

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-39299  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: October 24, 2013  
County: Wayne (19)

**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 October 24, 2013, from Inkster, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's brother, and [REDACTED] testified on Claimant's behalf. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the 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 [REDACTED]/12, Claimant applied for MA benefits.
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 18-19).
4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 13-17) informing Claimant of the denial.

5. On [REDACTED]/13, Claimant's AHR 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 a severe impairment.
7. On [REDACTED]/13, an administrative hearing was held.
8. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old male with a height of 5'10" and weight of 195 pounds.
9. Claimant has no known relevant history of substance abuse.
10. Claimant's highest education year completed was the 12<sup>th</sup> grade.
11. As of the date of the administrative hearing, Claimant had no ongoing medical coverage.
12. Claimant alleged disability based on impairments and issues including cognitive disorder.

### **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 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 monthly income limit considered SGA for non-blind individuals is \$1,010.

Claimant denied performing 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 38-76) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant was admitted after a fall from his bicycle, possibly after he was assaulted. It was noted that Claimant's blood alcohol level was .373. Discharge diagnoses included: intracranial hemorrhage with brief loss of consciousness and multi subarachnoid hemorrhaging and contusions, fractured left clavicle, four left rib fractures, spinal deformity, hypertensive urgency, alcohol abuse, leukocytosis, hypocalcaemia and others. On [REDACTED]/12, it was noted that Claimant was ambulating without difficulty.

Hospital documents (Exhibits 28-37) from an admission dated [REDACTED]/12 were presented. Presumably, the admission was an extension of Claimant's admission from [REDACTED]/12. It was noted that upon arrival, Claimant had a Glasgow coma scale of 14. The documents were consistent with diagnoses found in the hospitalization beginning [REDACTED]/12. It was noted that Claimant was discharged on [REDACTED]/12. A Discharge Summary noted that Claimant's functional independence measure (FIM) on [REDACTED]/12 was 54. On [REDACTED]/12, Claimant's FIM was noted to be 78. As of 1 [REDACTED]/12, Claimant was modified independent for transfers, modified independent for gait going 15 feet x2 with going up and down 12 steps, modified independent single handrail and mobility modified independent. It was noted that Claimant required supervision due to cognition and finding his way.

Progress Notes (Exhibits 86-87) dated 1 [REDACTED]/12 were presented. It was noted that Claimant was seen as a follow-up from the hospital. It was noted that Claimant had memory issues, but does not now. It was noted that Claimant reported intermittent headaches which were tolerable.

A consultative mental status examination (Exhibits 89-92) dated [REDACTED]/13 was presented. It was noted that Claimant reported getting confused easily. Claimant noted that he would accept a job if offered. It was noted that Claimant reported no prior mental health treatment. The examiner noted that Claimant had a good deal of confusion and memory issues. The examiner diagnosed Claimant with cognitive disorder. The examiner noted Claimant's GAF to be 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 ability to understand, remember and carry out tasks was moderately to significantly impaired. The examiner noted that Claimant's ability to concentrate and focus was moderately to significantly impaired. The examiner noted that Claimant's ability to withstand stress was mildly impaired. The examiner noted that Claimant was able to perform simple repetitive tasks but would likely have moderate to significant difficulty performing more complicated tasks.

Claimant testified that he has no restrictions to performing basic work abilities. Claimant testified that he can walk, sit and lift- each without restriction. Claimant testified that he

performs all of his activities of daily living without assistance. Claimant's testimony was consistent with the medical evidence. Medical evidence verified that Claimant sustained physical injuries in [REDACTED]/2012 but there was no basis to believe that Claimant was physically restricted after a brief period of healing.

Turning to psychological and/or cognitive abilities, evidence was presented to suggest Claimant may be restricted despite his statements to the contrary. Pride and denial may often cause clients to believe that they are more functional than reality suggests. Claimant suffered head trauma, which may also diminish his ability to speak accurately about his abilities.

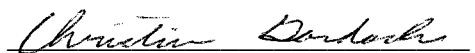
It was verified by a consultative examiner that Claimant has cognitive and psychological restrictions. The examiner noted moderate to significant restrictions in understanding and concentration. The details provided by the examiner were compelling and deemed to be a better representation of Claimant's abilities than what Claimant stated.

The absence of psychological treatment records is troubling. The consultative examiner's statements were made in [REDACTED]/2013, only six months following Claimant's injury. Thus, it cannot be stated with certainty whether Claimant's restrictions will continue for 12 months or longer. The lack of treatment records also makes it difficult to determine whether Claimant's restrictions would lessen with either medication or psychotherapy. The lack of treatment documents is especially surprising considering that Claimant lived in a nursing home since the injury; it would be expected that the nursing home would provide some type of treatment and/or therapy for Claimant.

Based on the presented evidence, it is found that Claimant fails to meet the durational requirements for a severe impairment. Accordingly, the denial of MA benefits is found to be proper.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 9/28/12 based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.

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

Date Signed: 11/15/2013

Date Mailed: 11/15/2013

**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:

