

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201257277
Issue No. 2009
Case No. [REDACTED]
Hearing Date: September 20, 2012
Wayne DHS (55)

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 September 20, 2012 from Hamtramck, Michigan. The claimant appeared and testified; [REDACTED] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

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 2/27/12, Claimant applied for MA benefits (see Exhibits 24-43) including retroactive MA benefits for 1/2012 (see Exhibits 21-22).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/2/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 4/6/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 44-45) informing Claimant of the denial.

5. On 6/1/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 46).
6. On 7/19/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 82), in part, by determining that Claimant retained the capacity to perform past relevant employment.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'6 " and weight of 240 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had no health coverage since approximately 7/2010.
11. Claimant alleged that he is a disabled individual based on impairments and issues including: diabetes, congestive heart failure, shortness of breath and leg swelling.

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 monthly income limit considered SGA for non-blind individuals is \$1,010.

In the present case, Claimant testified that he worked as a security guard for 24 hours per week at \$8.00/hour. Multiplying Claimant's hourly wage by his weekly hours results in a weekly income of \$192/month. Multiplying the weekly income by four results in a monthly income of \$768/month. Claimant's monthly income is less than the amount considered to be 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.

A Social Summary (Exhibits 3-4) dated [REDACTED] was presented and signed by a disability representative. It was noted that Claimant alleged impairments of acute congestive heart failure.

A Medical Social Questionnaire (Exhibits 5-6) was presented. Claimant's form was completed by a disability representative on [REDACTED]. A previous hospitalization was noted on 1/25/12 concerning CHF.

Hospital documents (Exhibits 7-16) from 1/2012 were presented. It was noted that Claimant presented with complaints of a progressively worsening shortness of breath, a tightness in the chest and leg swelling. A diagnosis of acute CHF was provided. It was noted that Claimant's diabetes was poorly controlled. A physical examination was unremarkable other than noting pedal edema 2+ which is suggestive of some leg swelling. An EKG was unremarkable. Medications prescribed to Claimant upon discharge included: Lisinopril, Lantus and Novolog. Claimant was discharged on his day of arrival.

Hospital documents (Exhibits 48-54) were presented. A hospital admission of [REDACTED] and discharge on [REDACTED] was noted. Claimant presented with complaints of abdominal pain which started in the prior three weeks. It was noted that Claimant was not suffering symptoms of nausea, vomiting or loose stools. Claimant underwent a CT scan of the abdomen and pelvis and a limited abdomen ultrasound. An impression on the radiology reports was given for acute pancreatitis. A discharge diagnosis of "likely gastritis" was given. Omeprazole was prescribed to Claimant upon discharge.

Claimant stated that he had good days and bad days. Claimant estimated the good and bad days are evenly split. Claimant stated that he was limited to walking 50 yards because of dyspnea. Claimant estimated that he was limited to 10-15 minutes because

of leg swelling. Claimant estimated he was limited to sitting for 20-25 minute periods. Claimant stated that bending causes him to feel light-headed.

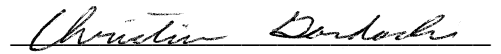
Concerning daily activities, Claimant stated that he bathes and dresses himself. Claimant stated that he cooks simple meals or receives help for less simple meals. Claimant stated that laundry is difficult because it requires him to walk down stairs to the basement. Claimant stated that he shops with someone because he has lifting difficulties.

Claimant described his exertional restrictions as relatively severe. Claimant stated that he was drastically limited in walking, sitting and standing due to pain. The presented medical records failed to note any specific physical restrictions for Claimant. An absence of specific restrictions is not uncommon and would not preclude findings of restrictions as long as the evidence was suggestive of restrictions.

The presented hospital records only established that Claimant had seemingly unrelated episodes, one involving Claimant's heart, the other involving his stomach. Both episodes were described as acute, suggesting that Claimant's symptoms were not chronic. Claimant was released the same day in the first episode and kept overnight in the second. There were no primary care physician treatment records. The medical evidence simply failed to verify or even imply any ongoing restrictions to Claimant. Not to say that Claimant's testimony was not believable, Claimant testified very credibly. However, the testimony was unsupported by medical evidence. Even applying a de minimus standard, it is found that Claimant failed to establish a significant impairment to the performance of basic work activities. Accordingly, Claimant is not a disabled individual and the DHS denial of MA benefits is deemed 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 2/27/12, including retroactive MA benefits for 1/2012, based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.


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

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Date Signed: September 28, 2012

Date Mailed: September 28, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

CG/hw

cc:

