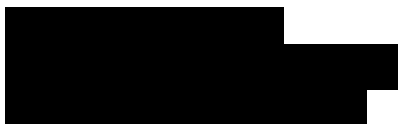


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2012 29598
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 9, 2012
Oakland County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 April 9, 2012. The Claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED] ES, Assistance Payments Worker appeared and testified.

ISSUE

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 October 3, 2011, Claimant applied for MA-P benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On January 17, 2012, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibit 1, page 1).
4. On January 29, 2012, the Department denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On January 29, 2012, Claimant requested a hearing disputing the denial of MA-P benefits.

6. On March 13, 2012, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 2).
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a birth date of [REDACTED] with a height of 5'10.5" and weighed 130 pounds.
8. Claimant's highest education year completed was the 4 years of college.
9. Claimant has alleged a disability based on impairments including high blood pressure and congestive heart condition.
10. The Claimant has not alleged any mental disabling impairment.
11. The Claimant has an employment history as a home health provider, a freelance reporter and writer and a substitute teacher.

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 8/2011, 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 \$1,010.

In the present case, Claimant is currently not working, but last worked in February 2012 as a substitute teacher. The Claimant's earnings for January and February 2012, based upon his testimony did not qualify as substantial gainful activity as they did not meet or exceed the \$1010 income limit. The Claimant has also since applied and qualified for assignment as a substitute teacher in the [REDACTED] but has not yet been assigned. Therefore it is found that the Claimant is not currently substantially gainfully employed. 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). Multiple 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).

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation.

The Claimant was admitted to the hospital on [REDACTED] and was treated for a period of nine days for congestive heart failure, double pneumonia, high blood pressure and acute kidney disease. The Claimant was released and was noted as alert and oriented X3 and vital signs were stable. During his hospital stay a 2D cardiogram was performed and the ejection fraction was 40 to 45% which showed moderate hypokinesis of left ventricle. The Claimant was cleared by the hospital cardiologist. (Exhibit 1, page 3).

Claimant was discharged from the hospital on [REDACTED]. Discharge instructions included continuing to take medications for high blood pressure, no alcohol and follow up.

An independent consultative exam was conducted on [REDACTED]. The exam records indicate hypertension with absence of chest pain. The exam concludes that hypertension is well controlled with present regime. Clinically no evidence of cardiomegaly or cardiac failure. Patient has recovered from recent attack of pneumonia. Osteoarthritis of the knee joint with no functional limitation orthopedically. The DHS 49 concluded that the Claimant was stable and improving and that Claimant could meet his needs in the home. No physical or other restrictions were noted. Exhibit 1, pages 6-8.

Claimant testified that until his hospitalization in [REDACTED] he was unaware of his high blood pressure. The Claimant testified that his main concern is control of his blood pressure. The Claimant testified that he is able to clean his home including mopping, vacuuming and washing his clothes. He also performs yard work and some snow clearing (within reason). The Claimant exercises and is capable of push ups and lifting small weights. The Claimant testified that he can walk at least one mile, squat, stand a couple of hours and sit for 8 hours arising occasionally to move positions. The Claimant

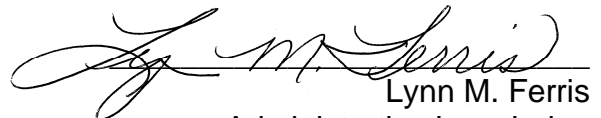
testified that he can carry up to 25 pound and lift up to 30 pounds. This weight lifting capability was confirmed during the consultative exam referenced above. The Claimant was recently required to pass a physical for employment as a substitute teacher and passed the exam. Although he had to repeat the exam several times he was passed and qualified to be hired for employment as a substitute teacher. The Claimant testified that he has also applied for short term industrial work. The Claimant also testified that he was capable of substitute teaching (noting that his only aid physically was the use of reading glasses).

Claimant's main focus was his alleged impairment related to high blood pressure. Claimant provided no medical documentation to support any restrictions due to high blood pressure. The discharge following the hospital stay in [REDACTED] that was verified was attributable to double pneumonia, renal and congestive heart failure and did not note any physical or other restrictions. This leaves Claimant with no evidence that his current complaint of high blood pressure significantly impairs his ability to perform basic work activities. The presented hospital records failed to note any restrictions placed on Claimant.

Even applying a de minimus standard, it is found that Claimant failed to establish an impairment that significantly limits his basic work activities. 20 CFR416.920(a) (5)(c). Thus, Claimant failed to establish having a severe impairment. Accordingly, it is found that DHS properly 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 properly denied MA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.


Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 10, 2012

Date Mailed: April 10, 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

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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

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cc:

