

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-21961
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 29, 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 April 29, 2013, from Taylor, Michigan. Participants included the above-named claimant. [REDACTED] testified and appeared on Claimant's behalf. 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) 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 9/20/12, Claimant applied for MA benefits (see Exhibits 27-28), including retroactive MA benefits from 7/2012 (see Exhibits 29-30).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 11/20/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On 11/29/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 20-22) informing Claimant of the denial.

5. On 1/8/13, Claimant's AHR requested a hearing (see Exhibit 23) disputing the denial of MA benefits.
6. On 2/21/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 203.08
7. On 4/29/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A164) at the hearing.
9. On 4/30/13, the new medical documents were forwarded to SHRT.
10. On 7/26/13, SHRT determined that Claimant was not disabled, in part, by determining that Claimant is capable of performing past relevant work.
11. As of the date of the administrative hearing, Claimant was a 60-year-old male with a height of 5'6" and weight between 140-150 pounds.
12. Claimant is a pack/day cigarette smoker and has a relevant history of alcohol abuse, though he stopped drinking alcohol in 2011.
13. Claimant's highest education year completed was the 12th grade.
14. As of the date of the administrative hearing, Claimant had no medical coverage.
15. Claimant alleged disability based on impairments and issues including: seizures, diabetes and neuropathy.

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).

Prior to a substantive analysis of Claimant's AHR's hearing request, it should be noted that the request noted that Claimant required special arrangements to participate in the administrative hearing. Claimant attended and participated in the hearing without noting any special arrangements required for participation.

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 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 income limit is \$1010/month.

Claimant seeks a disability determination from 7/2012. Claimant conceded that he performed self-employment at least through a date of a motor vehicle accident that occurred in 11/2012. Claimant testified that he made \$1,000/month up until the time of a vehicle accident (verified as occurring in 11/2012). Claimant also testified that he made approximately \$40,000-\$50,000 in 2012 and worked for most of the year. The evidence established that Claimant performed SGA through 10/2012, the month prior to a major motor vehicle accident. It is found that Claimant was not disabled through 10/2012. The disability analysis may proceed to determine Claimant's disability beginning in 11/2012.

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.

Documents (Exhibits A138-A139) dated [REDACTED] from a treating physician were presented. It was noted that Claimant presented, seeking to get blood sugar medicine.

Documents (Exhibits 12-19; A160-A163) from a hospitalization beginning [REDACTED] were presented. It was noted that Claimant reported having two small seizures. It was also noted that Claimant reported seizures causing him to pass out for five-hour periods. It was noted that Claimant drove despite having seizures. Claimant also reported having chest pain and shortness of breath. Claimant's ejection fraction was noted as 25%-30%. It was noted that a stress test was performed and Claimant developed severe hypotension. It was noted that the stress test showed no reversible ischemia. It was noted that Claimant was in poor compliance for diabetes treatment. Discharge diagnoses included: cardiomyopathy, probable coronary artery disease, sinus tachycardia and uncontrolled DM. It was noted that Claimant was discharged on [REDACTED] after his vitals were all stable.

Hospital documents (Exhibits A4-A13; A148-A151) dated [REDACTED] were presented. It was noted that Claimant presented with SOB complaints. It was noted that chest x-rays showed pleural effusion.

Documents (Exhibits A1-A3; A14-A15; A140-A147; A152-A159) from a hospital encounter dated [REDACTED] were presented. It was noted that Claimant presented with a complaint of recent loss of consciousness; it was noted that a grand mal seizure occurred. It was noted that Claimant's son reported that Claimant ingested transmission fluid. It was noted that Claimant last drank alcohol two days ago. A diagnosis of alcohol abuse and treatment for transmission fluid poisoning was noted. A diagnosis of alcohol withdrawal seizures was noted.

Hospital documents (Exhibits A32-A133) from an admission dated [REDACTED] were presented. It was noted that Claimant presented following a motor vehicle accident in which his vehicle was rear-ended. It was noted that radiography verified Claimant had #8, #9 and #10 left-rib fractures, bilateral pulmonary contusions and T7 and L1 fractures. It was noted that Claimant drank half of a fifth of alcohol every day or two, though Claimant had not drunk in the past couple days. It was noted that Claimant showed confusion and that it was possibly due to alcohol withdrawal. A diagnosis of alcohol abuse was also noted. It was noted that Claimant was discharged on [REDACTED].

Hospital documents (Exhibits A16-A31) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented and reported having two seizures that day. It was noted that Claimant did take seizure medication on regular basis and that he may have missed a dose. It was noted that a CT of the head verified no acute intracranial process.

The presented medical records answered some questions, but also raised others. It was not clear why Claimant consumed transmission fluid. Such an action would be consistent with a suicide attempt or a desperate attempt by an addict to drink alcohol.

The EF from 7/2012 is known to be dangerously low, yet there is little evidence to find that it impaired Claimant significantly after 7/2012. Claimant did not appear to receive any notable treatment for the problem, thereby implying the low EF was temporary. The records failed to indicate that Claimant sought treatment for heart problems after 7/2012. Claimant's testimony also emphasized seizures as his primary impairment, not cardiac restrictions.

Claimant testified that he had restrictions stemming from a motor vehicle accident in 11/2012. The evidence verified that Claimant broke several ribs and two vertebrae. Often, broken ribs and vertebrae will heal within 12 months. No evidence was presented verifying that Claimant's impairments would last 12 months. Based on the presented evidence, little weight can be given to any claimed impairments caused by the vehicle accident.

Claimant also testified that he was in another car accident in the week prior to the date of administrative hearing. Claimant testified that he broke his sternum, went to the emergency room and was sent away on the same day. Claimant testified that he had a seizure while he was driving. Claimant testified that his Dilantin level was found to be low. No medical records were presented concerning this incident.

Claimant initially testified that he had fibromyalgia in his feet and his fingers. Claimant later amended his testimony to having neuropathy. There was a reference to neuropathy in Claimant's feet in the medical records. The neuropathy would be consistent with a type II diabetic who is often noncompliant on medication. The mere diagnosis of neuropathy would be sufficient to infer preclusion from employment involving heavier exertional levels. Based on the presented evidence, it is found that Claimant established a significant impairment to performing basic work activities.

Claimant was already found to be not disabled at step one through 10/2012. Neuropathy is of such a nature it is not likely to improve within a 12 month period, in particular, for a person without health insurance. It is found that Claimant established meeting 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 ongoing seizures. Claimant's seizures are most closely associated with Listing 11.02 which reads:

11.02 Epilepsy - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

- A. Daytime episodes (loss of consciousness and convulsive seizures) or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

The medical evidence established that Claimant has a history of seizures. The first time Claimant was treated for seizures was in 7/2012. It was noted in 7/2012, that a CT of Claimant's brain was normal; the same result occurred when a CT scan was performed in 1/2013. When Claimant had a grand mal seizure (in 12/2012), it was noted that he consumed transmission fluid for inexplicable reasons. Claimant's last documented seizure treatment (1/2013), Claimant conceded that he was noncompliant with prescription treatment.

There was no evidence that Claimant was ever compliant with prescribed treatment. The only grand mal seizure document was noted as related to transmission fluid ingestion.

The evidence also established that Claimant was an alcohol abuser. The medical records did not explicitly state that alcohol was a factor in any of the reported seizures, but there is concern after Claimant testified that he had not drunk in a couple of years and hospital documents verified usage within six months of the hearing date. Claimant does not meet the listing for epilepsy.

A listing for neuropathy (Listing 11.14) was considered. The listing was rejected due to Claimant's failure to establish following prescribed treatment and a failure to establish disorganization of motor function.

A listing for chronic heart failure (Listing 4.02) was considered based on Claimant's EF. The listing was rejected due to a failure to verify that the low EF occurred during a period of stability.

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 has a lengthy history of working on radios. Claimant's experience varied from installing emergency radio systems for many cities to inspecting radio systems. Claimant testified that he was unable to perform his past employment due to lifting restrictions.

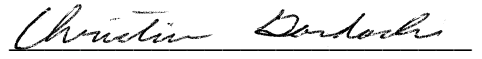
The medical records established a degree of exertional impairments due to cardiac function and neuropathy. However, the evidence was simply very lacking in establishing to what degree Claimant was restricted. It is known that Claimant returned to work at least from 7/2012-10/2012. There was a lack of evidence that the car accident from 11/2012 restricted Claimant further, at least after factoring some recovery time.

Based on the presented evidence, it is found that Claimant can perform past employment. Accordingly, DHS properly denied Claimant's MA benefit application.

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 9/20/12, including retroactive MA from 7/2012, based on a determination that Claimant is not disabled.

The action taken by DHS is AFFIRMED.


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

Date Signed: 8/27/2013

Date Mailed: 8/27/2013

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:

