

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-49693
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 2, 2013
County: Wayne DHS (18)

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 October 2, 2013, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [REDACTED].

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]/12, Claimant applied for MA benefits (see Exhibits 108-109, including retroactive MA benefits from 10/2012 (see Exhibits 106-107).
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 2-3).
4. On [REDACTED] 13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibit 2) informing Claimant of the denial.

5. On [REDACTED]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 96).
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-A89) at the hearing.
9. During the hearing, Claimant and DHS waived any rights to receive a timely hearing decision to allow SHRT to redetermine disability.
10. On [REDACTED]/13, the new medical documents were forwarded to SHRT.
11. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical Vocational Rule 202.17.
12. As of the date of the administrative hearing, Claimant was a 42-year-old male with a height of 5'8" and weight of 270 pounds.
13. As of the date of hearing, Claimant was a tobacco smoker with no known relevant history of alcohol or illegal substance abuse.
14. Claimant's highest education year completed was 10th grade.
15. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient for approximately the prior three years.
16. Claimant alleged disability based on impairments and issues including leg neuropathy, congestive heart failure, diabetes and lupus symptoms.

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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing;

specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 income limit is \$1010/month.

Claimant 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 documents (Exhibits 14-69) from a treating physician were presented. The documents described regular doctor appointments from 10/2011 through 11/2012. Claimant's physician consistently noted the following: reports of severe leg pain, difficulty walking and standing, losing balance, burning sensation in legs and toes. A history of diabetes was consistently noted. Other Claimant complaints noted within the documents included: a boil on right hand, difficulty sleeping, falling down due to leg weakness and a slip and fall from 12/2011.

Hospital documents (Exhibits 77-92) from an admission dated 10/21/12 were presented. The hospital noted that Claimant presented with perirectal pain and swelling. The hospital noted that Claimant's medical history included tobacco use, hypertension and soft tissue infections. The hospital noted that Claimant was taken for incision and drainage prior to discharge. The hospital noted that post-surgery, Claimant was ambulating without difficulty. The hospital noted that Claimant was discharged on 10/23/12; a discharge diagnosis of abscess on buttock was noted.

Medical documents (Exhibits 14-16) dated [REDACTED]/12 were presented. It was noted that Claimant reported severe pain in legs and knees to his treating physician. It was noted that Claimant reported difficulty standing and walking due to the pain. Claimant's physician noted that Claimant reported losing balance while walking. It was noted that Claimant reported that stress and exertion were triggers for the pain. It was noted that Claimant also reported suffering severe hip pain and muscle weakness. It was noted that Claimant had limited range of motion in the lumbar spine and paraspinal spasms. It was noted that Claimant had weakness in both lower extremities; the pain was noted as moderately limiting activities. Noted diagnoses included peripheral neuropathy, unspecified myopathy, radiculopathy and herniated lumbar disc. Claimant's physician noted Claimant was prescribed metformin, Lisinopril, Lantus, Vicodin, Neurontin and Keflez. Claimant's physician noted that a physical examination revealed paraspinal spasms and tenderness and weakness in both lower extremities.

Hospital documents (Exhibits A8-AA26) from an admission dated [REDACTED]/13 were presented. The hospital noted that Claimant presented with complaints of a perirectal abscess. The hospital noted that following debridement of the abscess, Claimant was found to have Fournier gangrene. The hospital noted that it is important for Claimant to be blood sugar compliant. The hospital noted that Claimant was discharged on 1 [REDACTED]/13. Discharge diagnoses included right buttock abscess and uncontrolled DM.

Various documents (Exhibits A34-A89) from a treating physician were presented. The documents describe regular appointments for Claimant from 12/2012 through 8/2013. Claimant's physician consistently noted the following: reports of bilateral leg pain, difficulty walking and standing, losing balance and sleep interruption due to spasms. On [REDACTED]/13, the physician noted that Claimant's DM was currently controlled.

Physician treatment documents (Exhibits A27-A33) from an appointment dated [REDACTED]/13 were presented. The treating physician noted that Claimant continued to complain of leg weakness and losing balance while walking. Claimant's diabetes was noted as controlled. Claimant's physician noted lower extremity muscle weakness and toe numbness. Limited range of motion and tenderness were noted in the lumbar spine.

Claimant alleged that that he is disabled, in part, due to lupus. Numerous medical documents were presented but a diagnosis of lupus was not apparent. On [REDACTED]/13, Claimant's treating physician noted an active diagnosis of "unspecified myopathy" but not lupus. Leg pain and swelling are known symptoms of lupus, but many other diseases too. The presented evidence failed to establish disability related to lupus.

