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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-58817
Issue No.: 2009
Case No.: [redacted]
Hearing Date: August 19, 2013
County: Oakland DHS (04)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on August 19, 2013, from Pontiac, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative. 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) 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 [redacted]/13, Claimant applied for MA benefits, including retroactive MA benefits from [redacted]/2012.

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

3. On [redacted]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2)

4. On [redacted]/13, 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's AHR requested a hearing disputing the denial of MA benefits.

6. On [redacted]/13, SHRT determined that Claimant does not have a severe impairment.

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, the new medical documents were forwarded to SHRT.

10. On [redacted]/13, SHRT determined that Claimant does not have a severe impairment.

11. As of the date of the administrative hearing, Claimant was a[redacted]-year-old male with a height of 5'11'' and weight of 285 pounds.

12. Claimant has no known relevant history of substance abuse.

13. Claimant's highest education year completed was high school.

14. As of the date of the administrative hearing, Claimant had no health insurance but had access to a program allowing him to purchase prescriptions at discounted prices.

15. Claimant alleged disability based on impairments and issues including diabetes mellitus (DM), lower back pain stemming from previously broken vertebrae, arthritis, carpal-tunnel syndrome (CTS) and poor memory.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing;

specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

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 2013 income limit is $1040/month.

Claimant testified that he is self-employed. Claimant testified that he receives approximately $750 per week to deliver newspapers. Claimant also testified that he is too unhealthy to deliver the newspapers so he employs a family member to perform the job. Claimant testified that after his expenses, he ends up with approximately $200/month; no evidence was submitted to contradict Claimant's testimony. Based on an income of $200/month, it can only be concluded 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.

Claimant presented a radiography report (Exhibits A4-A5) dated [redacted]/11. It was noted that a CT of Claimant's lumbar was performed. A physician noted an impression of L3 compound fracture, causing moderate central stenosis. The impression also noted mild-to-moderate multi-level disc degenerative spondylosis.

DHS presented hospital documents (Exhibits 8-85) from an admission dated [redacted]/12. It was noted that Claimant presented with complaints of pus bubbles over his lower body. It was noted that Claimant reported dealing with the bubbles over the previous nine months. It was noted that Claimant dealt with the bubbles by popping them. It was also noted that Claimant used antimicrobials on an outpatient basis. It was also noted that Claimant had scrotal swelling and an abscess that continually drained over a two month period. It was noted that an incision and drainage of an abscess occurred during the stay. It was noted that Claimant would be continued on antimicrobials. A hospital physician assessment noted a previous back fracture causing debility. It was noted that Claimant took Norco four times per day to relieve back pain. It was noted that Claimant reported a radiating back pain, which is only relieved by lying down. It was noted that Claimant was not a diabetic. Discharge diagnoses included the following: scrotum abscesses, cellulitis of the scrotum, hypertension, impaired glucose, history of L3 compound fracture and morbid obesity. It was noted that Claimant was discharged on [redacted]/12.

Claimant's primary care physician (PCP) completed a Medical Examination Report (Exhibits A1-A2) [redacted]13. It was noted that the physician first treated Claimant on [redacted]/08 and last examined Claimant on [redacted]/13. The physician provided the following diagnoses: neck and back pain, spinal stenosis, hyperglycemia, hypertension, right renal lithiasis and multilevel degenerative spondylosis. The PCP noted that Claimant

ambulated slowly with a cane. The PCP noted that Claimant appeared to be in moderate-to-severe pain while ambulating. An impression was given that Claimant's condition was deteriorating. The PCP noted that Claimant was capable of frequently lifting less than 10 pounds, occasional 10 pound lifting and no lifting of more than 20 pounds. Claimant's PCP noted that Claimant could stand or walk less than two hours of an eight hour shift and could not sit less than six hours in an eight hour shift. Claimant's PCP noted that Claimant was restricted from reaching, pushing, pulling and operating foot controls. The PCP stated that Claimant required help with shopping, laundry and housework.

Claimant's PCP also completed a Medical Needs form (Exhibit A3) dated [redacted]/13. Claimant's PCP noted that Claimant could work at his usual occupation but with limitations. The PCP noted that Claimant could not work at any job. It was noted that Claimant could not perform the following actions: heavy lifting, repeated bending or twisting, prolonged walking and prolonged standing.

The medical records established that Claimant has lumbar problems. It is mildly troubling that the most recent radiography was two years old, however, Claimant's PCP provided a recent diagnosis verifying ongoing back problems for Claimant. Claimant's PCP also noted several restrictions, most notably an inability for Claimant to walk even two hours in an eight hour period. It is found that Claimant established a significant impairment to performing basic work activities.

Claimant's lumbar problems were verified by radiography from 2011 and PCP forms from 6/2013. It was not verified with certainty that Claimant's impairments will last 12 months or longer beginning in [redacted]/2013, the date of application. Based on the nature of back pain and Claimant's lack of insurance, it is presumed that Claimant's back pain originated no later than 2011 and continued through [redacted]/2013. Accordingly, Claimant meets the durational requirements for having a severe impairment

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 (Listing 1.04) was considered based on Claimant's LBP complaints. The listing was rejected due to a failure to establish a compromised nerve root, arachnoiditis or stenosis causing an inability to ambulate effectively.

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 his past employment includes work as a building mechanic. Claimant testified that this employment required him to climb ladders. Claimant testified that his lumbar problems prevent him from ever working on a ladder again.

Claimant also testified that he performed work as a security guard. Claimant testified that he lost his job because CTS made it impossible for him to fire a weapon. Claimant testified that he could not perform this employment because he is required to lay down every couple of hours to relieve his back pain.

Claimant testified that he is an independent contractor who is paid to deliver newspapers. Claimant testified that he used to deliver the newspapers himself but can no longer do so. Claimant testified that delivering newspapers requires substantial walking and lifting, which he can no longer perform.

Claimant's testimony that he can no longer perform his past employment was credible and consistent with the medical evidence. It is found that Claimant cannot perform past relevant employment. Accordingly, the analysis may proceed to the next step.

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).

Given Claimant's age, education and employment history, a determination of disability is dependent on Claimant's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Radiology, hospital documentation and Claimant's PCP all noted lumbar problems for Claimant. It is somewhat troubling that more recent radiography than 2011 was not presented, however, that is likely the cause of Claimant's lack of insurance. It was documented by Claimant's PCP that Claimant is unable to walk even six hours in an eight-hour shift. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner,* 486 F. 3d 234 (6th Cir. 2007)*; Bowen v Commissioner.* The statements of Claimant's PCP were consistent with the medical evidence.

Based on the presented evidence, it is found that Claimant is unable to perform light employment. For purposes of this decision, it will be accepted that Claimant can perform sedentary employment.

It should be noted that Claimant turned [redacted] years old after submitting an MA benefit application dated [redacted]/13. For purposes of this decision, it will be accepted that Claimant remained [redacted] years old after he applied for MA benefits.

Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school, but no direct entry into skilled employment), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of 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 perform the following actions:

(1) reinstate Claimant's MA benefit application dated [redacted]/13, 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: 10/31/2013

Date Mailed: 10/31/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

CG/hw

cc: [redacted]