – 3-15; A34-A35) were presented. It was noted that Claimant presented on [redacted] with complaints of chest pain and an open sore on a toe which persisted for three months. It was noted that the hospital physician believed the

chest discomfort to be a radiating pain from Claimant's abdomen. It was also noted that the pain had a gastrointestinal origin. Discharge diagnoses included: foot ulcer, atypical chest pain, diabetes (type 2), obesity, hypercholesterolemia and GERD. It was noted that Claimant was given dressing for his foot ulcer and advised to follow-up if there is no improvement. It was noted that Claimant was discharged on [redacted].

Hospital documents (Exhibits A2-A33; A36-A82) stemming from an admission dated 8/31/12 were presented. It was noted that Claimant presented with complaints of chest pain, nausea and vomiting. Multiple assessments noted pancreatitis as a possible diagnosis (though it was noted on [redacted] that past imaging did not support such a diagnosis). A discharge document noted Claimant had no driving restrictions and was to perform activity as tolerated. A discharge diagnosis of uncontrolled HTN was noted.

Hospital documents (Exhibits A83-A99) stemming from an admission dated [redacted] were presented. It was noted that Claimant presented with symptoms of radiating chest pain and vomiting. It was noted that Claimant is unable to follow-up with doctors following hospitalizations due to a lack of insurance. A discharge diagnosis of acute pancreatitis was provided.

Claimant testified that he is in pain every day. Claimant testified that his stomach pain is debilitating. Claimant testified that his sister performs cleaning, laundry and shopping for Claimant because he is unable to perform the activities. Claimant testified that he is restricted to half a block of walking before his legs are tired. Claimant testified that his foot ulcer requires daily attention, and has not yet healed.

The medical records established that Claimant has ongoing difficulties related to diabetes, HTN and/or pancreatitis. The presented hospital documents did not address Claimant's abilities, but the consultative examination report did. The report noted that Claimant would have difficulty with prolonged standing, stooping, squatting and bending due to knee joint problems and obesity. This is sufficient evidence of basic work ability restrictions.

The consultative examination occurred on [redacted]. The evidence tended to establish that Claimant received no medical treatment to improve his restrictions. The nature of joint pain is such that it is not likely to improve within 12 months. Thus, it is found that Claimant established meeting the durational requirements for a severe impairment.

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 complications stemming from diabetes, an endocrine disorder. Endocrine disorders are covered by Listing 9.00. SSA does not have independent listings for endocrine disorders. Based on Claimant's medical history, the most applicable listing for Claimant appears to be complications of a foot ulcer which is covered by Listing 8.04. This listing reads:

> **8.04** ***Chronic infections of the skin or mucous membranes,*** with extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment as prescribed.

Claimant testified that he has an ongoing foot ulcer which has not healed, despite persisting for over three months. Claimant has not received ongoing treatment for the ulcer. Thus, Claimant does not meet the listing because the ulcer has not persisted despite prescribed treatment.

Other diagnoses established by medical records (acute pancreatitis, HTN, congestive heart failure and joint pain) were considered. There is either no applicable listing, or Claimant does not meet the listing for any of the diagnoses.

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 testified that he spent ten years performing maintenance type work. Claimant testified that his maintenance duties included: stripping and waxing floors, shampooing carpets and cleaning glass. Claimant stated that he was laid-off due to foot ulcers and was never medically cleared to return. Claimant testified that he is not physically capable of performing the standing, or the general hard work required of his performing his maintenance employment.

Claimant also testified that a prior relevant job required him to blow dust from ceilings. Claimant testified that the job required overhead reaching which he can no longer perform.

Claimant's testimony that he can no longer perform the standing and overhead reaching required of his past employment was reasonable and consistent with the presented medical records. It is found that Claimant can not perform his past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there 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).

The medical records established many diagnoses that would affect Claimant's ability to perform any level of employment. The diagnoses of uncontrolled HTN, skin lesions, diabetes and CHF appear to be related. Presumably, the conditions are not improving due to Claimant's lack of medical treatment other than regular hospitalizations whenever he has symptoms of chest pain and vomiting.

It is reasonably possible that Claimant would not be disabled if he was able to get a diabetes medication and some regular medical treatment. As noted in hospital documents, Claimant is not able to follow-up with treatment or prescriptions due to his lack of insurance.

It was established that Claimant was hospitalized for some diabetes-related diagnosis six timed over the period of 11/2011-10/2012. The hospitalizations occurred almost like clockwork, just about every two months.

Based on Claimant's regular hospitalizations, multiple diagnoses and relatively serious symptoms, it is found that Claimant is not currently capable of performing any level of

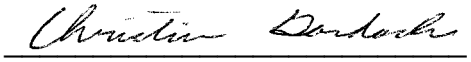
employment. Accordingly, Claimant is found to be a disabled individual and that the MA benefit denial was improper.

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 2/27/12, including retroactive MA from 11/2012;
(2) evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application 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

Date Signed: 4/4/2013

Date Mailed: 4/4/2013

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,
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- 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: [redacted]