

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201244683  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: June 20, 2012  
Macomb County DHS (12)

**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 Clinton Township, Michigan. The above named claimant appeared and testified; [REDACTED] testified on behalf of Claimant. [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 8/30/11, Claimant applied for MA benefits (see Exhibits 144-162) including a request for retroactive MA benefits for 5/2011-7/2011 (see Exhibits 163-164).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 12/16/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 143-142).
4. On 1/12/12, DHS denied Claimant's application for MA benefits and mailed a notice informing Claimant of the denial.

5. On 3/28/12, Claimant requested a hearing to dispute the denial of MA benefits.
6. On 5/24/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 167-168), in part, by application of Medical-Vocational Rule 203-12.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'7" and weight of 165 pounds.
8. Claimant is a tobacco and alcohol user.
9. Claimant's highest education year completed was 9<sup>th</sup> grade.
10. As of the date of the administrative hearing, Claimant has a State of Michigan health coverage which does not cover hospitalizations.
11. Claimant alleged that he is a disabled individual based on impairments including: back pain, shoulder pain, knee pain, stomach pain from hernia and headaches.

### **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 3/2012, 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

201244683/CG

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.

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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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. It should be noted that most of the exhibits (Exhibits 143-1) were numbered from top-to-bottom in high-low number fashion; those exhibits are cited in the same high-to-low number fashion. Exhibits 144-171 were chronologically numbered in low-high fashion and are cited accordingly.

A Social Summary (Exhibits 130-129) dated [REDACTED] was presented. A Social Summary is a standard DHS form which notes alleged impairments and various other items; Claimant's form was completed by a Medicaid advocate. It was noted that Claimant alleged impairments of confusion, hydration, hernia, learning disability and stomach problems. It was noted that Claimant complained of a headache which was related to a back infection.

A Medical Social Questionnaire (Exhibits 128-126) dated [REDACTED] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history; Claimant's form was completed by a Medicaid advocate. A hospital encounter from 5/2011 was noted; the encounter was noted as involving confusion, hydration and a headache. Two other hospital encounters from 2005 were noted, one for a stomach operation and one for treatment of a peptic ulcer.

A physical examination report (Exhibits 141-134) dated [REDACTED] was presented. The examiner was not a treating physician. Claimant reported suffering LBP and right knee pain for the last 2-3 years. Claimant could not point to an injury for the pain. Claimant also reported migraine headaches occurring 1-2 times per month. A small hernia was noted around the umbilicus; it was noted that the hernia was not tender. Claimant's spine was examined. Straight leg-raising test was negative. It was noted that Claimant had full range of motion. Crepitus was noted in Claimant's left knee joint. It was noted that Claimant ambulated fairly well and without a walking aid. An impression of

osteoarthritis of the left knee joint was given. The examining physician noted Claimant was suitable for eight hour/day employment with restrictions from heavy lifting due to the hernia.

Medical center treatment records (Exhibits 124-111) were presented. It was noted that Claimant was taken for treatment after Claimant's niece noticed a change in Claimant's mental status. A physical examination revealed no notable information. An impression of viral encephalitis was given. It was specifically noted that Claimant had no major medical illness. Claimant's history of cigarette smoking was noted as severe.

Records from 2008 and earlier (Exhibits 105-1) were presented. Generally, the documents were too out-of-date to be relevant to Claimant's most recent application for MA benefits. For example, a Medical Examination Report (Exhibits 98-97) noted that Claimant could stand and/or walk less than 2 hours in an 8 hour workday. However, this restriction was given on [REDACTED]. A four year old physician statement concerning a work restriction is not persuasive evidence of a current work restriction. The records verified Claimant's previous 2005 hospitalizations related to stomach surgery and an ulcer.

Claimant completed an Activities of Daily Living (Exhibits 110-107) 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 at night due to stomach pain; Claimant testified he woke up 5-6 times per night. Claimant noted he cannot stand long due to stomach pain. Claimant stated that he does not cook, clean or shop due to his physical problems. Claimant testified that he sometimes uses a cane, though he initially testified that he did not use a walking assistance device.

Claimant stated he had a 1-2 block walking limit before his back and knees hurt. Claimant stated he had unspecified sitting restrictions and expressed discomfort while sitting during the hearing. Claimant stated he had a one pound lifting limit due to back pain.

There was a significant disparity between Claimant's testimony concerning restrictions and those verified by medical records. Claimant's testimony was far beyond what could be verified by medical records to give the testimony much weight.

The medical records established that Claimant had crepitus of the knee. The medical records established that Claimant had a "small" hernia. The medical records established previous stomach problems which may or may not impact Claimant's current abilities. The only verified restriction was for Claimant to avoid heavy lifting. It must be determined whether the single verified restriction is a significant impairment to the performance of basic work activities.

It bears reminding that step two of the disability analysis requires application of a de minimus standard. Applying a de minimus standard, Claimant should be given deference in establishing a significant impairment to the performance of basic work activities. It is found that Claimant's knee dysfunction is a significant impairment in performing basic work activities.

The evidence established that Claimant's knee problems have been ongoing for several months. Claimant's condition is not one that is known to improve. It is found that Claimant's restrictions have and/or will continue for a period of 12 months.

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 primary impairment was crepitus of the knee. Based on the presented evidence, the most appropriate SSA listing would be for joint dysfunction. The listing for joint dysfunction reads:

- 1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
  - OR
  - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

The only verified medical work restriction was that Claimant could not perform heavy lifting. The examining physician found that Claimant could walk and stand without other limitations. The examining physician also concluded that Claimant had no need for a walking assistance device. It is found that Claimant can ambulate effectively; accordingly, Claimant failed to establish meeting the SSA listing for joint dysfunction.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's back pain complaints. The medical records were devoid of back pain causes. For example, there were no records verifying x-rays or an MRI of Claimant's back. There was not a specific diagnosis for Claimant's back pain. This listing was rejected due to a lack of evidence and a failure to establish a spinal disorder resulting in a compromised nerve root.

Claimant also complained of headaches and hernia. Neither problem is specifically covered by an SSA listing.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant's testified he had previous full-time employment as a roofer, carpenter and machinist. Claimant testified that each of the jobs required heavy lifting. Claimant stated that he could not perform the lifting necessary to perform his past employment. Claimant's testimony was credible and reasonably supported by medical evidence. It is found that Claimant is not capable of performing his past relevant employment. Accordingly, the disability analysis moves forward.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform

specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or

difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

The medical records supported that Claimant could perform walking, sitting and standing. This evidence is supportive that Claimant should be capable of at least a sedentary level of employment.

It was found in step two that Claimant's inability to perform heavy lifting was a severe impairment. The medical records did not specifically cite a weight amount that Claimant should not lift. Taking the "heavy" restriction literally would result in a finding that Claimant could perform a medium exertional level of employment. Though it is not clear that the physician imposing the restriction was referring to SSA definitions of "heavy", it is the most plausible interpretation based on the evidence. Claimant failed to establish any other restrictions to employment. It is found that Claimant is capable of a medium exertional level of employment.

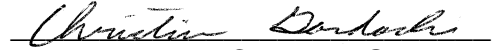
Based on Claimant's exertional work level (medium), age (advanced), education (limited or less), employment history (semi-skilled- not transferrable), Medical-Vocational Rule 203.12 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of 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 Claimant's MA benefit application dated 8/30/11, including retroactive MA benefits for 5/2011-7/2011, based on a determination that Claimant was not disabled.

201244683/CG

The actions taken by DHS are AFFIRMED.

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

Date Signed: July 19, 2012

Date Mailed: July 19, 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

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cc:

