

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201271074
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 19, 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, a telephone hearing was held on November 19, 2012 from Detroit, Michigan. Participants included the above named claimant. [REDACTED] testified on behalf of 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 4/12/12, Claimant applied for MA benefits (see Exhibits 14-16) including retroactive MA benefits back to 2/2012 (see Exhibits 12-13).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 5/15/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 17-18).
4. On 5/18/12, DHS denied Claimant's application for MA benefits and mailed an Application Eligibility Notice (Exhibit 69) informing Claimant of the denial.

5. On 6/14/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 3).
6. On 7/27/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 48), by determining that Claimant was capable of performing past relevant work.
7. On 11/19/12, an administrative hearing was held.
8. At and following the hearing, Claimant presented new medical documents (Exhibits A1-A72; B1-B46), which were forwarded to SHRT along with previously presented documents.
9. On 2/5/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits B47-B48), in part, by application of Medical-Vocational Rule 202.20.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'4" and weight of 176 pounds.
11. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
12. Claimant's highest education year completed was obtainment of a Bachelor of Arts Degree in Business Administration.
13. As of the date of the administrative hearing, Claimant had no ongoing medical insurance coverage but obtained some prescriptions through out-of-pocket purchases.
14. Claimant alleged that he is disabled based on impairments and issues including: high blood pressure, (HBP), congestive heart failure (CHF), general weakness, concentration difficulties and ongoing chest 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 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.

Various medical clinic documents (Exhibits A56-A72; B1-B18) were presented. The documents range in date from [REDACTED]. The documents established that Claimant sought treatment for various problems including: back spasms, back pain, knee pain, neck pain, anxiety and headaches. The records were not otherwise insightful other than listing various prescriptions provided for Claimant's reported ailments.

A Medical- Social Questionnaire (Exhibits 22-26) dated [REDACTED] was presented. The form was completed by a self-described "Medicaid Advocate". It was noted that Claimant claimed impairments of: anxiety, heart problems including a previous quadruple bypass, arthritis and HBP. Previous hospital encounters were noted including: from 2/2012 for a heart attack, from 2005 for a torn meniscus in the right knee and from 2003 for right arm radio nerve deconstruction surgery.

Hospital documents (Exhibits 27-67; A27-A55) were presented. A discharge summary (Exhibits 40-41) noted a hospital admission from [REDACTED]. It was noted that Claimant presented with complaints of chest pain. It was noted that Claimant complained of chronic right knee pain. It was noted that Claimant reported needing surgery in his left knee. Initial ejection fraction was measured at 20% (see Exhibit A28). A study dated [REDACTED] noted 60%-70% stenosis of the circumflex coronary artery, total occlusion of the right coronary artery, a severely impaired right ventricle ejection fraction of 30% with no mitral valve regurgitation. Primary discharge diagnoses included: acute myocardial infarction status post coronary artery bypass graft x5, ischemic cardiomyopathy, pulmonary edema, HTN, tobacco abuse, depression and chronic back pain. It was noted that Claimant's blood pressure was poorly controlled (see Exhibit A30).

In a [REDACTED] consultation, it was noted that Claimant was suspected to have a benzodiazepine addiction. Claimant was psychologically evaluated during the hospital stay. It was noted that Claimant had anxiety (see Exhibit 29). It was noted that Claimant

denied having panic attacks. An Axis I diagnosis of major depression and generalized anxiety disorder was noted. Claimant's GAF was 45. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

Radiology reports (Exhibits A23-A26) from the hospital stay were presented. On [REDACTED], it was noted that Claimant's lung volumes were low.

Medical documents (Exhibits A3-A4; duplicated on A20-A21) dated [REDACTED] from Claimant's treating cardiologist were presented. It was noted that a recent EKG was performed and that Claimant's ejection fraction was 30%-35%. It was noted that Claimant reported chest discomfort but no chest pain. It was noted that Claimant quit smoking 30 days ago. An impression of severe coronary artery disease and HTN was provided.

Various hospital documents (Exhibits A5-A12) dated [REDACTED] were presented. Records (Exhibits A13-A19) dated [REDACTED] were also presented. It was noted that Claimant presented complaining of left wrist injuries after falling. It was noted that an out-patient procedure was performed, which included inserting a pin into Claimant's wrist. A post-operative diagnosis of displaced fracture with intra-articular fragmentation of the left wrist was provided. It was noted that the intra-articular nature of the fracture could cause an early onset of osteoarthritis as well as pain and swelling in the wrist.

Hospital documents (Exhibits B19-B31) from [REDACTED] were presented. It was noted that Claimant presented with complaints of shortness of breath, nausea and headaches. It was noted that Claimant was a pack per day smoker. It was noted that Claimant was admitted for acute CHF and uncontrolled severe HTN. An impression was given of an ejection fraction of 20%.

Hospital documents (Exhibits B32-B46) from [REDACTED] were presented. It was noted that Claimant presented with complaints of shortness of breath, fatigue and chest pain. It was noted that Claimant's EF was very low at the time of a vascularization and Claimant has not had a repeat evaluation, "for unclear reasons". It was noted that Claimant had several episodes of decompensated heart failure. It was noted that Claimant reported an intense worry of dying. Claimant's EF was measured at 28% (see Exhibit B39)

The medical records established that Claimant has severe restrictions due to CHF. As recently as 11/2012, Claimant's left ventricle EF was measured under 30%. Such a low EF would reasonably restrict Claimant from performing many physical basic work activities, such as lifting and carrying.

Claimant's heart difficulties are well documented back to 2012, when Claimant was hospitalized for three weeks due to a heart attack. Based on the reduction in EF from 2/2012 to 11/2012, Claimant's condition is deteriorating, not improving. It is found that

Claimant meets the durational requirements for having significant basic work activity restrictions.

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 heart-related conditions. Cardiovascular impairments are found under Listing 4.00. Based on the evidence, the only applicable listing would be under chronic heart failure (Listing 4.02). This listing reads:

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or
2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or

3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:
 - a. Dyspnea, fatigue, palpitations, or chest discomfort; or
 - b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or
 - c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or
 - d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

Looking at Part A of the listing, it was established that Claimant's EF was measured at 28%. It is questionable whether Claimant was following prescribed treatment because it was noted that Claimant should have been checked sooner than 11/2012 following his heart attack from 3/2012. The medical records noted that Claimant followed cardiac therapy as prescribed. Based on the presented evidence, Claimant meets Part A of the listing for CHF.

The medical records were less supportive of meeting Part B. There was no known reference to stress testing within the medical records. Though no stress testing information was submitted, Claimant's complaints of fatigue and chest pain are consistent with an inability to perform stress testing. Based on the presented evidence, it is found that Claimant satisfactorily meets the listing for CHF.

It should be noted that if Claimant was not found to meet the listing, he would have been found unable to perform his past relevant employment as a video store manager due to his stress levels and that he was incapable of performing any employment due to the combination of his heart restrictions, uncontrolled HTN and anxiety. It is found that Claimant is a disabled individual and that DHS improperly denied Claimant's application for MA benefits.

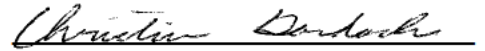
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 4/12/12, including retroactive MA benefits back to 2/2012;
- (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: 2/20/2013

Date Mailed: 2/20/2013

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:

