

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201319641  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: April 8, 2013  
County: Macomb DHS (20)

**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 April 8, 2013, from Detroit, Michigan. Participants included the above-named claimant. [REDACTED], Claimant's sister, testified on behalf of Claimant. 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 7/31/12, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/1/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).
4. On 12/20/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 12/26/12, Claimant requested a hearing (see Exhibit 2) disputing the denial of MA benefits.
6. On 2/22/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.10 (see Exhibits 99-100).
7. On 4/8/13, an administrative hearing was held.
8. On 4/12/13, an Interim Order was issued giving Claimant 60 days following the administrative hearing to submit: treatment records, eye doctor records and/or a Medical Examination Report from a cardiologist.
9. Neither Claimant nor DHS submitted new medical documents by the deadline.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'5" and weight of 145 pounds.
11. Claimant has no known relevant history of alcohol, tobacco or drug abuse.
12. Claimant's highest education year completed was the 12<sup>th</sup> grade with a certification as a nursing assistant.
13. As of the date of the administrative hearing, Claimant had no medical coverage.
14. Claimant alleged disability based on impairments and issues including: edema, anxiety, cardiac problems, back pain and cataracts.

### **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 (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 chil-

dren, 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 income limit is \$1010/month.

Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (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.

The first page of a Medical Examination Report (Exhibit 24) was presented. The report lacked the signature page, but it was noted that the form was created and returned to DHS in 8/2012; thus, it can be deduced that the form was completed in 8/2012. It was noted that Claimant had diabetes, edema and coronary artery disease (CAD). It was noted that Claimant reported left-side pain which limited his functioning. Presumably, the form was completed by a treating physician.

Hospital documents (Exhibits 34-43) from an encounter dated [REDACTED] was presented. It was noted that Claimant presented with complaints of chest pain. It was noted that Claimant received information of CAD and angiography.

Documents (Exhibits 35-71) from a hospitalization dated [REDACTED] were presented. It was noted that Claimant presented with complaints of shortness of breath and chest pain. It was noted that cardiac catheterization revealed significant stenosis. It was noted that Claimant's ejection fraction was 60%. It was noted that bypass grafting x2 was performed. It was noted that no complications occurred. Discharge instructions included ambulating 10-15 minutes, three times per day, and increasing as tolerated. It was noted that Claimant was restricted to lifting of five pounds. It was noted that Claimant should not drive for four weeks. Discharge diagnoses included CABGx2, CAD, acute anemia, diabetes (type 2) and anxiety.

A Medical Examination Report (Exhibits 90-91) from Claimant's treating physician dated [REDACTED] was presented. It was noted that the treating physician first examined Claimant on [REDACTED] and last examined Claimant on [REDACTED]. Diagnoses of CAD, CABGx2, DM (type 2) and neuropathy were noted. It was noted that Claimant took six medications. It was noted that Claimant's condition was stable and that Claimant could meet his household needs.

Hospital documents (Exhibits 72-82) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of shortness of breath. It was noted that an EKG revealed new-onset atrial fibrillation. It was noted that pleural effusion was present and that medication was administered.

A psychiatric consultative examination report (Exhibits 6-10) dated [REDACTED] was presented. It was noted that Claimant reported depression, 20-pound lifting restrictions, panic attacks since heart surgery in 1/2012. It was noted that Claimant took medication which helped reduce his anxiety. It was noted that Claimant had anticipatory anxiety of

running out of expensive heart medication. It was noted that Claimant showed: contact with reality, low self-esteem, mild psychomotor retardation, fair insight, dysphoric mood, fearfulness, insecurity, shallow affect and no range of responsivity. An Axis I diagnosis of anxiety disorder was given. Claimant's GAF was noted as 39. A guarded prognosis was given. It was noted that Claimant was unfocused and inattentive and incapable of being able to adapt and cope with work assignments, at that time.

Claimant testified that his walking and standing are limited due to chronic edema. Claimant testified that when his legs are swollen, he has to keep his legs elevated for 15-20 minutes. Claimant testified that he has to use a cane 3-4 times per month. Claimant also testified that he is physically capable of cooking, cleaning and laundry, but only in small doses due to edema. Claimant testified that he can drive, but has difficulty doing so because of back pain and leg restrictions. Claimant testified that his cardiologist imposed a 40 pound lifting restriction. Claimant testified that he could work, but that his restrictions would make him unlikely to be hired.

Claimant testified that he has driving anxiety due to a 1980 car accident. Claimant testified that in the 1990s he did not leave his home for five years. Claimant testified that he now also has anxiety about staying at home alone.

Claimant alleged disability from an onset date of 7/2012. Medical records established that Claimant had cardiac-related treatments since 1/2012. Claimant's primary physical problem appeared to be edema related to his cardiac treatments. Claimant testified that he was told a leaky valve caused chronic edema. It is known that edema can be caused by heart difficulties, however, edema cannot be presumed simply based on past heart treatments. Claimant testified to having restrictions but the restrictions were not verified by Claimant's treating doctor who cited that Claimant had no need for household assistance.

Claimant also testified that he had problems with his eyesight. He testified that he had cataract surgery in 2011 and that he is developing problems with his vision. The presented records failed to address any problems with Claimant's vision.

Claimant was given 60 days after the hearing to submit additional medical records which could have verified vision treatment and/or his need for further heart procedures, in particular, treatment for the leaky valve allegedly causing edema. Claimant failed to submit such records.

The presented medical records failed to verify clear exertional restrictions for Claimant. Accordingly, a severe impairment was not established concerning exertional restrictions.

Claimant's psychological restrictions were established by Claimant's GAF of 39 provided by a consultative examiner. A GAF of 31-40 is described as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." Ongoing psychological

treatment records were not presented. Claimant testified that he made efforts to receive psychological treatment, but that he cannot do so because of a lack of medical insurance. The GAF verified serious restrictions at one point in time. There was insufficient medical evidence to establish restrictions for Claimant over a 12 month period. Claimant testified that he took Xanax for his anxiety. It would have been helpful for Claimant if the prescribing physician provided statements about Claimant's reaction to the medication.

The presented evidence was suggestive that Claimant had physical and/or psychological impairments. However, the evidence was not sufficiently persuasive in establishing that Claimant had exertional or non-exertional restrictions for a period of 12 months or longer. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits based on the finding that Claimant was not disabled.

### **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 7/31/12 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: 7/30/2013

Date Mailed: 7/30/2013

**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:

