

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201327989
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 12, 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 June 12 2013, from Detroit, 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], 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 [REDACTED]/12, Claimant applied for MA benefits (see Exhibits 11-12), including retroactive MA benefits from [REDACTED]/2012 (see Exhibits 9-10).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED]/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 14-15).
4. On [REDACTED]/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED]/13, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 2).
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have an impairment expected to last 12 months.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A5) at the hearing.
9. On [REDACTED]/13, during the hearing and per Interim Order dated [REDACTED]/13, Claimant was given 10 days from the date of the hearing to submit a previously completed consultative examination report.
10. As of [REDACTED] 13, Claimant had not submitted the consultative examination report.
11. On [REDACTED]/13, the new medical documents were forwarded to SHRT.
12. On [REDACTED]/13, SHRT returned additional medical documents (Exhibits B1-B24) which were considered in the determination of disability.
13. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 201.21 (see Exhibits C1-C2)
14. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old male with a height of 5'7" and weight of 200 pounds.
15. Claimant has no known relevant history of alcohol, tobacco or drug abuse.
16. Claimant's highest education year completed was the 12th grade, with one year of college.
17. As of the date of the administrative hearing, Claimant had no medical coverage.
18. Claimant alleged disability based on impairments and issues including: diabetes mellitus (DM), neuropathy, hypertension (HTN), coronary heart disease (CAD), congestive heart failure (CHF), back pain related to a 2001 fusion surgery and asthma.

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 2012 income limit is \$1010/month.

Claimant denied performing employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. 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 *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 25-34) from an admission from [REDACTED]/12-[REDACTED]/12 were presented. It was noted that Claimant presented with complaints of shortness of breath and productive cough. It was noted that Claimant ran out of blood pressure and diabetic medication two months before the hospital admission. It was noted that Claimant complained of leg swelling. It was noted that Claimant's ejection fraction was 30%-35%. It was noted that Claimant was continued on beta blocker, ACE inhibitor, aspirin, IV diuretics and insulin sliding scale. Noted discharge diagnoses included: acute respiratory distress, pneumonia, acute congestive heart failure, cardiomyopathy with severe systolic and diastolic dysfunction, HTN, CAD and DM. Seven discharge medications were noted. Noted discharge instructions included diet and exercise. It was noted that Claimant clinically improved and that he was discharged in stable condition.

Hospital documents (Exhibits A1-A5) from an admission dated [REDACTED]/12-1[REDACTED]/12 were presented. It was noted that Claimant presented with complaints of shortness of breath and bilateral leg swelling. It was noted that Claimant ran out of medications in [REDACTED]/2012 because he could not afford them. It was noted that chest radiology revealed mild CHF. It was noted that deep vein thrombosis could be ruled out based on radiology of lower extremities. It was noted that Claimant received medications and the leg swelling went down. Discharge diagnoses included CHF, CAD, diabetes and HTN.

A consultative internal medicine examination report (Exhibits B1-B10) dated [REDACTED]/13 was presented. It was noted that Claimant was medically noncompliant due to a lack of insurance. The following impression was provided: chronic lower back pain with left leg radiculopathy, persistent asthma with mild exertion, untreated diabetes, severe diabetic peripheral neuropathy in the feet, poorly controlled hypertension and coronary artery disease with three previous myocardial infarctions. It was noted that an echocardiogram from [REDACTED]/2012 verified a severely dilated left ventricle with an ejection fraction of 28% and moderate pericardial infusion. It was noted that Claimant's lumbar was significantly limited in motion due to pain. It was noted that Claimant had total numbness of the right foot and a spotty sensory loss in the left. It was noted that Claimant's walking ability was

significantly limited due to neuropathy and lumbar pain. Limitations were also noted due to shortness of breath. It was noted that sensory modalities were well preserved other than the right foot which lacked sensation up to the knee.

A radiology report (Exhibits B11-B12) dated [REDACTED]/13 was presented. It was noted that x-rays of the lumbosacral region were taken. An impression of advanced disk degeneration at L5-S1 was noted. Probable grade 1 spondylolisthesis was noted. It was noted that there was probable osteoarthritis of the hips. Disk space narrowing at L5-S1 was noted as moderately severe.

Claimant testified that he could walk one block with a cane before having to stop due to shortness of breath and/or leg pain. Claimant testified that he could stand for 15-20 minutes before needing 30 minutes of sitting to stand again.

The presented records verified that Claimant has impairments related to back pain. A radiology report of Claimant's lumbar utilized terminology (e.g. *advanced* disk degeneration and *moderately* severe disk space narrowing) which is consistent with lifting and/or ambulation restrictions. The radiology report was consistent with a consultative examiner's conclusions that Claimant's abilities to walk, crawl, squat, pull, bend, lift and stoop were noted as significantly limited, particularly in light of Claimant's other verified problems (neuropathy, asthma and cardiac problems).

Claimant seeks a determination of disability beginning [REDACTED]/2012. Through [REDACTED]/2012, the only medical documentation submitted concerned Claimant's heart function. Claimant's other problems (neuropathy and lumbar pain) were verified in [REDACTED]/2012; however, the diagnoses are of such a nature that they were likely in existence in [REDACTED]/2012. It is found that Claimant established significant impairments as of [REDACTED]/2012.

Claimant's heart function, diabetes, hypertension and to a lesser extent, back pain can be improved with proper treatment. As noted in the medical documents, Claimant lacks insurance and has not received payment. This suggests that Claimant may not meet the 12 month durational requirement for a severe impairment. Claimant's lack of insurance is not likely to change. Further, Claimant's nerve damage in his feet from neuropathy is of such a nature that it will not improve, even with medication. It is found that Claimant's impairments have and/or will exist 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 restrictions related to 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.

Though x-rays verified numerous problems with Claimant's back, radiology failed to verify nerve root compression, arachnoiditis or stenosis. There was also a lack of evidence of atrophy, sensory or reflex loss caused by a spinal disorder (foot sensory loss was due to neuropathy) or an inability to ambulate effectively. Claimant does not meet the listing for spinal disorders.

A listing for peripheral neuropathies (Listing 11.14) was considered based on a documented diagnosis of neuropathy. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

A listing for chronic heart failure (Listing 4.02) was considered based on Claimant's low ejection fraction testing. The listing was rejected because of the absence of evidence of the following: inability to perform an exercise test, three or more episodes of acute congestive heart failure or a conclusion that an exercise test poses a significant risk to Claimant's health.

A listing for respiratory function (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

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 for several years as a job coach. Claimant testified that his employment required teaching job skills to newly employed persons. Claimant testified that he specifically supervised cooking and cleaning in a restaurant-type workplace. Claimant testified that his former employment required extensive periods of standing which he can no longer perform.

Claimant also testified that he also performed factory work. Claimant testified that the job required lifting 75 pounds and significant bending, neither of which he can perform.

Claimant's testimony that he was unable to perform his past relevant employment was credible and consistent with the medical records. It is found that Claimant cannot perform past relevant employment and 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).

Based on Claimant's age, education and work history, a disability determination hinges on whether Claimant can perform sedentary employment. Accordingly, the analysis will focus on Claimant's ability to perform sedentary employment.

A consultative examiner, based on radiology, determined that Claimant was significantly limited in the following activities: walk, crawl, squat, pull, push, bend, lift and stoop. Though sedentary employment requires a relatively small amount of exertion, two hours of an eight hour shift are expected to include standing and/or walking. Thus, a significant walking limitation is problematic even for sedentary employment.

Also of note is Claimant's lumbar problem. Claimant testified that he was capable of sitting 30-60 minutes in a comfortable chair. It is questionable how that translates over a 40 hour work week of sedentary employment, of which 30 hours would be spent sitting.

The neuropathy and lumbar restrictions probably would not be enough to establish less than sedentary employment. However, factoring Claimant's low ejection fraction and asthma makes it improbable that Claimant could maintain sedentary employment. Claimant's noncompliance due to lack of finances is not found to be the fault of Claimant, though it suggests that Claimant might maintain employment if he has health insurance access.

Based on the presented evidence, it is found that Claimant is capable of less than sedentary employment. Such a finding is the functional equivalent that no employment exists which would accommodate Claimant's restrictions. Accordingly, Claimant is a disabled individual and it is found that DHS erred in denying Claimant's application.

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 perform the following actions:

- (1) reinstate Claimant's MA benefit application dated [REDACTED]/12, including retroactive MA benefits from [REDACTED]/2012
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding 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: 9/27/2013

Date Mailed: 9/27/2013

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:

