

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-36328
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: August 8, 2013
County: Ionia (00)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on August 8, 2013, from Detroit, Michigan. Participants included the above-named 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) and State Disability Assistance (SDA) for the reason 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 SDA and MA benefits, including retroactive MA benefits from [REDACTED]/2012.
2. Claimant's only basis for MA and SDA 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 44).

4. On [REDACTED]/13, DHS denied Claimant's application for MA and SDA 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 and SDA benefits.
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.17.
7. On [REDACTED]/13, an administrative hearing was held.
8. During the hearing, Claimant waived the right to receive a timely hearing decision.
9. During the hearing, Claimant and DHS agreed to the admission of additional documents sent by SHRT.
10. On [REDACTED]/13, Claimant presented new medical documents (Exhibits A1-A69).
11. On [REDACTED]/13, an updated hearing packet was forwarded to SHRT.
12. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.
13. On [REDACTED]/13 the Michigan Administrative Hearings System received the hearing packet, updated SHRT decision (Exhibits B6-B7) and additional medical documentation (Exhibits B1-B5).
14. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old male with a height of 5'7" and weight of 95 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 12th grade via general equivalency degree.
17. As of the date of the administrative hearing, Claimant had no medical insurance coverage.
18. Claimant alleged disability based on impairments and issues including anxiety, depression and superior mesenteric artery (SMA) syndrome.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to

1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services 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 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

Claimant denied performing 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.

Hospital documents (Exhibits 118-121) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of vomiting and abdomen pain. Noted diagnoses included unspecified gastrointestinal disorder and hypokalemia.

Hospital documents (Exhibits 116-117) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of abdominal pain with GERD symptoms. It was noted that an esophagogastroduodenoscopy was performed.

Treating physician documents (Exhibits 75-76) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of anxiety. It was noted that Claimant's BMI was 17.38.

Treating physician documents (Exhibits 73-74) dated [REDACTED]/12 were presented. It was noted that Claimant was seen for a follow-up after hospitalization. It was noted that Claimant was medication compliant. It was noted that Claimant's BMI was 17.70.

Treating physician documents (Exhibits 69-70) dated [REDACTED]/12 were presented. It was noted that Claimant sought a medication refill. It was noted that Claimant weighed 116 pounds.

Treating physician documents (Exhibits 62-63) dated [REDACTED]/12 were presented. It was noted that Claimant reported an increase in abdomen pain. It was noted that Claimant's BMI was 16.68.

Treating physician documents (Exhibits 60-61) dated [REDACTED]/12 were presented. It was noted that Claimant reported jaw pain. It was noted that Claimant's BMI was 17.32

Hospital documents (Exhibits 1-42) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of chronic vomiting and abdomen pain, fatigue and nausea. It was noted that Claimant was diagnosed with SMA 12 years ago. Claimant's medical history noted a sigmoid colon resection surgery. It was noted that Claimant reported that he vomits after every meal. Claimant's weight was noted to be 106 pounds and his height was noted to be 5'7". Claimant's BMI calculation is 16.60. It was noted that Claimant was admitted to the hospital based on his appearance of malnourishment. It was noted that Claimant received fluids and Vicodin for abdominal pain. A diagnosis of duodenitis was noted.

Hospital documents (Exhibits 133-161) from an admission dated [REDACTED]/13 were presented. It was noted that Claimant presented with complaints of chronic vomiting and abdomen. It was noted that a CT enterogram was performed. An impression of findings consistent with SMA syndrome was noted. It was noted that Claimant reported weight loss. It was noted that Claimant was malnourished. Claimant's weight was noted to be 46kg (101.4 pounds).

Additional medical documents (Exhibits 165-419; A1-A69) were presented. The documents noted repeated treatments for abdominal pain, vomiting and nausea. The documents also include some psychological treatment.

The presented records verified that Claimant has a long history of SMA syndrome. The records established regular hospitalizations and symptoms of vomiting and abdominal pain.

Claimant testified that he is 95 pounds as of the date of hearing and struggles with fatigue, ambulation and stamina. Based on the presented records, Claimant's fatigue and chronic vomiting are significant impairments to performing basic work activities.

The presented records also established that Claimant has a 13-year history of SMA syndrome and related symptoms. It is found that Claimant's impairments have, and will last 12 months or longer.

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 weight loss due to SMA syndrome. Listing 5.08 states that disability is established if the following is established:

Weight loss due to any digestive disorder despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.

Claimant presented a glut of medical records. As of [REDACTED]/13, Claimant's weight was 101.4 pounds; based on Claimant's height, Claimant's BMI was 15.9. Claimant's BMI was verified to be 17.38 on [REDACTED]/12, exactly seven months earlier. Other documents verified that Claimant spent most of 2012 with a BMI less than 17.50. Presented records tended to verify that Claimant was compliant with prescribed treatment, other than tobacco use, but there was no evidence that Claimant's smoking was the cause of his digestive problems. Based on the presented evidence, Claimant meets the requirements for Listing 5.08 and is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA benefit application for the reason that Claimant was not a disabled individual.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

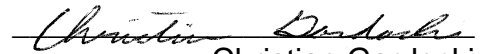
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet the requirements for weight loss due to a digestive order. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED]/13, including retroactive MA benefits from [REDACTED]/2012;
- (2) evaluate Claimant's eligibility for MA and SDA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by DHS are **REVERSED**.


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

Date Signed: 11/22/2013

Date Mailed: 11/22/2013

NOTICE OF APPEAL: 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.

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).

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:

