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

IN THE MATTER OF:

[redacted]

Reg. No.: 201269196
Issue No.: 2009
Case No.: [redacted]
Hearing Date: November 14, 2012
County: 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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on November 14, 2012, from Taylor, Michigan. Participants included the above-named claimant. [redacted] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [redacted], Medical Contact Worker.

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 3/30/12, Claimant applied for MA benefits, including retroactive MA benefits from 12/2011.

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

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

4. On 5/7/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 8/2/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 9/25/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 43-44), in part, by application of Medical-Vocational Rule 203.15.

7. On 11/14/12, an administrative hearing was held.

8. Following the hearing, Claimant presented new medical documents (Exhibits A1-A37).

9. The new medical documents were forwarded to SHRT.

10. On 4/15/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant is capable of performing past relevant work.

11. As of the date of the administrative hearing, Claimant was a [redacted] year old male with a height of 5'10 ½'' and weight of 180 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, via general equivalency degree.

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

15. Claimant alleged that he is disabled based on back-related impairments, chronic obstructive pulmonary disorder (COPD), arthritis, carpal-tunnel syndrome (CTS), hypertension, stroke complications, lower back pain (LBP) and heart disease.

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.

Various medical treatment records (Exhibits 45-48; A1-A2; A36-A37) from 2000-2002 were presented. It was noted that Claimant presented with complaints of a radiating neck pain. It was noted that a CT scan revealed various problems in Claimant's cervical spine such as: minimal spondylolisthesis of C4-C5, mild foraminal stenosis at C6-C7, hypertrophic spurs at C5, C6 and C7 and intervertebral narrowing at C5, C6 and C7. An MRI report noted moderate to marked degenerative changes.

Hospital documents (Exhibits 20-25) dated [redacted] were presented. It was noted that Claimant twisted his right foot after falling off of a stool. A final diagnosis of right ankle sprain was noted.

Hospital documents (Exhibits 8-13; 26-34) stemming from a [redacted] admission were presented. It was noted that Claimant presented with chest pain and dyspnea. It was noted that Claimant was discharged on [redacted] with a principal discharge diagnosis of unstable angina. It was noted that the chest pain resolved with morphine, oxygen, nitroglycerin and rest. It was noted that labs and EKGs showed no heart damage. It was noted that Claimant received an inhaler to treat COPD.

Hospital documents (Exhibits A3-A35) relating to an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of chest pain, left-side facial numbing and right side weakness. It was noted that a CT scan and MRI of Claimant's brain were negative. It was noted that a stress test revealed a small area of possible ischemia. Claimant's ejection fraction was noted as 65%. It was noted that Claimant was positive for hepatitis C. A radiology report of Claimant's chest noted mild pulmonary vascular congestion. It was noted that Claimant had no chest pain on the day of discharge on [redacted].

Claimant testified that he suffered from CTS and LBP. Claimant's testimony placed considerable emphasis on his inability to use his hands. The presented medical records failed to verify any claim of CTS or LBP. Thus, these claimed impairments will not be further considered.

Claimant alleged that he has heart disease and HTN. The claims of HTN and heart disease were somewhat verified based on references in Claimant's medical history in presented medical documents. Restrictions to Claimant's work abilities cannot be presumed based solely on a medical history reference.

It was established that Claimant was treated for COPD in 12/2011. Despite the diagnosis, it is difficult to presume work ability restrictions from a mere diagnosis, when it was also noted that quitting smoking would be Claimant's best treatment option. In fact, Claimant testified that he quit smoking in approximately 5/2012 and there was no further evidence of respiratory treatment.

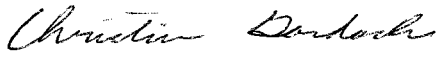
It was verified that Claimant had unstable angina in 12/2011 and possible ischemia in 10/2012. Claimant testified that he suffered a "mini-stroke" in 10/2012. The exact diagnosis was not verified by medical documentation, but doctors were concerned enough to hospitalize Claimant for four days. Claimant's ejection fraction is indicative of a well functioning heart. Radiology reports were also not supportive in finding any restrictions related to the supposed mini-stroke. Ischemia, if accepted as the diagnosis from 10/1012, could affect Claimant's ability to perform strenuous activity. The possibility of ischemia is not deemed to be particularly persuasive evidence of work restrictions.

Claimant also alleged neck pain. It was verified that Claimant was treated for neck pain 10 years prior to his MA benefit application. Claimant testified that the pain has gotten worse over time but most of his testimony noted restrictions based on respiratory and hand dysfunction. Evidence of restrictions related to the cervical spine was not very persuasive.

As noted above, the step two disability analysis applies a de minimus standard. Even under a de minimus standard, the presented medical evidence was insufficient to presume ongoing restrictions for Claimant expected to last 12 months or longer. Accordingly, Claimant is not disabled and DHS properly denied Claimant's MA benefit application.

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 MA benefit application dated 3/30/12 based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.



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

Date Signed: 5/14/2013

Date Mailed: 5/14/2013

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,
  - 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]