Claimant alleged disability, in part, due to congestive heart failure. The presented evidence failed to establish any cardiac-related restrictions for Claimant.

Claimant alleged disability, in part, due to neuropathy. Neuropathy is a neurological disease. Numerous physician appointment documents were presented. The documents consistently noted few neurological problems for Claimant. For example on [REDACTED]/13, it was noted that Claimant reported toe numbness though no other neurological deficits were noted (see Exhibits 48-49). Toe numbness would not cause Claimant to have the difficulty in walking which Claimant's alleges to experience. The dearth of neurological problems suggests that Claimant's walking difficulties are not due to neuropathy. The hospital documents verifying treatment for severe skin problems implied that Claimant may have problems with neuropathy. The records noted that Claimant had gangrene and uncontrolled DM. The hospital implied that uncontrolled DM contributed to the gangrene. Uncontrolled DM contributing to gangrene is consistent with causing severe neuropathy. For purposes of this decision, it will be found that Claimant's ambulation difficulties are due to neuropathy.

The medical evidence verified that Claimant has severe standing and walking restrictions. Claimant testified that he used a walker for fear of falling while physician documents regularly noted that Claimant reported falls while trying to ambulate. It is found that Claimant has significant impairments to performing basic work activities.

Claimant alleges disability beginning 10/2012. Based on presented evidence, it is reasonable to conclude that Claimant had ambulation restrictions from 10/2012, which are 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 standing and walking difficulties related to peripheral neuropathy. The listing for peripheral neuropathy (Listing 11.04) states that disability is established with disorganization of motor function as described in 11.04B, in spite of prescribed treatment.

Listing 11.04 (B) finds disability by establishing significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station. Claimant's testimony implied disorganization of motor function of his legs. The listing was rejected due because medical evidence failed to establish sustained disturbance of gait.

A listing for spinal disorders (Listing 1.04) was considered based on diagnoses of radiculopathy and herniated disc. In physical examination reports, Claimant's physician regularly noted the following abnormalities: paraspinal tenderness, paraspinal spasms and restricted range of motion. The listing was rejected because no radiology was presented to verify nerve root compression, arachnoiditis or stenosis.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant complaints of leg pain. The listing was also rejected due to a lack of radiology to verify any joint dysfunction.

A listing for chronic skin infections (Listing 8.04) was considered based on Claimant's multiple hospitalizations concerning infection. The listing was rejected due to a failure to establish ongoing infection for three months or longer despite prescribed treatment.

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.

A written history (Exhibits 8) of Claimant's employment was presented. The written history showed Claimant had not worked in 11 years. Claimant testified that he worked from 2009-2011 performing electrical work. Claimant testified that he can no longer do the standing to perform electrical work.

Claimant also testified that he worked as a tool salesman. Claimant testified that he can no longer perform the standing necessary to perform his previous tool salesman employment.

Claimant's testimony that he could not perform past relevant employment was credible and consistent with the presented medical evidence. Accordingly, the disability 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.

The presented records established that Claimant has walking and standing restrictions. The presented records failed to provide any expert opinion concerning the extent of

Claimant's restrictions. An estimation of Claimant's abilities is left to this disability analysis.

Claimant testified that his physician encourages Claimant to walk. A physician endorsement of walking is consistent with an ability to perform sedentary employment.

Claimant's obesity and tobacco addiction did not assist in establishing disability for Claimant. Claimant testified that he smokes 1.5 packs of cigarettes per day. Claimant's BMI was noted as 37.25 as of 9/2013. Though both are presumed to be health problems for Claimant, the presented documentation did not readily note obesity or smoking to be major factors to Claimant's ambulation complaints.

Claimant's testimony and appearance was that of a disabled individual. Claimant testified that he constantly uses a walker. Claimant testified that he cannot sit longer than 20 minutes due to restless legs. Claimant's testimony was not well documented by the presented evidence. No evidence of radiology was presented. Walking and sitting restrictions were not verified. Claimant's neurological strength was noted to be 5/5 (see Exhibit A36) by an examining physician, though lower extremity weakness was noted. Based on the presented evidence, it is found that Claimant is able to perform sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (less than high school), employment history (unskilled), Medical-Vocational Rule 201.24 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 11/21/12, including retroactive MA benefits from 10/2012, 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: 12/23/2013

Date Mailed: 12/23/2013

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:

