

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201314804
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 22, 2013
County: Wayne DHS (35)

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 conducted on April 22, 2013, from Redford, 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], 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 11/29/11, Claimant applied for MA benefits, including retroactive MA benefits from 8/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 9/13/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibit 9).
4. On 12/1/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 4-8) informing Claimant of the denial.

5. On 2/21/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 1/24/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 102-103), in part, by application of Medical Vocation Rule 202.203.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'8 ½ ' and weight of 160 pounds.
8. Claimant has no relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12th grade via general equivalency degree.
10. As of the date of the administrative hearing, Claimant was recently eligible for Adult Medical Program benefits.
11. Claimant alleged that he is disabled based on impairments and issues including diabetes, right foot neuropathy, carpal-tunnel syndrome, left hand nerve damage and stroke complications.

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.* 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 2011 monthly income limit considered SGA for non-blind individuals is \$1,000. The 2012 income limit is \$1010/month.

In the present case, Claimant testified that he stopped working shortly before applying for MA benefits. Claimant testified that he made a brief return to work in 9/2011 but quickly developed hand blisters which prevented continued employment. Claimant did not cite a specific amount of income that he made, but it was implied that he only returned to work for a few days and that his earnings did not approach the \$1,000 income limit. No evidence was submitted to contradict Claimant's testimony. It is found that Claimant is not and was 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.

Hospital documents (Exhibits 78-94) dated [REDACTED] were presented. It was noted that Claimant presented with breathing difficulties. A diagnosis of pneumonia was noted. It was noted that Claimant was discharged following administration of medications.

Hospital documents (Exhibits 58-67) dated [REDACTED] were presented. It was noted that Claimant presented with breathing difficulties. It was noted that Claimant presented three weeks earlier with the same difficulties. A diagnosis of pneumonia was noted. It was noted that Claimant was discharged on [REDACTED] with a mild cough.

Hospital documents (Exhibits 44-50; 74-76) related to an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of coughing and pneumonia. It was noted that x-rays verified significant infiltrates. It was noted that a diagnosis of empyema was made and that Claimant underwent a thoractomy. It was noted that Claimant was placed on a ventilator during his stay.

Hospital documents (Exhibits 51-57) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left hand numbness. A discharge diagnosis of paresthesia was noted.

Hospital documents (Exhibits 68-73; 77) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of an arm ulcer and arm pain. It was noted that an x-ray was negative for osteomyelitis. Claimant was discharged and advised to return if the condition worsened.

Hospital documents (Exhibits 31-43) dated [REDACTED] were presented. It was noted that Claimant presented with blood sugar problems and complaints of dizziness. It was noted that Claimant had difficulty obtaining medications do to a lack of finances. Claimant was given medication and was discharged after he reported feeling better.

A consultative examination report (Exhibits 13-20) dated [REDACTED] was presented. It was noted that Claimant was evaluated for diabetes, hypertension, cerebral vascular accident and pneumonia requiring left thoractomy. It was noted that Claimant had full ranges of motion in all tested areas. It was noted that Claimant had full motor strength (5/5) in all areas except on the lower right extremity (4/5). It was noted that Claimant would benefit from physical therapy for his right-side weakness. It was noted that Claimant's pulmonary function was tested and that Claimant had difficulties blowing for five seconds, but had no shortness of breath. It was noted that Claimant had certain restrictions with ambulation, climbing stairs and sitting or standing for extended periods.

It was noted that Claimant would be restricted from carrying greater than 5 pounds on an occasional basis. It was noted that Claimant had no restrictions in fine manipulation.

Claimant's treating physician also answered additional questions (Exhibits 27-28) concerning Claimant's abilities. The questions were answered on [REDACTED]. It was noted that Claimant could not stand for six hours per day, five days per week. It was noted that Claimant could not sit for six hours per day, five days per week. It was noted that Claimant could not lift 10 pounds per day for 67% of a work day. It was noted that Claimant's restrictions would continue for 12 months or longer.

A Medical Examination Report (Exhibits 25-26) dated [REDACTED] from Claimant's treating physician was presented. It was noted that the physician first treated Claimant in 2006 and last examined Claimant on [REDACTED]. The physician provided diagnoses of HTN, type II diabetes and peripheral sensory neuropathy. It was noted that Claimant had decreased right extremity sensation. It was noted that Claimant was restricted to occasional lifting of 10 pounds but never lifting of more weight. It was noted that Claimant was restricted to standing and/or walking less than 2 hours in an 8 hour work shift. It was noted that Claimant was restricted from pushing or pulling. It was noted that Claimant did not require an assisted walking device for ambulation. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

Claimant testified that he had difficulty walking due to right side weakness following a stroke. Claimant's testimony was verified by a consultative examiner and a treating physician, both of which noted that Claimant could not perform the walking necessary for full-time employment. It is found that Claimant has significant impairment to basic work restrictions.

Claimant's ambulation impairment was documented by a consultative examiner in 5/2012. Based on other medical records, it is reasonable to presume that the restrictions and treatment for pneumonia affected Claimant as far back as 8/2011. It was verified by Claimant's treating physician that Claimant's restrictions would continue for 12 months. Claimant established the durational requirements for 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.

Claimant's most prominent impairment appears to be right-sided weakness related to a stroke. Listing 11.04 covers vascular accidents and reads:

11.04 Central nervous system vascular accident.

With one of the following more than 3 months post-vascular accident

- A. Sensory or motor aphasia resulting in ineffective speech or communication; or
- B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

Looking at Part A, ineffective speech was not established. Looking at Part B, it was verified that Claimant has lower right extremity weakness due to stroke complications but a second extremity was not verified as affected. It is found that Claimant does not meet the listing for 11.04.

A listing for peripheral neuropathies (Listing 11.14) was considered. This listing can only be met by meeting Listing 11.04 B and is rejected for the reasons noted above.

A listing for joint dysfunction (listing 1.04) was considered based on Claimant's claim of carpal-tunnel syndrome. This listing was rejected due to a lack of medical 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 his past relevant employment consists of various jobs involved with shipping and receiving. Claimant testified that he had many jobs, but each required loading and unloading trailers. Claimant also testified that much of his work was done as a high-low driver. Claimant testified that his previous jobs also required extended periods of standing which he can no longer perform. Claimant's testimony was consistent with medical records. It is found that Claimant may not perform his past employment.

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).

As noted in step two of the analysis, Claimant is restricted from extended periods of standing and ambulation due to neuropathy and stroke complications. These restrictions would permit Claimant to perform no higher than a sedentary exertional level of employment. For purposes of this decision, it will be accepted that Claimant can perform sedentary employment.


Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school- no direct entry into skilled work), employment history (semi-skilled; not transferrable), Medical-Vocational Rule 201.14 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:

- (1) reinstate Claimant's MA benefit application dated 11/29/11, including retroactive MA benefits back to 8/2011;
- (2) evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.


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

Date Signed: 5/1/2013

Date Mailed: 5/1/2013

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:

