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

IN THE MATTER OF:

[redacted]

Reg. No.: 201324083
Issue No.: 2009
Case No.: [redacted]
Hearing Date: April 29, 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, a telephone hearing was held on April 29, 2013, from Detroit, Michigan. Participants included the above-named claimant. Delores Conley 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) for 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 8/2/12, 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 11/29/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).

4. On 12/5/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 89-92) informing Claimant of the denial.

5. On 12/12/12, Claimant reques ted a hearing disputing t he denial of MA benefits (see Exhibits 92- 93).

6. On 3/19/13, SHRT determined that Claim ant was not a disabled indiv idual, in part, by application of Medical-Vocational Rule 202.17.

7. On 4/29/13, an administrative hearing was held.

8. Claimant presented new medical documents (Exhibits A1-A88) at the hearing.

9. On 4/30/13, the new medical documents were forwarded to SHRT.

10. On 7/11/13, SHRT dete rmined that Claimant was not disabled, in par t, by application of Medical-Vocational Rule 202.27.

11. As of the date of t he administrative hearin g, Claimant was a [redacted] male with a height of 6'2'' and weight of 200+ pounds.

12. Claimant is a pack/day ci garette smoker and has no k nown relevant history of alcohol or illegal substance abuse.

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 dis ability bas ed on im pairments and issues including closed head injur y, general body pain, left-sided weakness and numbness, memory loss, migraine headaches and insomnia.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implemented by Title 42 of the Code of F ederal Regulations (CFR). DHS (formerly known as the Fa mily Independence Agenc y) admin isters the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department polic ies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant requested s pecial arr angements to participat e in th e administrative hearing. Claimant attended and partic ipated in the hearing wit hout noting any special arrangements required for participation.

MA provides medical assistance to indi viduals and families who meet fi nancial an d nonfinancial eligib ility factors. The goal of t he MA program is to ensure that essentia l

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 (10/2010), p. 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:

- 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).
  BEM 260 (7/2012) pp. 1-2

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 (7/2012), p. 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 impairment s amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

Treatment notations (Exhibits 87-88) over the period of [redacted] were presented. The notations were unsigned, but are presumed to have been made by Claimant's treating physician. It was noted that Claimant was issued continuing prescriptions for Xanax. It was noted on [redacted] that Claimant and his mother reported decreased alcohol usage ("only once in past seven days").

Documents (Exhibits 15-22, 34, 42-44, 52-78, A12-A32; A44-A48) stemming from a hospitalization dated [redacted] were presented. It was noted that Claimant presented after drinking alcohol and falling on his face from a second story balcony. It was noted that Claimant's injuries included: concussion with loss of consciousness , skull fracture, orbital fracture and intra-cranial bleeding. It was noted that Claimant had a traumatic brain injury. It was noted that Claimant's mental status showed improvement but that agitation and confusion persisted throughout his stay and that impulsivity was displayed, which concerned the specialist. It was noted that Claimant was ambulatory steadily, but he had to be frequently reoriented and supervised; it was noted that Claimant's mother agreed to 24 hour supervision for Claimant. It was noted that Claimant was a heavy alcoholic and pack per day smoker.

Documents (Exhibits 23-32; A33-A43) stemming from a hospital encounter dated [redacted] were presented. It was noted that Claimant presented after feeling dizzy and falling. A clinical impression of dizziness was noted. Radiology reports (46-51) noted minimally distracted, nonoblique fracture of left lower extremity.

An Initial Evaluation (Exhibit 45) dated [redacted] from a physician was presented. It was noted that Claimant reported 10/10 level of pain. It was noted that x-rays of the left foot were unremarkable. An impression of possibly displaced tibial plafond fracture was noted. It was noted that a CT scan was preferred but that Claimant's lack of insurance made it unlikely that one would be performed.

Hospital documents (Exhibits A49-A51) were presented. It was noted that Claimant had a left foot fracture.

Office visit documents (Exhibits A53-A56) dated [redacted] were presented. It was noted that Claimant complained of left ankle pain, dizziness and headaches. It was noted that Claimant's strength was 5/5 in all extremities and gait was unassisted.

Other office visit documents (Exhibits A62-A79) were presented. The documents verified doctor visits over the period of 7/2012-10/2012). The documents were not notable other than repeating information already noted.

A consultative physical examination report (Exhibits 35-41) dated [redacted] was presented. It was noted that Claimant had a left leg fracture, but no surgery. It was noted that Claimant required crutches for ambulation. It was noted that Claimant had a JAMAR grip strength of 100 on the right and 27.5 on the left. It was noted that Claimant displayed upper-left and lower-left side weakness. It was noted that Claimant had difficulty moving his neck. It was noted that Claimant often feels dizzy and nauseous. It was noted that Claimant reported regular headaches. It was noted that the examiner did not have Claimant's medical history. The examiner noted that Claimant needed workup for several problems. The examiner noted that Claimant was unable to work until Claimant's symptoms reduced.

An office visit document (Exhibit A2) dated [redacted] was presented. It was noted that Claimant could not take ASA or NSAIDs due to a diagnosis for hereditary hemorrhagic telanglectasia. It was noted that Claimant reported left-side pain rating as 9/10. It was noted that Claimant's left wrist was particularly painful.

A letter (Exhibit A1) dated [redacted] from a treating physician was presented. It was noted that Claimant requires treatment to address a severe traumatic brain injury, causing significant cognitive deficits and behavioral challenges.

A consultative psychological examination report (Exhibits 94-98) dated [redacted] was presented. It was noted that Claimant reported feelings of depression, loss of memory and multiple physical obstacles. It was noted that Claimant reported taking Tylenol 3 four times per day, Celexa, Propanolol and Fioricet. It was noted that Claimant recalled seven numbers forward and four numbers backward. It was noted that Claimant recalled three of three objects after a few minutes. The examiner diagnosed Claimant with Cognitive Disorder and Adjustment Disorder with depressed mood. Claimant's GAF was 55. Claimant's prognosis was fair- to-guarded. The examiner noted that Claimant's ability to relate to others was moderately impaired. The examiner noted that Claimant's memory was moderately impaired. It was noted that Claimant was able to perform simple repetitive tasks, but that Claimant would have moderate-to-significant difficulty in performing multiple step tasks. It was noted that Claimant's ability to withstand daily stresses was moderately-to-significantly impaired.

Office visit documents (Exhibits A57-A61) dated [redacted] were presented. It was noted that Claimant complained of daily headaches, blurred vision, left-side pain and fatigue. It was noted that Claimant took 12 medications for his various problems including Norco.

A report concerning psychological testing for mental retardation report (Exhibits 99-101) dated [redacted] was presented. It was noted that Claimant's verbal comprehension IQ index score was 81 and full scale IQ was 79. The examiner opined that Claimant had the ability to perform simple and repetitive tasks and could follow simple instructions. The examiner opined that Claimant had the social skills to interact with others. It was opined that Claimant could manage his own funds.

Office visit treatment documents (Exhibits A83-A85) dated [redacted] were presented. It was noted that Claimant had daily headaches, but that medication has helped a lot. It was noted that Claimant still had left-sided pain with occasional parestheisas. It was noted that a lack of insurance limits medical progress.

A letter (Exhibit A82) from Claimant's treating physician dated [redacted] was presented. It was noted that Claimant is unable to pursue treatments because of a lack of insurance.

Claimant and his mother testified that Claimant was not an independent individual. Both testified that Claimant needs daily reminders in order to complete daily activities and to attend appointments.

Claimant testified that his walking is limited due to ankle and left-side pain. Claimant's mother testified that Claimant often trips. Claimant testified that he often drops items due to weakness.

The medical evidence established that Claimant has significant non-exertional restrictions. The medical records established that Claimant has significant pain affecting his concentration, limited cognitive function and headaches. The symptoms were sufficient to establish significant restrictions to performing basic work activities.

Claimant seeks a determination of disability from 7/2012. It was established that Claimant's restrictions began in 7/2012, when he drunkenly fell two stories. Medical records only followed Claimant's progress for approximately 9 months and progress was shown. Despite the progress, there were still sufficient symptoms causing basic work activity restrictions. Treating physician statements reasonably opined that Claimant's work restrictions would continue due to Claimant's lack of health insurance. The evidence established a probability that Claimant will have restrictions for 12 months or longer. 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 pain and functioning difficulties related to a fall. Listing 12.02 covers organ brain disorders and reads:

> **12.02 Organic mental disorders**: Psychologic al or behavioral abnormalities associated with a dys function of the brai n. History and phys ical examination or laboratory tests demonstrate the presence of a spec ific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional ab ilities. The required le vel of s everity for these dis orders is met when the requirements in both A and B ar e satisfied, or when the requirements in C are satisfied.
>
> A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:
> 1. Disorientation to time and place; or
> 2. Memory impairment, either s hort-term (inab ility to le arn ne w information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
> 3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
> 4. Change in personality; or
> 5. Disturbance in mood; or
> 6. Emotional liability (e.g., explosive temper outbursts, sudden c rying, etc.) and impairment in impulse control; or
> 7. Loss of measured intellectual ab ility of at least 15 I.Q. points fro m premorbid levels or overall impairment index clearly within the severely impaired range on neurops ychological testing, e.g., Luria-Nebras ka, Halstead-Reitan, etc.;
> AND
> B. Resulting in at least two of the following:
> 1. Marked restriction of activities of daily living; or
> 2. Marked difficulties in maintaining social functioning; or
> 3. Marked difficulties in maintaining concentration, persistence, or pace; or
> 4. Repeated episodes of decompensation, each of extended duration;
> OR
> C. Medically documented hist ory of a chronic organic ment al disorder of at least 2 years' duration that has cause d more than a minimal limitation of ability t o do basic work activities, with symptom s or signs currently attenuated by medication or psychosocial support, and one of the following:
> 1. Repeated episodes of decompensation, each of extended duration; or
> 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in th e environment would be predicted to cause the individual to decompensate; or

3. Current history of one or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Technically, Claimant cannot meet Part C of the above listing due to failing to meet the durational requirement of a two-year long organic mental disorder. Claimant could meet the substantive requirements of more than a minimal limitation of ability in performing basic work activities, symptoms attenuated by medication and marginal adjustment whereby a change in the environment would be predicted to cause compensation; the latter being established by a consultative examiner showing that Claimant's significant restrictions in daily stresses. The durational requirement is not found to be particularly controlling because of Claimant's likelihood of little improvement without health insurance. Thus, Claimant probably will meet the durational requirement once two years passes.

Even if Claimant had not met the above listing, he would have been found disabled at step five. Claimant is unable to perform past relevant employment (though he has a relatively sparse work history indicating that he worked approximately five of the past 15 years. Though Claimant can perform levels of sedentary employment, his non-exertional restrictions would make such employment impractical. 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 8/2/12, 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: 8/9/2013

Date Mailed: 8/9/2013

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]