

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201230531
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 25, 2012
Wayne County DHS (57)

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, an in-person hearing was held on April 25, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] appeared as Claimant's authorized hearing representative. 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) 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 6/28/10, Claimant applied for MA benefits (see Exhibits 12-13) including a request for retroactive MA benefits starting in 4/2010 (Exhibits 10-11).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 11/2/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On 11/4/11, DHS denied Claimant's application for MA benefits and mailed a notice (Exhibits 2-3) informing Claimant of the denial.

5. On 1/27/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 3/21/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 128-129), in part, by application of Medical-Vocational Rule 203.28.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'11" and weight of 226 pounds.
8. Claimant has been a tobacco, alcohol and marijuana user.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had a limited medical coverage for treatment of human immunodeficiency virus (HIV).
11. Claimant alleged that he is a disabled individual based on impairments including: HIV, depression, knee pain and back 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).

The controlling DHS regulations are those that were in effect as of 6/2010, 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

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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.

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 Social Summary (Exhibits 24-25) dated [REDACTED] was presented. A Social Summary is a standard DHS form to be completed by an interviewer which notes alleged impairments and various other items of information; Claimant's form was completed by an unidentified Medicaid Advocate. It was noted that Claimant alleged impairments of: an immune disorder, back pain, arthritis and mental capacity. It was also noted that Claimant alleged: vision problems, hearing problems, learning problems, personality changes, mood swings, emotional outbursts, post-traumatic stress disorder, hallucinations, feelings of hopelessness, social problems and problems being supervised. It was noted that Claimant had physical weakness due to his HIV+ status. It was noted that Claimant had PTSD from serving in Iraq for eight months. It was noted that Claimant took five medications to treat HIV and Zoloft for depression.

A Medical Social Questionnaire (Exhibits 19-21) dated [REDACTED] was presented. The Claimant completed form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. It was noted that Claimant was hospitalized in 4/2011 for a medication overdose and in 4/2010 for acute cephalgia.

A Medical Social Questionnaire (Exhibits 65-67) dated [REDACTED] was presented. Claimant noted feeling fatigue from HIV medications. Claimant's medications included: Norvir, Prezista, Truvada and Isentress.

A hospital page (Exhibit 18) stemming from a [REDACTED] HIV follow-up was presented. It was noted that Claimant drank and occasionally used marijuana. It was noted that Claimant felt well but had trouble sleeping. It was noted that Claimant was going to take pre-nursing classes.

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Hospital records (Exhibits 31-53) from 4/2010 were submitted. It was noted that Claimant went to the hospital following a five day bout involving nausea, vomiting, malaise, fever, headaches and myalgias. An impression dated 4/10/10 was given that the symptoms were caused by a bad reaction to an HIV prescription. On [REDACTED] an assessment was given of acute renal failure caused by HIV medication.

A Medical Examination Report (Exhibits 54-55) dated [REDACTED] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided a diagnosis of HIV. It was noted that Claimant had ongoing right knee pain. An impression was given that Claimant's condition was stable. The physician noted that Claimant had no limitations other than walking long distances. Claimant had no mental limitations. It was noted that Claimant can meet his household needs.

Medical records from 4/2010 were presented (see Exhibits 56-59). It was noted that the clinical significance in HIV-1 Viral load has not been fully established.

Medical records from 4/2010 (Exhibits 60-64) were presented. Records included test results from chest views, CAT scan of brain and renal ultrasound. Each report noted no significant findings.

Hospital records (Exhibits 68-79) dated 7/2010 were presented. An impression was given that Claimant's HIV was stable. Again, the records concerned a negative physical reaction to starting a new HIV medication.

Various dated hospital records (Exhibits 80-88) were presented. A 6/2010 physical examination was performed and no notable negative findings were made; it was noted that Claimant was negative for fatigue, fever and night sweats. In 9/2010, a complaint of fatigue was noted. In 10/2010 it was noted that Claimant was doing well.

Hospital records from [REDACTED] (Exhibits 89-107) were presented. The records primarily consisted of various lab results. Some notable results included: low CD4 and CD4%, low Vitamin D levels and high CD8 levels. No medical analysis was included with the lab results.

Records for HIV follow-up appointments dated [REDACTED] were presented (see Exhibits 110-113). It was noted that Claimant complained of knee pain. It was noted that Claimant expressed interest in starting psychological treatment.

Various lab results were presented (Exhibits 122-125). Claimant had some out-of-range levels on various dates, though no analysis accompanied the results.

Medical records from [REDACTED] (Exhibits 126-127) were presented. It was noted that Claimant had no unusual anxiety or evidence depression. A physical examination report did not note any problem areas for Claimant.

Claimant testified that he had no particular lifting, sitting or gripping problems. Claimant also did not assert having any physical problems in performing any basic work activities. Claimant stated that he had a one hour sitting restriction for unknown reasons. Claimant testified that he would have problems with squatting and kneeling due to knee pain. Claimant does not use a walking aid for ambulation assistance.

The analysis of whether Claimant is impaired to performing basic work activities should start with Claimant's HIV+ status. The mere status as an HIV+ individual is compelling. However, all medical evidence points to the HIV being stable and controlled. There is no medical evidence to conclude that Claimant's performance of basic work activities is any way affected by his status as an HIV+ individual.

There were references to fatigue from the HIV medication. It is known that Claimant complained of fatigue on [REDACTED], however, there is no evidence that this was an ongoing problem. There is also no evidence concerning the severity of fatigue. Without substantially more evidence of fatigue other than a single day's complaint, it cannot be found that fatigue impairs Claimant in the performance of basic work activities.

Claimant testified that he had bad knees and feet. He stated that he is limited to a two block walking limit because of the pain in his knees and feet. If verified, the walking restrictions could amount to a significant impairment to the performance of basic work activities; Claimant's testimony was not verified. There were references to Claimant's complaint of knee pain in the records. Claimant's treating physician noted that Claimant could not walk long distances, though "long distances" was not defined. Again, the medical evidence was too lacking to conclude any adverse effects on the performance of basic work activities.

Concerning psychological impairments in performing basic work activities, Claimant testified to having many symptoms of impairments. Claimant stated that he had broken sleep at night, night terrors, social anxiety, mood swings and feelings of isolation.


Claimant testified that he dropped out of school due to psychological problems. It was contended that Claimant's failure to complete school was definitive evidence of depression. The contention was unreasonable. It is possible that dropping out of school was caused by depression. However, by itself, dropping out of school is hardly conclusive evidence of a psychological disorder. References were made within medical records concerning complaints of depression and/or PTSD which gives some support for the testimony; psychological records of depression would be far more compelling evidence. No such records were presented despite extending the record 90 days to

allow for the submission of such records. It is known that Claimant was prescribed Zoloft, a known depression medication, but this is not insightful to determining the severity of Claimant's depression. Based on the presented evidence, Claimant failed to establish any psychological impairment to the performance of basic work activities.

It was established that Claimant is only limited in walking long distances. This could conceivably meet the de minimus standard required for step two. Based on the presented evidence, it is not found to be a significant impairment. There was simply insufficient supporting evidence for the impairment and evidence specifying the impairment. It is found that Claimant failed to establish a significant impairment to the performance of basic work activities and therefore, that Claimant is not a disabled individual. Accordingly, the denial of Claimant's application for MA benefits is found to be proper.

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 6/28/10, including retroactive MA benefits for 4/2010. The actions taken by DHS are AFFIRMED.


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

Date Signed: July 9, 2012

Date Mailed: July 9, 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.

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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:

