

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-36294
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 8, 2013
County: Iosco DHS

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, a telephone hearing was held on August 8, 2013, from Detroit, Michigan. Participants included the above-named claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED]/13, Claimant applied for MA benefits, including retroactive MA benefits from 12/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant employment.
7. On [REDACTED] 13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A10) at the hearing.
9. On [REDACTED]/13, the new medical documents were forwarded to SHRT.
10. On [REDACTED] 9/13, SHRT determined that Claimant was not disabled, in part, by 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 6'3" and weight of 248 pounds.
12. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
13. Claimant's highest education year completed was 12th grade.
14. As of the date of the administrative hearing, Claimant was an ongoing Adult Medical Program (AMP) benefit recipient since [REDACTED]/2013.
15. Claimant alleged disability based on impairments and issues including hearing loss, back pain, torn muscles and cardiac restrictions.

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).

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 2013 income limit is \$1040/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 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.

Various medical documents (Exhibits 205-257) from 2009 were presented. The documents noted various physician encounters concerning lower back pain. It was noted that an MRI dated [REDACTED]/09 of the lumbar revealed mild central canal and mild right foraminal stenosis at L4-L5. It was also noted there is mild bi-foraminal stenosis at L5-S1.

A Medical Examination Report (Exhibits 11-12) dated [REDACTED]/10 from Claimant's treating physician was presented. It was noted that the physician first treated Claimant on 2/6/09 and last examined Claimant on [REDACTED]0/09. The physician provided a diagnosis of lower back pain. It was noted that Claimant's lumbar had L4-L5 and L5-S1 foraminal stenosis. It was noted that Claimant was restricted to sit-down work for [REDACTED]/019-[REDACTED]/09 and could return to work thereafter.

Hospital documents (Exhibits 171-179) from an admission dated 1 [REDACTED]/11 were presented. It was noted that Claimant presented with a head injury after getting hit with a 25 pound pulley. An impression of post-concussion syndrome was noted. It was noted that a CT of the head was performed and there was no evidence of hemorrhage or skull fracture.

Hospital documents (Exhibits 13, 25-170; 180-181) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of epigastric pain, sternal pressure, nausea and vomiting. The noted pre-operative diagnosis was acute type A aortic dissection and severe aortic insufficiency. Significant pulmonary dysfunction was also noted. It was noted that Claimant underwent an aortic dissection on [REDACTED]/12, complicated by acute renal insufficient. A history of diverticulitis and abdominal pain was noted; it was also noted that Claimant used medical marijuana to control the pain. It was noted on [REDACTED]/12 that hyperglycemia led to an insulin infusion; noted causes included surgery stress and IV medications. Discharge instructions noted wound care and a follow-up appointment in 3-4 weeks.

Medical documents (Exhibits 184-186) dated [REDACTED]/13 were presented. It was noted that Claimant appeared for "transition into care".

Medical clinic documents (Exhibits 23-24) dated [REDACTED] [REDACTED] were presented. It was noted that Claimant presented for a four-week surgery follow-up appointment. It was noted that Claimant reported mild discomfort in the upper chest and shoulders, which was slowly improving. It was noted that Claimant took narcotic medication daily. It was noted that Claimant could resume sexual activity. It was noted that Claimant could resume driving if not taking narcotic medication. It was noted that Claimant was restricted to lifting of 15 pounds. It was noted that Claimant's recovery was going well and that a

second doctor was pleased with Claimant's progress. It was noted that Claimant should follow-up in two months.

Physician documents (Exhibits 267-268; 275-278) dated [REDACTED]/13 were presented. It was noted that Claimant presented following a bicycle accident complaining of shoulder pain. It was noted that radiography was taken of Claimant's shoulder. An impression of degenerative changes without evidence of fracture was noted. A radiography report of Claimant's chest noted that heart and pulmonary vasculatures were within normal limits.

Physician documents (Exhibits 269-270) dated [REDACTED]/13 were presented. It was noted that an MRI of the upper right shoulder was taken. An impression of predominantly severe degenerative changes in the tendon was noted. It was noted that a small focal partial thickness articular surface tear was present.

Physician documents (Exhibits 271-274) dated [REDACTED]/13 were presented. It was noted that Claimant presented for a follow-up of chronic conditions. It was noted that Claimant felt well with minor complaints. It was noted that Claimant no longer used medical marijuana.

A Medical Needs (Exhibit A1) form dated 4/15/13 was presented. Noted diagnoses included: shoulder joint pain, AAA repair, claudication, tendinopathy of rotator cuff and palpitations. The physician estimated that Claimant required 2-4 visits per year. It was noted that the physician certified that Claimant had no medical need for assistance with any of 12 listed activities including eating, bathing, grooming, mobility or housework. It was noted that the physician thought Claimant to be unable to work for a lifetime duration.

Medical documents (Exhibits A9-A10) dated 4/28/13 were presented. It was noted that Claimant feels as if he fully recovered from his 12/2012 heart operation. It was noted that Claimant reported pain from a rotator cuff and a burning sensation in his legs. It was noted that a Holter monitor revealed no arrhythmias.

Medical documents (Exhibits A2-A4) dated [REDACTED]/13 were presented. It was noted that a bilateral arterial was performed; an impression of no significant arterial occlusive disease was noted. It was noted that Claimant had mild disease in the lower left extremity and minimal disease in the right, but not at claudication levels.

Medical documents (Exhibits A5-A7) dated [REDACTED]/13 were presented. It was noted that Claimant presented for a three-month follow-up for anemia, hypertension, cardiovascular disease and joint pain. It was noted that Claimant walked, rode his bike and fished daily. It was noted that Claimant reported a gradually worsening loss of hearing.

The medical records established that Claimant has a history of various medical problems. The records also established that most of Claimant's complaints resolved with medical intervention.

There was documented evidence of lumber pain from 2009. It was noted that Claimant underwent epidural steroid treatments in 2010 for pain (see Exhibit 258). There was little-to-no documented evidence of lumbar problems since 2010.

Claimant alleged disability, in part, due to hearing loss. Claimant's complaint was documented by one physician, but there is no evidence (e.g. hearing tests) to verify any loss of hearing.

Claimant also alleged disability based on a torn rotator cuff. On [REDACTED]/13, there was evidence of a small tear. Four months later, Claimant was described to feel well "with minor complaints". It was also noted that Claimant rode his bike, walked and fished daily. Presumably, Claimant's torn rotator cuff improved to the point of not being relevant in a disability claim.

Lastly, Claimant alleged disability based on heart-related restrictions. It was established that Claimant underwent a significant procedure in [REDACTED] 012. It was also noted one month later that Claimant was restricted to 15 pounds of lifting. The evidence implied that the restriction was temporary, but this was not certain. For purposes of this decision, it will be presumed the restriction was permanent. Such a restriction would be a significant impairment to performing basic work activities for a period of longer than 12 months.

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.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. The listing was rejected due to a failure to verify ongoing impairments caused by stenosis, nerve root compression and/or arachnoiditis. Medical evidence also failed to establish that Claimant is unable to ambulate effectively.

Listings for cardiac-related disorders (Listings 4.00) were considered based on restrictions related to heart surgery from 12/2012. The restrictions were rejected due to a failure to establish any diagnostic requirements or medical restrictions other than a 15 pound lifting restriction.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of shoulder restrictions. The listing was rejected due to a failure to very an inability to perform fine and gross movements with each upper extremity.

Listings for hearing loss (Listings 2.10 and 2.11) were considered based on Claimant's complaints. The listings were summarily rejected due to the 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 he performed past employment as a stockperson and bartender. Claimant testified that his past employment required substantial lifting and standing, both of which he can no longer perform. Claimant's testimony was consistent with the medical evidence. It is found that Claimant cannot perform his past relevant 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).

For purposes of this decision, only an analysis of sedentary employment will be undertaken. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10. Medical records noted that Claimant walked and rode his bike daily. This evidence is strongly suggestive that Claimant can stand and walk two hours of an eight hour workday.


There was evidence of back pain from 2009. Claimant's complaints are so far in the past that little information can be deduced about current restrictions. It is possible that Claimant has sitting restrictions, but the medical evidence was not particularly supportive.

Medical records determined noted a 15-pound restriction. As noted in the step two analysis, it was not clear that this was a permanent restriction but it will be presumed to be such a restriction. A 15-pound lifting restriction is consistent with an ability to perform sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (literate and capable of communicating in English), employment history (unskilled), Medical-Vocational Rule 201.18 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.

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 1/21/13, including retroactive MA benefits from 12/2012, 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: 10/15/2013

Date Mailed: 10/15/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

