

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-58099
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: January 9, 2014
County: Wayne (49)

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 January 9, 2014, from Detroit, 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], Medical Contact Worker.

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] Claimant applied for SDA and MA benefits, including retroactive MA benefits from 1/2013.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED], Claimant applied for Social Security Administration (SSA) benefits based on a claim of disability.

4. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 7-8).
5. On [REDACTED], DHS denied Claimant's application for SDA and MA benefits and mailed a Notice of Case Action (Exhibits 4-6) informing Claimant of the denial.
6. On [REDACTED], Claimant requested a hearing disputing the denial of SDA and MA benefits.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past employment as a day care provider.
8. On [REDACTED] SSA denied Claimant's application based on a finding that Claimant was not disabled.
9. Claimant failed to timely request an appeal of the SSA disability claim.
10. On [REDACTED], an administrative hearing was held.
11. During the hearing, Claimant waived the right to receive a timely hearing decision.
12. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional documents considered and forwarded by SHRT.
13. On [REDACTED], an Interim Order Extending the Record was mailed to Claimant and Claimant's AHR to allow 60 days from the date of hearing to submit the following: treating physician records, Medical Examination Report and current status of Claimant's SSA application dated [REDACTED].
14. On [REDACTED], Claimant submitted additional documents (Exhibits A1-A12).
15. On [REDACTED] an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record an additional 90 days.
16. On [REDACTED], SHRT denied Claimant's claim of disability, in part, based on application of Medical-Vocational Rule 202.20 (see Exhibit 2-21 – 2-22).
17. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

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

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

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

Eligibility for MA based on disability or blindness does not exist once SSA's determination is final. *Id.*, p. 3. SSA's determination that disability or blindness does not exist for SSI is final for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA; or
- The client failed to file an appeal at any step within SSA's 60 day limit, and
- The client is not claiming:
 - A totally different disabling condition than the condition SSA based its determination on, or

- o An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

Id., pp. 3-4.

It was not disputed that Claimant applied for SSA benefits in 5/2013. Claimant presented testimony strongly suggesting that he was denied SSA benefits in 9/2013 based on a determination that he was not disabled. Claimant's testimony also strongly suggested that he did not appeal the SSA denial and instead reapplied.

Claimant's testimony was persuasive evidence that SSA made a "final" determination of disability. The SSA denial appeared to occur several months after Claimant applied for MA and SDA benefits; thus, there is little doubt that Claimant's MA application was based on the same conditions that led to Claimant's SSA application.

There are occasions when clients testify inaccurately concerning SSA determinations. Claimant was given an additional 30 days following the hearing to provide documents to justify finding that the SSA denial of disability was not binding on Claimant's MA and SDA application. Examples of evidence which would negate Claimant's testimony would include verifying timely appeal of Claimant's SSA application or verifying that SSA did not determine Claimant's eligibility based on a disability determination.

In response to the record extension, Claimant's AHR submitted SSA documents verifying that Claimant applied for SSI benefits on [REDACTED]. The presented documents failed to invalidate Claimant's testimony.

Following the hearing, DHS presented a Disability Determination Explanation (DDE) (Exhibits 2-11 – 2-20). The DDE is a SSA document which lists a client's application history. The DDE noted that Claimant applied for SSA benefits on [REDACTED] and was denied on [REDACTED]. Claimant's subsequent submitted application only verified that Claimant reapplied after the denial instead of appealing the denial.

Based on Claimant's "final" decision denying SSA benefits, it is found that Claimant is not a disabled individual. Accordingly, it is found that DHS properly denied Claimant's MA application, including retroactive MA benefits.

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 (1/2013), p. 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 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- 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).

Id.

It has already been found that Claimant is not disabled for purposes of MA benefits based on a finding that a denial of SSA benefits is binding due to Claimant's failure to appeal the denial. The same analysis is not necessarily applicable to Claimant's SDA application because SSA requires a 12 month period to establish disability. The durational requirement for SDA eligibility is 90 days. The analysis will proceed to determine Claimant's eligibility for SDA benefits.

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. As noted above, SDA eligibility is based on a 90 days period of disability.

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. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. 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 a summary of the relevant submitted medical documentation.

Hospital treatment documents (Exhibits 15-95) from 4/2013 were presented. It was noted that Claimant presented with a left leg gunshot wound. On [REDACTED], a radiology report noted that Claimant had several birdshot bullet pellets in his lower left thigh. It was noted that Claimant underwent a fasciotomy. On [REDACTED], it was noted that Claimant was healing well and that staples were removed. A three-week follow up appointment was noted as scheduled.

A Medical Examination Report (Exhibits A1-A2) dated [REDACTED] was presented. The report was noted as completed by a physician with no previous history of treating Claimant. The physician provided diagnoses of sensory impairment related to a gunshot wound. The physician noted that Claimant was restricted to less than two hours of standing per 8 hour shift. An impression was given that Claimant's condition was stable. No sitting restrictions were noted. It was noted that Claimant can meet household needs.

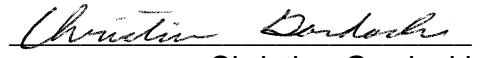
The evidence established that Claimant has a severe impairment. The evidence suggested that Claimant does not meet Listing 1.02 or any other SSA listings. The evidence suggested that Claimant cannot perform past relevant employment. The evidence also suggested that Claimant can perform sedentary employment.

SSA determined that Claimant is capable of performing light employment and denied Claimant's disability claim based on application of Medical-Vocational Rule 202.20. Claimant alleged disability based on ambulation, lifting and bending restrictions related to getting shot. The presented evidence was not persuasive in finding that the SSA denial of benefits would have been different had a 90 day period of duration been applied. It is found that Claimant is not a disabled individual for purposes of SDA eligibility and that DHS properly 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 properly denied Claimant's SDA and MA benefit application dated 4/19/13, including retroactive MA benefits, 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: 5/1/2014

Date Mailed: 5/1/2014

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:

