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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 201319292
Issue No.: 2009
Case No.: [redacted]
Hearing Date: March 11, 2013
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 March 11, 2013, from Taylor, Michigan. Participants included the above-named claimant. [redacted] testified on behalf of 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 9/10/12, Claimant applied for MA benefits, including retroactive MA benefits from 7/2012.

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

3. On 12/5/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).

4. On 12/7/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 86-88) informing Claimant of the denial.

5. On 12/18/12, Claimant requested a hearing (see Exhibits 89-91) disputing the denial of MA benefits.

6. On 2/12/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 118-119), in part, by application of Medical-Vocational Rule 202.21.

7. On 3/11/13, an administrative hearing was held.

8. Following the hearing, Claimant presented new medical documents (Exhibits A1-A3).

9. The new medical documents were forwarded to SHRT.

10. On 5/21/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 201.27.

11. As of the date of the administrative hearing, Claimant was a [redacted] year old male with a height of 5'8'' and weight of 175 pounds.

12. Claimant is a tobacco smoker has no known relevant history of alcohol or drug abuse.

13. Claimant's highest education year completed was the 12th grade.

14. As of the date of the administrative hearing, Claimant had no medical coverage but received discounts on prescriptions.

15. Claimant alleged disability based on impairments and issues including: degenerative discs, right leg numbness and muscle spasticity.

## 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 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 testified that he was last employed in 7/2012. Claimant seeks MA benefits from 7/2012. Unfortunately, specifics concerning Claimant's 7/2012 income were not obtained. It was established that Claimant sought hospital treatment on 6/25/12 and 6/30/12. It was also established that Claimant was hospitalized on 7/18/12. Based on Claimant's medical history, it is probable that Claimant did not work on or after 7/18/12. Based on a probable last day of work before 7/18/12, it is more probable than not that Claimant's employment income from 7/2012 was less than the SGA income limit. Accordingly, the analysis may proceed to step two for a disability analysis for all months starting with 7/2012.

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.

Hospital documents (Exhibits 27-41) from a hospital encounter dated 6/25/12 were presented. It was noted that Claimant presented with complaints of lower back pain over the prior three days. It was noted that the pain was worse when changing positions and ambulation. A generic final diagnosis of low back pain was given. It was noted that Claimant was given prescriptions for Norco and Motrin.

Hospital documents (Exhibits 13-26) from a hospital encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of low back pain with right leg numbness. It was noted that Claimant reported falling when walking. A radiography report (Exhibit 26) noted that a CT scan of the lumbar spine revealed: a mild circumferential bulge at L2-L3, circumferential bulge causing mild-central canal effacement at L3-L4, moderate central bulging causing mild effacement at L4-L5 and mild central bulging at L5-S1. It was noted that Claimant was discharged and advised to return if symptoms worsen.

Hospital documents (Exhibits 49-60; 72-85; 97-117) from an admission dated [redacted] were presented. It was noted that Claimant presented with lower extremity numbness and tingling, causing imbalance in ambulation. One prior episode of a loss of bowels was noted. It was noted that an examination showed upper motor neuron findings and that Claimant was admitted. It was noted that MRIs of the brain, thoracic spine and cervical spine were performed.

Office Visit documents (Exhibits 46-48; duplicated by 94-96) dated [redacted] were presented. It was noted that Claimant complained of lower extremity weakness and numbness. It was noted that Claimant also complained of a loss of bowel control. It was noted that an MRI scan of Claimant's brain revealed white matter signal change in medulla. It was noted that a recent MRI of Claimant's cervical and thoracic spine revealed several lesions on the spinal cord. It was noted that Claimant needed a cane to ambulate but his ambulation has improved. It was noted that Claimant had mild difficulty walking in tandem fashion and that Romberg Sign was present. It was noted that demyelinating disease was the likliest diagnosis though NMO testing was sought.

A Medical Examination Report (Exhibits 44-45) dated [redacted] was completed by Claimant's treating physician. It was noted that the physician last examined Claimant on [redacted]. No first date of examination was noted but it was noted that Claimant was newly diagnosed. The physician provided diagnoses of: AMO vs. multiple sclorosis and demyelinating disease. It was noted that Claimant can meet household needs.

Office Visit documents (Exhibits 92-93) dated [redacted] from a neurologist were presented. It was noted that Claimant was diagnosed with relapsing MS. It was noted that Claimant was waiting for approval of insurance prior to having modifying treatment. It was noted that immunomodulatory treatment would begin once Claimant had insurance. It was noted that tone was mildly spastic in the lower right extremity.

A letter (Exhibit A1) dated [redacted] from Claimant's treating neurologist was presented. It was noted that Claimant was in need of insurance so that Claimant could be tested to differentiate between NMO and MS. It was noted that Claimant had foot numbness and that Claimant's sitting and standing were limited to no more than 5-10 minutes.

Office visit documents (Exhibits A2-A3) dated [redacted] from Claimant's treating neurologist were presented. It was noted that Claimant reported pain in his back and neck. It was noted that Claimant was frustrated because he is unable to perform activities that he previously could perform. It was also noted that Claimant reported taking longer to perform activities.

The presented medical documents consistently established that Claimant has demyelinating disease, either MS or neuromyelitis optica. Either diagnosis would be consistent with the neurologist's stated ambulation restrictions (5-10 minutes). It is found that Claimant established significant impairment to performing basic work activities.

Ambulation symptoms, presumably related to MS or NMO were established, beginning in 7/2012. It is known that Claimant has no medical insurance and is unable to be treated for either illness. Due to the lack of insurance and the nature of the diseases, it is probable that Claimant's ambulation restrictions will last for a period of 12 months, starting from 7/2012.

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 body control problems related to MS or NMO. Claimant would be disabled if the medical evidence supported:

> **11.09** ***Multiple sclerosis****.* With:
> A. Disorganization of motor function as described in 11.04B; or
> B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
> C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Listing 11.04B requires "significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

It is questionable whether Claimant should be considered for the MS listing when Claimant's precise diagnosis is in doubt. Despite the doubt, Claimant's treating neurologist noted that whether Claimant has MS or NMO, either disease is disabling (see Exhibit 1). There was also a reference by the neurologist that Claimant would be treated as if he had an MS diagnosis (see Exhibit A3). Based on the similarity of symptoms between NMO and the statements of the treating neurologist, evaluation of Claimant for the MS listing is deemed to be appropriate.

Documentation from 1/31/13 shows a regression in Claimant's abilities. Office visit documents noted Claimant's ongoing complaints of fatigue and motor loss. It was established by prior documents that Claimant has spasticity in a lower extremity. It was also documented that the treating neurologist limited Claimant to 5-10 minutes of sitting and standing; both are fairly dramatic restrictions.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner,* 486 F. 3d 234 (6th Cir. 2007)*; Bowen v Commissioner.*

Thought was given to questioning the appropriateness for the dramatically limited standing and sitting restrictions. Medical records from 10/2012 noted only "mild"

spasticity in a single lower extremity. This is not suggestive of a particularly short standing restriction. Claimant's treating neurologist, on 1/31/12, noted ongoing numbness in Claimant's feet (feet suggesting problems in multiple lower extremities). Based on the serious and unpredictable nature of MS, such a regression is plausible. It is found there is no basis discount the 5-10 minute standing restriction.

The sitting restriction was met with more skepticism. There is no known medical reason why Claimant would be unable to sit for longer than 10 minutes based on the presented medical records. There was evidence of prior back pain though there was no indication that the treating physician evaluated Claimant for back restrictions. For example, it was not listed in any of the treating physician's documents or notes. Despite some skepticism for accepting the stated sitting restrictions, deference will be given to the provider. It is plausible that Claimant's reported fatigue justified such a restriction. Further, MS/NMO are accepted to be diseases with a potential for severe regression in motor function, particularly for a client without access to insurance. It is found that Claimant established standing and sitting restrictions of 5-10 minutes.

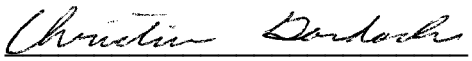
Standing and sitting restrictions of 5-10 minutes related to neurological dysfunction are consistent with a finding that Claimant has a disorganization of motor function sufficient to meet the MS listing. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in denying Claimant's application for MA benefits.

## 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 9/10/12, including retroactive MA benefits back to 7/2012;
(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:

Date Mailed: _____

**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]