

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-24683
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 held on April 22, 2013, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] appeared as Claimant's authorized hearing representative. [REDACTED] testified on behalf of Claimant. 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) 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 5/25/12, Claimant applied for MA benefits, including retroactive MA benefits from 2/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 12/28/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 1/14/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 105-106) informing Claimant of the denial.

5. On 1/22/13, Claimant requested a hearing disputing the denial of MA benefits.
6. On 3/18/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical Vocational Rule 202.21.
7. On 4/22/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A118) at the hearing.
9. The new medical documents were forwarded to SHRT.
10. On 6/27/13, SHRT determined that Claimant was a disabled individual, effective 10/2012, but not a disabled individual prior to 10/2012, in part, based on application of Medical Vocational Rule 202.21.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'10 ½" and weight of 274 pounds.
12. Claimant has no known relevant history of alcohol, tobacco or drug abuse.
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 but went to free clinics and was able to obtain some low-cost prescriptions.
15. Claimant alleged disability based on impairments and issues including: diabetes, retinopathy, colitis, leg ulcers, neuropathy, hypertension, back pain and Crohn's disease.

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.* 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 (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 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 (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 *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.

Various records from Claimant's treating physician (Exhibits 78-91; 96-101) from 2010 were presented. The documents established treatment and laboratory testing for HTN, high cholesterol and DM.

A hospital document (Exhibit 92) dated [REDACTED] was presented. It was noted that a venous scan of Claimant's legs showed no evidence of deep vein thrombosis.

A Progress Note (Exhibit 75) from Claimant's treating physician was presented. The documents dated [REDACTED] noted treatment for abdomen bloating and tightness.

A discharge summary (Exhibit 14; 70) was presented. The documents concerned a hospitalization dated [REDACTED]. It was noted that Claimant presented with abdomen pain. It was noted that Claimant had fecal impaction and given enemas to resolve. It was noted that Claimant was sent home, but he returned with complaints of rectal pain and bleeding. It was noted that a CT scan revealed some rectosigmoid junction inflammation. Final diagnoses included: ulcerative colitis, DM and HTN. It was noted that Claimant was discharged after being found hemodynamically stable.

Various records (Exhibits 71-74) from Claimant's treating physician were presented. The documents were dated from [REDACTED] and verified treatment for leg ulcers.

Treatment documents (Exhibits 19-69; A7-A57) from a wound center were presented. The documents noted multiple leg ulcer treatments over the course of [REDACTED]. On [REDACTED] it was noted that Claimant presented with hives, swollen throat and inability to breathe. On [REDACTED] it was noted that Claimant presented with bilateral leg ulcers; it was noted that two wounds were dressed and that Claimant was given a follow-up appointment in one week. On [REDACTED], one of the wounds was noted as deteriorating. On [REDACTED], Claimant's wound progress was noted as improving. On 6 [REDACTED], Claimant's left ulcer was noted as healed. On [REDACTED], it was noted that debridement was performed on a right leg ulcer. On [REDACTED] it was noted that ulcerations healed and Claimant showed +1 edema in both legs.

Eye specialist documents (Exhibits 102-104) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of decreasing right eye vision. Two visual acuities of 20/200 were noted but not clarified.

Eye specialist documents (Exhibits 107-109) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of redness and decreasing vision in the left eye. Visual acuities of 20/50 and 20/200 were noted but not clarified.

A consultative physical examination report dated [REDACTED] was presented. It was noted that Claimant reported decreasing visual acuity and a history of diabetes and hypertension. It was noted that Claimant reported a history of colitis which was stable at the time of examination. It was noted that Claimant could not stand or sit for long periods due to leg swelling. Noted conclusions included: obesity, DM, chronic diabetic retinopathy with markedly impaired vision and venous stasis and stasis dermatitis which impacted Claimant's standing abilities. It was noted that Claimant should avoid any jobs involving prolonged standing. It was noted that Claimant's DM required monitoring. A fair prognosis was given.

An Eye Examination Report (Exhibits A1-A2) dated [REDACTED] from a treating specialist was presented. It was noted that Claimant's right eye was 20/200 with best correction. It was noted that Claimant's left eye was 20/400 with best correction. A diagnosis of proliferative diabetic retinopathy was noted for each eye. It was noted that Claimant would require more laser treatment and/or more surgery.

A letter from Claimant's treating eye specialist (Exhibit A3) dated [REDACTED] was presented. It was noted that Claimant's left eye acuity was 20/400 and will not improve. It was noted that Claimant's right eye vision might improve to 20/50 but with a limited field due to damage from diabetes.

A Mental Impairment Questionnaire (Exhibits A114-A117) dated [REDACTED] was presented. The document was completed by an unspecified person employed with a psychological services clinic. It was noted that Claimant received weekly therapy since [REDACTED].

DHS (through SHRT) conceded that Claimant was a disabled individual as of 10/2012. Based on Claimant's application date, a disability period from 2/2012-9/2012 is in dispute.

It was established that Claimant was diagnosed with DM and HTN at least since 2010. It was established that Claimant's DM was so poorly uncontrolled that his visual acuity was substantially lost in the end of 2012. It was also established that Claimant received month long treatments for leg ulcers in 6/2012 and was hospitalized for three days in 4/2012.

The diabetic retinopathy, which was serious enough to cause lost vision no later than 10/2012, can be presumed to be indicative of uncontrolled diabetes. Claimant testified that he had standing and walking restrictions since 2/2012 because of the poorly controlled diabetes. Claimant's testimony was consistent with the findings of a consultative examiner, who nine months later opined that Claimant had standing restrictions, presumably because of neuropathy related to DM.

The presented evidence sufficiently established work restrictions for a period of 12 months starting with 2/2012. 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 of 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.

SHRT determined that Claimant met the SSA listing for loss of visual acuity as of 10/2012. The applicable listing reads

2.02 Loss of Visual Acuity. Remaining vision in the better eye after best correction is 20/200 or less.

Presented medical records established that Claimant's first eye examination occurred on 9/14/2012. It was noted that Claimant complained of decreased vision over a period of six weeks. Based on Claimant's loss of vision, it is reasonable to presume Claimant's statement to be accurate. Going back six weeks allows Claimant to establish disability back to at least 8/2012. Thus, it can be determined that Claimant is entitled to a disability finding from 8/2012.

Claimant did not meet any other listings for the period 2/2012-7/2012. 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's past relevant work consisted of truck driving. Claimant testified that he is unable performing the lifting required of his past employment. Based on the presented evidence, Claimant's testimony was credible. Accordingly, it is found that Claimant

could not have performed his past employment for the period of 2/2012-7/2012, and the analysis may proceed to step five.

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).

Based on the above findings, there remains a dispute concerning disability for the period of 2/2012-7/2012. Based on Claimant's circumstances, only a determination of whether Claimant can perform sedentary employment is necessary to determine whether he was disabled for the time period of 2/2012-7/2012.

Claimant suggested that he had standing and ambulation restrictions which would prevent his employment for the period of 2/2012-7/2012. Though Claimant's loss of vision was not established until 8/2012, it is reasonable to presume that Claimant had uncontrolled diabetes in the six months prior to losing most of his vision. This presumption is consistent with the verified multiple medical appointments over the period of 5/2012-7/2012 to treat leg ulcers related to diabetes and the standing restrictions noted by a consultative examiner in 11/2012. Based on this evidence, it is reasonable to presume that Claimant was incapable of performing even a level of sedentary employment as of 5/2012.

It was also established that Claimant was hospitalized in 4/2012 for three days for abdominal pain. The verified diagnosis was ulcerative colitis. The diagnosis appears to be unrelated to Claimant's diabetes. Nevertheless, the mere fact that Claimant was hospitalized is persuasive evidence that Claimant was most likely not capable of any form of employment for that benefit month. It is found that disability was established for 4/2012.

The same cannot be stated for 2/2012 and 3/2012. It was verified that Claimant saw a physician for abdomen tightness and bloating as of 3/23/12. This is not compelling

evidence that Claimant was unable to perform sedentary employment. Based on the presented evidence, it is found that Claimant was capable of performing sedentary employment for the period of 2/2012-3/2012.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (high school graduate), employment history (unskilled), Medical-Vocational Rule 201.27 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of MA benefits for the benefit months of 2/2012 and 3/2012.

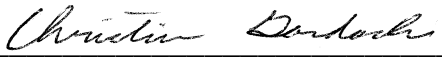
DECISION AND ORDER

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 for the period of 2/2012-3/2012 based on the finding that Claimant was not disabled. The actions taken by DHS are PARTIALLY AFFIRMED.

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 starting with the benefit month of 4/2012. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 5/25/12, including retroactive MA;
- (2) evaluate Claimant's eligibility for MA benefits, beginning with benefit month 4/2012, subject to the finding that Claimant was 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: 7/23/2013

Date Mailed: 7/23/2013

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 affect the substantial rights of the claimant,
 - 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:

