

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201222768
Issue No. 2009;4031
Case No. [REDACTED]
Hearing Date: March 5, 2012
Wayne County DHS (19)

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 March 5, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 8/10/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 11/17/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).
4. On 11/21/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 1/3/12, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 2/6/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 19) by determining that Claimant failed to establish an impairment that affects his ability to perform basic work activities.
7. As of the date of the administrative hearing, Claimant was a 30 year old male (DOB 11/16/81) with a height of 5'11" and weight of 160 pounds.
8. Claimant smokes approximately 10 cigarettes per day and has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12th grade via a general equivalency degree.
10. As of the date of the administrative hearing, Claimant received Adult Medical Program benefits and has received them for approximately two years.
11. Claimant contended that he is a disabled individual based on impairments of nerve and muscle problems in his legs, joint problems in his shoulder and atraumatic multidirectional instability (AMI).

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).

The controlling DHS regulations are those that were in effect as of 11/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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 current 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.

A Medical Social Questionnaire (Exhibits 7-9) dated [REDACTED] was presented. The form is intended to be completed by clients for general information about their claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant listed impairments of: joint damage in shoulder, nerve issues, anxiety, depression, mental issues and emotional depression. Claimant note he cannot focus due to his pains, anxiety and depression. Claimant noted two previous hospital emergency room visits, both due to his shoulder falling out of joint.

A Medical Examination Report (Exhibits 10-11) dated [REDACTED] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on 10/26/10 and last examined patient on [REDACTED]. The physician provided diagnoses of anxiety, depression and right shoulder issues. An impression was not given whether Claimant's condition was improving or deteriorating. It was noted that Claimant can meet his household needs. It was noted that Claimant took the following medications: Celexa, Xanax, Buspar and Neurontin.

An unidentified document (Exhibit 12) appeared to be notes from a hospital or doctor visit. The notes were dated [REDACTED] and were unsigned. It was noted that Claimant claimed a history of rheumatoid arthritis, though testing showed no evidence of rheumatoid arthritis. It was noted that Claimant complained of pain on his right foot, lower back and right shoulder. It was noted that Claimant was crying. It was noted that Claimant had decreased ranges of motion in the right shoulder and lumbar spine, but it was also noted that the examiner was uncertain if the limited range was a physical

problem or due to Claimant's emotional state. The examiner was unable to diagnose Claimant's problems based on the one visit and advised Claimant to return.

An unidentified document (Exhibit 13) dated [REDACTED] was presented. Claimant was noted as a new patient. The notes were unsigned but appeared to stem from a doctor visit. Claimant reported pain in his shoulder and claimed that he had rheumatoid arthritis.

Claimant completed an Activities of Daily Living (Exhibits 14-18) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble sleeping due to general pain and burning. Claimant also noted that his shoulder falls out of socket. Claimant noted that he does not cook. Claimant noted that he cannot do work around the house. Claimant noted that he shops but uses an electric chair. Claimant noted that all he does is watch television or listen to the radio. Claimant noted that he cannot bike ride anymore due to joint damage. Claimant noted he wants his problems fixed so he can go back to work.

Claimant testified that he can bathe and groom himself without difficulty. Claimant noted he does laundry and some cleaning. Claimant has a driver's license but says he does not drive often. Claimant reported walking limits of 10-15 minute periods and sitting limits of 30 minutes before he needs to stand. Claimant noted he has a five pound lifting restriction on his right arm.

Evaluating Claimant's claim of disability is difficult. The only presented medical records failed to identify any diagnoses that verify a specific physical medical problem. Claimant's treating physician noted that Claimant complained of multiple muscular skeletal pains. A diagnosis of a right shoulder problem was identified but little else is known. The physician listed four medications that Claimant took; each medication treated psychological problems, not physical problems. The two unsigned medical records also failed to verify any medical problems other than Claimant reporting pain. The record is simply devoid of sufficient medical evidence to establish that Claimant suffers a physical problem that poses a significant impairment to the performance of basic work activities.

Looking at Claimant's reported psychological problems, there is some medical evidence to support some impairment. A diagnosis of depression was provided by Claimant's treating physician. Further, all four of Claimant's listed medications are known to treat depression and other psychological symptoms. Though the medical evidence is supportive of finding that Claimant has a psychological impairment, there is little medical evidence verifying psychological restrictions. The medical providers failed to indicate any restrictions to Claimant's ability to work. It is simply known that Claimant has psychological impairments and is receiving treatment. Claimant's primary complaints

involved physical pain and restrictions, so even Claimant's testimony cannot be relied on to find psychological restrictions.

Based on the presented evidence, there is an insufficient amount to justify a finding of a severe impairment to the performance of basic work activities. It is found that Claimant is not a disabled individual. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It has already been found that Claimant is not disabled for purposes of MA benefits based on a finding that Claimant failed to verify a severe impairment. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA and SDA benefits to Claimant based on a

determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.



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

Date Signed: March 13, 2012

Date Mailed: March 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 to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

201222768/CG

cc:

