

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20132062
Issue No.: 2009 4031
Case No.: [REDACTED]
Hearing Date: January 17, 2013
County: Wayne DHS (43)

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 conducted on January 17, 2013, from Highland Park, Michigan. Participants included the above-named claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 7/10/12, Claimant applied for MA and SDA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 9/18/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 8-9).
4. On 9/20/12, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 4-7) informing Claimant of the denial.

5. On 9/25/12, Claimant requested a hearing (see Exhibits 2-3) disputing the denial of MA and SDA benefits.
6. On 11/14/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 64), in part, by determining that Claimant does not have a severe impairment.
7. On 1/17/13, an administrative hearing was held.
8. On 2/21/13, Claimant presented new medical documentation (Exhibits A1-A39), which was forwarded to SHRT for review.
9. On 5/6/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20
10. As of the date of the administrative hearing, Claimant was a ■ year old male with a height of 6'0" and weight of 175 pounds.
11. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
12. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
13. As of the date of the administrative hearing, Claimant had no health coverage, but received some medications through an unspecified program.
14. Claimant alleged that he is disabled based on impairments and issues including: lower back pain, diabetes, depression and schizophrenia.

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 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 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 relevant submitted medical documentation.

Michigan Department of Corrections grievance documents (Exhibits 36-48) from 2004 were presented. It was noted that Claimant reported an injury after a tree fell on a trailer door near where Claimant was standing. It was noted that the supervising prison officer reported that there was an incident involving Claimant and a tree, but it was a smaller tree than reported by Claimant, only the top part of the tree fell onto the trailer and that Claimant exaggerated his injuries as evidenced by Claimant’s normal behavior afterwards. Following a physician evaluation, Claimant was restricted to two days of light duty. It was noted that Claimant’s grievance was denied.

An MDOC Request for Services document (Exhibit 49) dated [REDACTED] was presented. The document was completed by a registered nurse in response to Claimant’s complaints of back pain. It was noted that Claimant “was given Naprosyn two days ago and that he needed to wait longer for the medication to work”.

An MDOC Medical Detail (Exhibit 52) dated [REDACTED] was presented. The document was completed by a person with an unspecified title. It was noted that Claimant was approved for a back support, effective 10/28/09 and through 4/28/10.

A correctional facility document (Exhibit 55) dated [REDACTED] was presented. It was noted that Claimant was to perform janitorial duties.

Hospital documents (Exhibits A35-A39) from an encounter dated 5/15/12 were presented. It was noted that Claimant presented with complaints of swollen legs and a headache. A physical examination and lab tests were performed with no notable findings. It was noted that the examining physician did not appreciate any edema to Claimant’s lower leg. Claimant was discharged after receiving medication for his headache.

Hospital documents (Exhibits 30-35) from an encounter from 6/7/12 were presented. Encounter details were not provided but it was noted that Claimant was given instructions for how to strengthen his lower back.

Treatment records (Exhibits 27-29) dated 6/27/12 were presented. It was noted that Claimant presented with complaints of LBP and left foot pain. It was noted that Claimant

hurt his foot after stepping on a metal cap. It was noted that Claimant did not limp. It was also noted that Claimant reported a history of panic attacks, which increased after Claimant served a 15 year prison term.

Hospital documents (Exhibits A32-A34) from an encounter from [REDACTED] were presented. It was noted that Claimant presented with complaints of back pain, fatigue and headaches. It was noted that Claimant was given Naprosyn Valium for his back. It was noted that the hospital provided Claimant with IV electrolytes and that Claimant's condition improved.

A consultative physical examination report (Exhibits 16-22) dated [REDACTED] was presented. It was noted that Claimant complained of chronic thoracic pain. It was also noted that Claimant complained of left foot and right wrist pain. It was noted that Claimant was living in a group home for physical and psychological treatment. It was noted that Claimant was a smoker. It was noted that Claimant had full range of motion in his back. Mild muscle spasms were noted in the back muscles; the spasms were noted as possibly due to chronic depression. It was noted that Claimant had full strength and reflexes. It was noted that Claimant's gait was steady and that he had no limp.

Hospital documents (Exhibits A29-A31) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with a need for pain medication for his back. It was noted that the hospital gave Claimant a refill of Norco.

Hospital documents (Exhibits A11-A28) from an admission dated [REDACTED] were presented. It was noted that police brought in Claimant following his "bizarre" and "threatening" behavior. It was noted that Claimant reported back pain. A medical plan of treatment by NSAIDs and physical activity was noted. A psychological examination was also undertaken. An Axis I diagnosis of Psychosis and opiate abuse was noted. Claimant's GAF at admission was noted as 20. It was noted in documentation that Claimant presented with loud and demanding behavior. It was noted that he demanded Norco for his back. Despite Claimant's demands, a much more conservative treatment plan was recommended, NSAIDs. It was noted that Claimant eventually displayed eating habits and social skills within normal parameters and that impulsivity was greatly reduced and judgment has improved. It was noted that Claimant was given a four week supply of medications at discharge and a referral was given for psychological treatment. Prior to discharge, Claimant's GAF was noted as 50.

A Psychiatric/Psychological Examination Report (Exhibits A1-A3) was presented. It was noted that the examination was performed on [REDACTED] after an initial appointment with Claimant on [REDACTED]. It was noted that Claimant reported feeling angry. It was noted that Claimant had a history of poor decision-making and had difficulty controlling impulses. An Axis I diagnosis of depressive disorder- recurrent and moderate was noted. Claimant's GAF was 42.

A Mental Residual Functional Capacity Assessment (Exhibits A4-A6) dated [REDACTED] was completed by Claimant's treating physician. This form lists 20 different work-related

activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. It was noted that Claimant was markedly limited in the following abilities: sustaining a routine without supervision, accepting instructions and responding appropriately to criticism, responding appropriately to work setting changes and traveling to unfamiliar places.

The consultative examination report was the best evidence of Claimant's back problems. The examiner noted back spasms, which were part of the justification for restricting Claimant from performing heavy lifting. The restrictions meet the de minimus burden of establishing basic work activity restrictions.

The records tended to verify that Claimant had restrictions since 2004. It is found that Claimant meets the durational requirement from performing basic work 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 undiagnosed back 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.

The medical records failed to verify any range of movement restrictions or ambulation difficulties. Claimant's back problems are not even diagnosed. The presented evidence failed to establish that Claimant meets the listing for spinal disorders.

Various mental disorders (12.03- psychotic disorders; 12.04- affective disorders and 12.09 substance abuse disorders) were considered. Though there was evidence that Claimant is potentially markedly restricted in social functioning and concentration, the evidence also tended to show that Claimant's psyche was affected by opiate abuse. Opiate abuse was noted as a diagnosis at the time of an involuntary hospitalization. The diagnosis tends to show that drug use is a material factor to Claimant's decompensation. Further, restrictions which were documented were determined shortly after Claimant's hospitalization related to opiate abuse. Thus, again, Claimant's drug use was material to the restrictions. Other hospital documents tend to verify the abuse. It is found that Claimant is not disabled based on psychological restrictions due to the materiality of drug abuse. Despite this finding, a further evaluation of Claimant's other impairments may be considered because drug abuse is not necessarily material to those disabilities.

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 has zero history of SGA. Without any history of SGA, it cannot be found that Claimant can return to performing SGA. Accordingly, the analysis may proceed to step five.

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).

A consultative examiner noted that Claimant could sit, stand, walk and lift 20 pounds without difficulty for an eight hour period. Other medical evidence was consistent with the examiner's findings. The presented evidence justifies a finding that Claimant is capable of performing light work.

As noted above, Claimant has psychological limitations, but drug abuse is material to the restrictions. Claimant's employment opportunities are not deemed to be further restricted by psychological limitations.

Based on Claimant's exertional work level (light), age (younger individual aged 18-44), education (high school), employment history (none), Medical-Vocational Rule 201.27 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.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

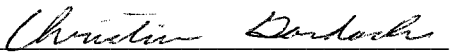
- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
-

- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It has already been found that Claimant is not disabled for purposes of MA benefits based on application of Medical-Vocational Rule 201.27. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly denied Claimant's application for SDA 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 4/27/12 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: 5/28/2013

Date Mailed: 5/28/2013

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

20132062/CG

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

CG/hw

cc:

