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

IN THE MATTER OF:

[redacted]

Reg. No.: 201265359
Issue No.: 2009
Case No.: [redacted]
Hearing Date: October 10, 2012
County: Wayne DHS (18)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on October 10, 2012, from Taylor, Michigan. Participants included the above-named claimant. [redacted] testified on behalf of Claimant. [redacted] appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (Department) included [redacted], Medical Contact Worker.

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 1/8/12, Claimant applied for MA benefits including retroactive MA benefits (see Exhibits 13-14) from 11/2011 (see Exhibits 11-12).

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On 4/18/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 15-16).

4. On 4/18/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 3-5) informing Claimant of the denial.

5. On 7/12/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 2).

6. On 9/6/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 70), in part, by determining that Claimant does not have a severe impairment.

7. On 10/10/12, an administrative hearing was held.

8. At the hearing, Claimant presented new medical records (Exhibits A1-A180).

9. The new medical documents were forwarded to SHRT.

10. On 2/12/13, SHRT determined that Claimant was not a disabled individual (see Exhibits A181-A182), in part, by application of Medical-Vocational Rule 202.20

11. As of the date of the administrative hearing, Claimant was a [redacted] year old male with a height of 5'10'' and weight of 200 pounds.

12. Claimant is a smoker with a history of cocaine abuse through 8/2011.

13. Claimant's highest education year completed was the 12th grade via general equivalency degree.

14. As of the date of the administrative hearing, Claimant had no health insurance coverage.

15. Claimant alleged that he is disabled based on impairments and issues including: shortness of breath, fatigue, eczema, low functioning immune system and low cognitive functioning.

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 CRF 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 2011 monthly income limit considered SGA for non-blind individuals is $1,000. The 2012 income limit is $1010/month.

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 F2d 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 relevant submitted medical documentation.

A Medical- Social Questionnaire (Exhibits 20-25) dated 12/20/11 was presented. The form was signed by a person describing herself as a Medicaid Advocate. Three hospitalizations were listed: in 2003 for an infection, 8/2011 for a low white blood cell count and 11/2011 for bronchitis.

Hospital records (Exhibits 26-54) were presented. The documents verified a hospital admission from [redacted]. It was noted that Claimant presented with complaints of nausea, diarrhea and skin lesions. It was noted that Claimant was HIV negative. The discharge assessment noted an assessment of febrile neutropenia, likely caused by levamisole laced cocaine use. It was noted that the vomiting and diarrhea were caused by viral gastroenteritis; it was also noted that patient had no further episodes after admission. A diagnosis of MRSA cellulitis was given concerning the lesions. It was noted that Claimant refused treatment for cocaine abuse and that Claimant did not consider himself to have a problem with using cocaine.

Hospital records (Exhibits 55-69) were presented. The documents verified a hospital admission from [redacted]. It was noted that Claimant presented with complaints of falling due to weakness, runny nose, sore throat, fever, cough and chills. It was noted that Claimant's blood work revealed an absolute neutrophil count of 100. It was noted that Claimant was given antibiotics. It was noted that a bone marrow biopsy revealed hypercellular bone marrow. Other CAT scans were performed which led to a recommendation of nasal endoscopy and flexible laryngoscopy to be performed on an outpatient basis.

Hospital documents (Exhibits A17-A31) were presented. The documents verified an emergency room encounter on [redacted]. It was noted that Claimant presented with abscesses on his left wrist. A diagnosis of cellulitis was provided. Claimant was given prescriptions for the abscesses.

Hospital documents (Exhibits A32-A133) were presented. The documents verified a hospital stay from [redacted]. It was noted that Claimant presented with a worsening of abscesses on his left wrist. Discharge diagnoses included: cellulitis,

neutropenia of unclear etiology and dermatitis. It was noted that Claimant denied cocaine abuse. It was noted that an Utox screen was positive for opiates and cocaine. It was noted that upon discharge, Claimant was referred to a free clinic for follow-up.

Hospital documents (Exhibits A134A179) were presented. An admission from [redacted]-[redacted] was noted. It was noted that Claimant presented with complaints of chest pain, coughing and pain when swallowing. Claimant reported losing 15 pounds in the prior two weeks; other documentation noted that Claimant denied weight loss (Exhibit A150). Claimant's medical history upon admission noted that Claimant is in need of a bone marrow evaluation. A drug test showed Claimant was positive for cocaine. Claimant was noted to be a heavy smoker. The discharge diagnosis for the chest pain was candida esophagitis. The Discharge Summary noted that Claimant had neutropenia for over a year; the cause was thought to be likely secondary to chronic cocaine ingestion. It was noted that a bone marrow biopsy was performed and that Claimant should follow-up for the results.

A hospital document (Exhibit A180) dated [redacted] was presented. It was noted that Claimant underwent a procedure involving a gastroscope. It was noted that Claimant's esophagus, GE junction and stomach appeared to be normal. A recommendation was noted that Claimant should avoid non-steroidal anti-inflammatory drugs because of a small erosion on the duodenum.

Claimant testified that he generally lacks strength and energy. He testified that he is capable only of ½ a block of walking and 10 minutes of standing. Claimant conceded that he does not use a walking aid. Claimant testified that he sleeps 10-12 hours per day.

The medical records established that Claimant has a history of neutropenia. A diagnosis of neutropenia is consistent with Claimant's reported symptoms of general fatigue, chronic infections and ambulation difficulties. Claimant's reported difficulties with walking and standing are significant basic work restrictions.

The diagnosis of neutropenia was established in 8/2011. The medical records established ongoing problems involving neutropenia through 8/2012. Claimant's testimony concerning his symptoms and restrictions was credible. Claimant established the durational requirements for a severe impairment.

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 most prominent impairment appears to be neutropenia. Claimant described the disease as one that weakened his immune system. Based on the SSA listing, the most applicable for neutropenia is Listing 14.07 which reads:

> ***14.07 Immune deficiency disorders, excluding HIV infection.*** As described in 14.00E. With:
> **A.** One or more of the following infections. The infection(s) must either be resistant to treatment or require hospitalization or intravenous treatment three or more times in a 12-month period.
> 1. Sepsis; or
> 2. Meningitis; or
> 3. Pneumonia; or
> 4. Septic arthritis; or
> 5. Endocarditis; or
> 6. Sinusitis documented by appropriate medically acceptable imaging.
> OR
> **B.** Stem cell transplantation as described under 14.00E3. Consider under a disability until at least 12 months from the date of transplantation. Thereafter, evaluate any residual impairment(s) under the criteria for the affected body system.
> OR
> **C.** Repeated manifestations of an immune deficiency disorder, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:
> 1. Limitation of activities of daily living.
> 2. Limitation in maintaining social functioning.
> 3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

There is no evidence that parts A or B were met. Regarding Part C, repeated manifestations of neutropenia with documented fatigue and fever were verified. Claimant and his daughter testified that Claimant was restricted in all daily activities including: shopping, laundry and cleaning. Claimant testified that he could perform each activity, but only in very limited periods. It is debatable whether Claimant is markedly limited in daily activities, but for purposes of this decision, it will be so found. Accordingly, Claimant established meeting a SSA listing.

Typically, meeting a SSA listing results in a conclusive finding of disability. When drug usage is relevant to an impairment then an additional analysis must be performed. SSA provides guidance on disability findings that may be impacted by substance abuse. Social Security Rule 82-60 states:

> Where the definition of disability is met in a title XVI claim, and there is evidence of drug addiction or alcoholism, a determination must also be made as to whether the drug addiction or alcoholism was a factor material

> to the finding of disability for purposes of applying the treatment and representative payee provisions. In making this decision the key issue is whether the individual would continue to meet the definition of disability even if drug and/or alcohol use were to stop. If he or she would still meet the definition, drug addiction or alcoholism is not material to the finding of disability and the treatment and representative payee provisions do not apply. The drug addiction and alcoholism requirements are imposed only where (1) the individual's impairment(s) is found disabling and drug addiction and/or alcoholism is a contributing factor material to the determination of disability, and (2) the same impairment(s) would no longer be found disabling if the individual's drug addiction or alcoholism were eliminated, as, for example, through rehabilitation treatment.

Claimant testified that he ceased cocaine usage in 8/2011. The medical records noted drug testing which verified cocaine usage as recently as 8/2012. The 8/2012 medical records also noted that Claimant did not seem to have a strong desire to stop his cocaine abuse.

The neutropenia was noted to have unknown etiology, however, medical records continually suspected cocaine laced with levamisole as the basis for Claimant's hospitalizations. It cannot be known with certainty that tainted drugs caused neutropenia, but the medical records suggest that it is the most probable cause. Claimant's positive cocaine test results in the 8/2011 and 8/2012 hospitalizations are supportive in concluding that the tainted cocaine led to the hospitalizations for neutropenia. The neutropenia appears to be the central cause for all of Claimant's verified restrictions. Based on the presented evidence, drug abuse is found to be material to the finding of disability.

Claimant also complained of shortness of breath, asthma, foot numbness and back pain. Assuming that drug abuse is unrelated to these complaints, no finding of disability could be justified for these impairments due to the lack of medical evidence.

Based on the presented evidence, it is found that Claimant is not disabled due to the materiality of drug abuse. Accordingly, the DHS denial of MA benefits, including retroactive 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 1/812, including retroactive MA benefits from 11/2011, 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

Date Signed: 3/8/2013

Date Mailed: 3/8/2013

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

CG/hw

cc: [redacted]