

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-42841
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 18, 2013
County: Oakland (04)

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, an in-person hearing was held on August 18, 2013, from Pontiac, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's fiancée, testified on behalf of Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. 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 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 MA benefits, including retroactive MA benefits from [REDACTED]/2013.
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 9-10).

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 application of Medical-Vocational Rule 202.21.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A29) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
11. On [REDACTED]/13, an Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit psychological/psychiatric examination documents.
12. On [REDACTED]/13, Claimant submitted additional documents (Exhibits B1-B73).
13. On [REDACTED]/13, an updated hearing packet was forwarded to SHRT.
14. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.21.
15. On [REDACTED]/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
16. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old male with a height of 5'11 ½ " and weight of 420 pounds.
17. Claimant has no known relevant history of alcohol or illegal substance abuse.
18. Claimant's highest education year completed was the 12th grade.
19. As of the date of the administrative hearing, Claimant had no form of medical insurance coverage.

20. Claimant alleged disability based on impairments and issues including osteoarthritis of the knees, lower back pain, right shoulder pain, cellulitis and psychological problems.

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 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

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 77-89) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant presented with left leg redness, pain and fluid discharge. A final diagnosis of left leg cellulitis was noted. Radiology of Claimant's left leg revealed soft tissue swelling, possible mild strain and thinning cartilage consistent with compartment osteoarthritis (see Exhibit 99). The hospital noted that Claimant received antibiotics and that Claimant's pain was reduced. A discharge date of [REDACTED]/12 was noted.

Hospital documents (Exhibits 63-67) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant presented with complaints of right knee and leg pain. An impression of recurrent cellulitis was noted. Radiology of Claimant's knee was unremarkable (see Exhibit 98). The hospital noted that Claimant improved after antibiotics were provided. The hospital noted degenerative changes in the right knee and pain medication was recommended.

Hospital documents (Exhibits 53-62) from an encounter dated [REDACTED]/12 were presented. The hospital noted that Claimant complained of severe right shoulder pain following a fall. The hospital noted that Claimant complained of right knee pain; the hospital noted that there was no decreased of knee motion or difficulty bearing weight on the knee. An impression of shoulder dislocation was noted. Following radiology, the hospital noted possible Hills-Sachs deformity with Claimant's right shoulder (see Exhibits 90-92). Radiology of Claimant's right shoulder revealed mild osteoarthritis (see Exhibit 96). The hospital noted that a reduction was performed and there was good alignment of the shoulder.

Hospital documents (Exhibits 31-52; 103-105) from an encounter dated [REDACTED]/13 were presented. The hospital noted that Claimant complained of right shoulder dislocation after trying to move a door. The hospital noted that a closed right shoulder reduction under general anesthesia was performed. The hospital noted that Claimant received a sling following the reduction and that Claimant was discharged on [REDACTED]/13.

Hospital documents (Exhibits 106-162) from an admission dated [REDACTED]/13 were presented. The hospital noted that Claimant presented with complaints of a leg wound. The hospital noted that Claimant conceded to having poor hygiene in that Claimant scrubbed his feet and legs "maybe once or twice a week"; Claimant noted difficulty in cleaning wounds due to morbid obesity. The hospital noted Claimant had extensive calf and foot erythema and swelling. The hospital noted that a previous hospital stay revealed that Claimant had MRSA. Claimant's ejection fraction was noted to be 60% with no wall motion abnormalities, though mild mitral regurgitation was found; the hospital noted that cardiology treated Claimant with Plavix. The hospital noted that Claimant responded well to 4 days of antibiotics. A final diagnosis of bilateral lower extremity cellulitis was noted. The hospital noted a date of discharge on [REDACTED]/13.

Hospital documents (Exhibits A1-A29) from an admission dated [REDACTED]/13 were presented. The hospital noted that Claimant presented with complaints of shoulder pain and dislocation. The hospital noted that Claimant reduced the shoulder back to its position on his own. The hospital noted that Claimant reported chronic swelling, redness and lower extremity pain. The hospital noted that Claimant's leg swelling was caused by chronic lymphedema, not cellulitis. The hospital noted that Claimant's leg swelling improved after antibiotics were discontinued. Discharge instructions noted non-weight bearing right arm until follow-up with clinic. A discharge date of [REDACTED]/13 was noted.

A Medical Examination Report (Exhibits B1-B2) dated [REDACTED]/13 was presented. The report was completed by a treating psychiatrist who noted a 12-month history with Claimant. Claimant's psychiatrist noted diagnoses of dysthymic disorder, major depressive disorder and ADHD. Claimant's condition was noted as stable.

Various psychiatric treatment documents (Exhibits B5-B73) were presented. On [REDACTED]/12, a social worker noted Claimant's GAF to be 49. It was noted that until [REDACTED]/2012,

Claimant used marijuana and drank up to a fifth of whiskey per day. On [REDACTED]/13, it was noted that Claimant took lithium, vibryd, Ritalin and Zoloft.

Substantial evidence was presented concerning cellulitis. Medical records implied that Claimant's lack of hygiene contributed to a reoccurrence. The evidence failed to establish that cellulitis or MRSA were impairments expected to last 12 months or longer.

Presented medical evidence established impairments related to leg swelling, shoulder pain and psychological problems. Records sufficiently verified that each impairment was expected to 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 right shoulder pain. A listing for joint dysfunction (Listing 1.02) was considered. The listing was rejected due to a failure to establish that both of Claimant's upper extremities are adversely affected.

A listing for affective disorders (Listing 12.04) was considered based on a diagnosis of depression. The listing was rejected due to a failure to establish that Claimant has marked restrictions in concentration, performing daily activities or social interaction. As of 7/30/12, Claimant's GAF of 49 was consistent with marked restrictions; however, there was no evidence that the GAF was representative of Claimant's continuing ability to function. Also, the low GAF was determined by a social worker rather than a psychiatrist.

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 had previous employment as a machine operator, caregiver and lawn mower. Claimant testified that he could not perform the standing required of his lawn mowing employment. Claimant testified that his caregiver employment required running and sometimes restraining patients, neither of which he could do now. Claimant testified that he was fired from his machinist job for not performing the job competitively.

Claimant's testimony was consistent with the presented evidence. It is found that Claimant cannot perform his past relevant employment 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).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. 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.

Claimant testified he is right-handed. Claimant testified that he cannot pick up a gallon of milk with his right arm. Claimant's shoulder injury would restrict Claimant's employment opportunities. The one arm restrictions should not prevent Claimant from performing the lifting necessary of sedentary employment with his left arm.

Claimant's fiancée testified that Claimant is limited to 10-minute periods of sitting. As it happened, Claimant managed to sit for 50 minutes during the administrative hearing. Presented medical documents failed to note any particular restrictions to Claimant's ability to sit.

Claimant testified that he is limited in standing due to osteoarthritis in his knee. Claimant testified that he needs surgery on his knee but that his high weight prevents him from being medically cleared for surgery. Radiology of Claimant's knee was noted as unremarkable. The medical evidence was consistent with finding that Claimant can perform the standing necessary to perform sedentary employment.

Presented medical records verified chronic leg problems for Claimant related to lymphedema. Lymphedema was established to cause swelling in Claimant's legs. As of 6/2013, lymphedema appeared to be controlled after Claimant stopped taking antibiotics. There was also no evidence verifying the severity of lymphedema. Based on the presented evidence, it is found that Claimant can perform sedentary employment.

Psychological treatment records were presented. The records were not particularly compelling. A diagnosis for depression was noted. A low GAF from a social worker was noted. The low GAF happened to be taken shortly after a suicide attempt and does not appear to be representative of Claimant's functioning level. The presented records verified that Claimant took medications for depression but little else could be inferred from the records. For example, Claimant was noted to have average grooming, cooperative attitude, normal affect, no hallucinations, normal thought content, normal attention, adequate impulse control, and adequate judgment (see Exhibit B33). These descriptions are consistent with not being impaired and having the ability to perform sedentary employment.

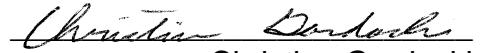
Based on presented evidence, Claimant failed to establish any ongoing non-exertional impairments other than right shoulder pain. Claimant's right shoulder pain is not deemed to be so severe or distracting as to prevent the performance of sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (English literate), 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 2/11/13, including retroactive MA benefits from █/2013, 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: 12/12/2013

Date Mailed: 12/12/2013

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:

