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

IN THE MATTER OF:

[redacted]

Reg. No.: 201321144
Issue No.: 2009
Case No.: [redacted]
Hearing Date: March 28, 2013
County: Macomb DHS (20)

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 28, 2013, from Clinton Township, 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], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 10/14/12, Claimant applied for MA benefits.

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

3. On 10/26/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 114-113).

4. On 11/5/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 1/2/13, Claimant requested a hearing disputing the denial of MA benefits.

6. On 2/14/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 117-118), in part, by determining that Claimant was capable of performing past relevant employment.

7. As of the date of the administrative hearing, Claimant was a [redacted] year old male with a height of 6'0'' and weight of 250 pounds.

8. Claimant has no known relevant history of alcohol or illegal substance abuse.

9. Claimant's highest education year completed was a Bachelor of Arts degree in Psychology.

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

11. Claimant alleged that he is disabled based on impairments and issues including: left knee pain, chronic gout, and heart-related impairments.

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.

At the time of hearing, Claimant worked as a substitute teacher. Claimant testified that he typically worked 3 days per week for $65 or $75 per day. Multiplying Claimant's higher daily wage ($75), days worked per week (3) and the average number of weeks per month (4.3) results in a total income of $967.50. This amount falls below the amount needed to establish SGA. Claimant testified that eh typically limits his work days to three per week because of the difficulty in standing. 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. It should be noted that DHS inexplicably numbered the first 114 pages of exhibits in reverse numerical order; thus, those exhibits will be cited from high-to-low number.

Hospital documents (Exhibits 100-6) were presented. It was noted that Claimant was admitted on [redacted] after presenting with complaints of chest discomfort and malaise. It was noted that Claimant had a history of HTN. It was noted that a cardiac work-up was performed, and that Claimant had significant proximal LAD lesion with intravascular ultrasound and 86% stenosis. On [redacted], a progress note stated that Claimant was critically ill and suffered acute respiratory failure (see Exhibit 76). It was noted that Claimant underwent robotic bypass of LAD using the LIMA. It was noted that Claimant was given an insulin drip to control his blood sugar. On [redacted], it was noted that Claimant was intubated on the ventilator. On [redacted], it was noted that Claimant was doing well and independently breathing. On [redacted], the day of discharge, it was noted that Claimant had no complaints of shortness of breath, no fever and no chills; it was also noted that Claimant was ambulating without difficulty. Discharge diagnoses included: coronary artery disease, non-ST elevation MI, elevated triglycerides and uncontrolled HTN.

Hospital documents (Exhibits 5-2) dated [redacted] were presented. It was noted that chest x-rays were taken. An interpretation noted that there was some linear atelectasis in the left lung, but overall, Claimant's lungs were both well aerated.

Physician documents (Exhibits 115-117) dated [redacted] were presented. It was noted that an EKG was performed and showed normal sinus rhythm. It was noted that Claimant was hemodynamically stable It was noted that Claimant should undergo cardiac rehabilitation therapy, but needed insurance in order to go.

Claimant testified that he feels significantly better since undergoing cardiac treatment. Claimant testified that his heart and lungs have been fine and that he has no ongoing cardiac-related restrictions. Claimant's testimony essentially conceded that he is not disabled from heart-related issues any longer than three months (8/2012-10/2012).

Claimant testified that he suffers chronic gout. There was a reference to the problem in a physician document dated [redacted]. However, the medical evidence was too lacking to draw any conclusions concerning restrictions.

Claimant also testified that he has ambulation difficulties related to his knees. Claimant testified that he has no left knee meniscus and that it is painful for him to stand or walk for extended durations. Claimant's testimony was very credible, however, it was also completely unsupported by medical evidence. The presented medical records contained no references to any joint or knee problems. The only reference to ambulation noted that Claimant had no difficulties without ambulation.

The medical evidence established that Claimant had heart-related problems in 9/2012. The records verified that hospital intervention significantly improved Claimant's condition. The presented evidence failed to establish any ongoing restrictions to performing basic work activities for a period of 12 months or longer. Accordingly, Claimant does not have a severe impairment. Therefore, it is found that DHS properly determined that Claimant was not disabled. Accordingly, the MA benefit application denial was 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 10/14/12, including retroactive MA benefits back to 9/2012, based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.

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

Date Signed: 4/5/2013

Date Mailed: 4/5/2013

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]