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

IN THE MATTER OF:

[redacted]

Reg. No.: 201317353
Issue No.: 2009
Case No.: [redacted]
Hearing Date: March 11, 2013
County: Wayne DHS (19)

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 March 11, 2013, from Inkster, Michigan. Participants included the above-named claimant. [redacted] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) 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 4/19/12, Claimant applied for MA benefits, including retroactive MA benefits from 3/2012.

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

3. On 8/27/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-7).

4. On 9/10/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 62-67) informing Claimant of the denial.

5. On 12/3/12, Claimant requested a hearing (see Exhibit 2) disputing the denial of MA benefits.

6. On 1/30/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 68-69), in part, by determining that Claimant's condition will improve within 12 months.

7. On 3/11/12, an administrative hearing was held.

8. Following the hearing, Claimant presented new medical documents (Exhibits A1-A11).

9. The new medical documents were forwarded to SHRT.

10. On 5/22/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.10.

11. As of the date of the administrative hearing, Claimant was a [redacted] year old male with a height of 6'3'' and weight of 163 pounds.

12. Claimant has no known relevant history of alcohol or drug abuse but smokes 1 ½ packs per day of cigarettes.

13. Claimant's highest education year completed was the 11th grade.

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

15. Claimant alleged disability based on impairments and issues including: foot-drop, shoulder arthritis, hip pain, knee pain, memory loss and chronic obstructive pulmonary disease (COPD).

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).

Prior to a substantive analysis, it should be noted that Claimant's AHR's hearing request noted that Claimant special arrangements were required for Claimant to participate in the administrative hearing; specifically, an in-person hearing was requested. Claimant's request was granted.

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 physical consultative examination report (Exhibits 15-19) dated [redacted] was presented. It was noted that Claimant reported pain in his: hip, neck, ankle and hand. It was also noted that Claimant reported that he has hepatitis C. It was noted that Claimant had decreased range of motion in the cervical spine and left ankle. It was noted that Claimant's strength was 5/5 and that reflexes were present and symmetrical. The examiner's conclusion noted a history of degenerative joint disease involving neck, hips, knees, ankles and hands. Left foot drop was also verified.

Hospital documents (Exhibits 20-53; A1) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of chronic and radiating back pain and cardiac issues. It was noted that Claimant had right hip swelling related to Claimant's attempt to inject morphine. It was noted that Claimant was a heavy smoker. It was noted that a previous hospitalization revealed multiple herniated discs, which was managed with pain meds. It was noted that Claimant had foot numbness from neuropathy related to herniated discs. It was noted that Claimant had difficulty walking due to the pain. It was noted that an MRI revealed DDD at L3-L4, L4-L5 with the most significant degeneration at L5-S1. Physical therapy was recommended for treatment. An impression was given of lumbar radicular syndrome with MRI evidence of DDD at L5-S1. A recommendation of epidural steroid injections was noted. A discharge date of [redacted]2 was noted.

Hospital documents (Exhibits A2-A6) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of a radiating back pain. It was noted that Claimant ran out of morphine and that he was ambulating with a cane.

Hospital documents (Exhibits A7-A11) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of chronic back pain. It was noted that Claimant was issued prescriptions for Flexeril and Norco.

A diagnosis for degenerative disc disease was verified by radiology. The accompanying radiology report established problems with three lumbar discs. It was established that Claimant received chronic treatment for back pain. It was further established that Claimant had foot drop, specifically caused by nerve damage in Claimant's back. The back pain and foot drop are persuasive evidence of significant ambulation restrictions, a basic work activity.

The presented evidence suggested that Claimant's ambulation problems began no later than 3/2012, when he was hospitalized for a week related to the pain and heart problems. The submitted medical records only verified treatment into the following month. Claimant testified that his back pain continues and affects his walking to the point where he requires use of a cane. Foot drop due to lumbar nerve damage is persuasive evidence of a long-term condition. Back pain, particularly for a person without insurance, is also suggestive of a long-term condition. It is found that Claimant established that his impairments have lasted and/or will last for a period of 12 months and longer.

It was concerning that Claimant was an admitted heavy tobacco smoker. Tobacco usage is known to exacerbate back pain. Nevertheless, there is no medical evidence that Claimant's heavy smoking was a prominent contributor to Claimant's restrictions.

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 back pain and problems. Spinal disorders are covered by Listing 1.04 which reads:

> **1.04** ***Disorders of the spine*** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:
>
> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by

sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);
OR
B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;
OR
C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

It was established that Claimant: has a diagnosis of DDD, requires a cane for ambulation, received treatment for radiating back pain (verifying neuro-anatomic distribution of pain) and has foot drop (motor loss) due to spinal nerve damage. The medical evidence is strongly suggestive of nerve root compromise, a restriction in range of motion and a probable positive straight-leg raising test. Based on the presented evidence, it is found that Claimant established meeting the listing for spinal disorders. Accordingly, the denial of MA benefits is found to be improper.

It should be noted that Claimant would have been found disabled even if he was found not to meet the listing for spinal disorders. In a scenario where Claimant was found to not meet a SSA listing, it would have been found that Claimant cannot return to his past relevant employment and that he was disabled under Medical-Vocational Rule 201.10 based on a finding that he was limited to sedentary employment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

(1) reinstate Claimant's MA benefit application dated 4/19/12, including retroactive MA benefits back to 3/2012;
(2) evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.

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

Date Signed: 6/13/2013

Date Mailed: 6/13/2013

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]