

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-24678
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 15, 2013
County: Monroe DHS

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 May 15, 2013, from Monroe, Michigan. Participants included the above-named claimant. [REDACTED], Claimant's [REDACTED] and [REDACTED] Claimant's [REDACTED] testified on behalf of Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). 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 5/1/12, Claimant applied for MA benefits, including retroactive MA benefits from 3/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/11/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 7-8).

4. On 10/25/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 5-6) informing Claimant of the denial.
5. On 1/18/13, Claimant's AHR requested a hearing to dispute the denial of MA benefits (see Exhibit 2).
6. On 4/1/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.
7. On 5/15/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A13) at the hearing.
9. On 5/16/13, the new medical documents were forwarded to SHRT.
10. On 7/26/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old [REDACTED] with a height of 5'7" and weight of 209 pounds.
12. Claimant is a pack/week [REDACTED] and has no known relevant history of alcohol or illegal substance abuse.
13. Claimant's highest education year completed was [REDACTED].
14. As of the date of the administrative hearing, Claimant had a medical coverage through a hospital that allowed Claimant to purchase medication at a discounted rate.
15. Claimant alleged disability based on impairments and issues including lower back pain and psychological symptoms.

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 of Claimant's hearing request, it should be noted that the Claimant required special arrangements to participate in the administrative hearing; specifically, an in-person hearing was requested. The hearing was conducted in accordance with Claimant's request.

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 (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.
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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 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.

Radiology reports (Exhibits 37-38) were presented from 2010. The documents noted healing fractures of fourth and fifth metacarpal.

Various treatment documents (Exhibits 67-80; 86-96) from 2011 were presented. It was noted that Claimant was treated for attention deficit hyperactivity disorder, lumbar stenosis and toothache.

Treating physician documents (Exhibits 25-27) dated 12/12/11 were presented. It was noted that Claimant presented for a recheck of anxiety. No abnormal findings were found.

A court order (Exhibit 28) noted a court finding that it was necessary that Claimant be taken into protective custody for psychological screening to take place on 3/19/12

Lab testing documents (Exhibits 11-12; 33-35; 41-43) were presented. It was noted that Claimant tested positive to cannabis on 3/19/12.

A [REDACTED] (Exhibits 29-30) dated 3/20/12 from an examining physician was presented. It was noted that Claimant sometimes goes off in thought tangents. It was noted that Claimant sometimes seems drawn from reality. A diagnosis of psychosis was provided. It was noted that [REDACTED] was recommended.

A [REDACTED] report (Exhibits 14-19; 44-48) dated 7 [REDACTED]/12 was presented. It was noted that Claimant reported feelings of anxiety and depression. It was noted that Claimant was in a recent motor vehicle accident and has pain while driving. It was noted that Claimant reported poor concentration and a low activity level. It was noted that Claimant has [REDACTED]. It was noted that Claimant reported being unable to work since 6/2011 due to chronic pain, mood swings and personality changes. A previous psychiatric hospitalization was noted. An Axis I diagnosis of major depressive disorder, moderate, recurrent was provided. Claimant's GAF was 50. The examiner noted a fair prognosis with continued support and intervention at outpatient clinics.

A radiology report (Exhibit 58; 64) of Claimant's lumbar dated 8/19/12 was presented. An impression was given of severe chronic compression deformity of T12 endplate. Small compression deformity was noted at S1.

A [REDACTED] (Exhibits 59-60) from Claimant's [REDACTED] dated [REDACTED] was presented. It was noted that Claimant is not able to perform duties requiring constant motion, daily routine activities or have involvement with individuals. It was noted that Claimant's back problems prevent sitting, standing or walking for hours at a time. It was noted that Claimant could not perform heavy lifting. It was noted that Claimant had a tragic childhood encounter causing psychosis. It was noted that insurance would benefit Claimant.

A [REDACTED] (Exhibit 57) was presented. The document was unsigned and undated but the document was created on 11/30/12; thus, it can be presume to have been completed shortly after that time. Diagnosis of spinal stenosis, radiculopathy, anxiety disorder and psychosis were noted.

A [REDACTED] (Exhibits A10-A13) dated 1 [REDACTED]/13 was presented. It was noted that Claimant was not involved in any psychological therapy. Axis I diagnoses of depression, panic disorder without agoraphobia and cannabis abuse were noted. A GAF of 50 was given. Claimant prognosis was noted as guarded. It was noted that Claimant had adequate abilities to understand and retain information and to follow simple instructions. It was noted that Claimant had adequate ability to interact with others. It was noted that Claimant was capable of managing funds.

[REDACTED] Exhibits A1-A4) dated 2/21/13 were presented. It was noted that Claimant presented for recheck of depression. Noted symptoms included poor concentration, loss of interest, irritability, anxiety, weight gain and poor sleep. It was noted that Claimant reported a non-radiating lumbar pain. It was noted that Claimant was in multiple vehicle accidents and it was implied that Claimant's poor concentration

was a cause for at least some of the accidents. An assessment of generalized anxiety disorder was noted. It was noted that Claimant would continue Xanax, Ibuprofen and Lortab.

Claimant testified that he was capable of performing his daily activities though he testified that he had difficulty putting on socks due to lower back pain, Claimant testified that he drives. Claimant testified that he was capable of walking for 30 minute periods and standing for one hour periods. Claimant testified that his sitting was restricted to 30 minute periods due to lower back pain. Claimant does not use a walking assistance device.

The presented evidence established that Claimant has lumbar problems which would restrict his walking, sitting and lifting restrictions. The evidence also established that he has psychological symptoms related to depression and/or psychosis.

Claimant seeks a finding of disability from 3/2012. The presented medical records established that Claimant's symptoms and restrictions began before 3/2012. The presented evidence also established that Claimant's symptoms are ongoing and have or will last 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.

A listing for spinal disorders was considered (Listing 1.04). This listing was rejected due to Claimant's failure to establish nerve compression, psychomotor dysfunction or an inability to ambulate effectively.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning or completion of daily activities. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation. There was evidence suggesting marked restrictions in concentration but another marked restriction must have been established to meet the listing.

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 testified that he worked in 2013 as a painter. Claimant testified that the employment lasted only one week. Claimant conceded that he could perform the employment now. Claimant's testimony is consistent with the medical evidence. It is found that Claimant is capable of performing his past employment. Accordingly, it is found that Claimant is not disabled and that DHS properly denied Claimant's MA benefit application.

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 5/1/12, including retroactive MA benefits, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.

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

Date Signed: 8/30/13

Date Mailed: 8/30/13

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/tb

cc:

