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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-58160
Issue No.: 2009
Case No.: [redacted]
Hearing Date: November 25, 2013
County: Wayne (76)

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 November 25, 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]/12, Claimant applied for 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 4-5).

4. On [redacted]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [redacted]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits.

6. On [redacted]/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.

7. On [redacted]/13, an administrative hearing was held.

8. On [redacted]/13, an Updated Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit cardiac treatment records and a consultative examination report.

9. On [redacted]/13, an Updated Interim Order Extending the Record was mailed to DHS to allow 30 days from the date of hearing to submit Social Security Administration application status.

10. By [redacted]/13, neither DHS nor Claimant presented additional medical documents.

11. As of the date of the administrative hearing, Claimant was a 27 year old male with a height of 5'11'' and weight of 147 pounds.

12. Claimant has no known relevant history of alcohol or illegal substance abuse.

13. Claimant's highest education year completed was the 11th grade.

14. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since approximately [redacted]/2013.

15. Claimant alleged disability based on impairments and issues including scoliosis, restrictions related to a bullet wound and an irregular heartbeat.

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 CRF 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 F2d 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 9-13; 19-29) from an encounter dated [redacted]/12 were presented. The hospital noted that Claimant presented with complaint of a dental infection. The hospital noted that Claimant underwent incision and drainage of mouth abscesses.

Hospital documents (Exhibits 6-8) from an encounter dated [redacted]/12 were presented. It was noted that Claimant presented with a complaint of syncope. The hospital noted "no diagnosis specified".

A consultative mental examination report (Exhibits 33-36) dated [redacted]/12 was presented. The report noted that Claimant interacted appropriately and appeared to be able to take care of self and follow simple directions. The report noted that Claimant would need a public guardian to manage his own funds. An Axis I diagnosis of adjustment disorder was noted. Claimant's GAF was noted to be 60.

A consultative physical examination report (Exhibits 37-42) dated 1[redacted]/12 was presented. The report noted that Claimant suffered a gunshot wound to the abdomen in 12/2010; the mental consultative examination report noted the wound was self-inflicted. A musculoskeletal examination noted the following: steady gait, no limp, full range of motion of all tested areas, no spasms, and no joint tenderness. It was noted that Claimant could perform all physical movements though comments of "ASW-[redacted]/2012" and "colostomy in [redacted]/2011" were noted next to the abilities of standing, bending, stooping, carrying, pushing and pulling.

Claimant testified that he is limited to 10 minutes of standing before his legs go numb. Claimant testified that he is limited to 20-30 pounds of lifting. Claimant testified that he should have a cane. Claimant's testimony was not supported by the medical evidence.

Presumably, a bullet lodged in Claimant's body and/or scoliosis are the cause of Claimant's alleged restrictions. Hospital records referenced scoliosis and a gunshot

wound in Claimant's history. A consultative examiner also referenced the problems. The examiner noted Claimant had a normal gait, full strength and full range of motion- each of these are consistent with no physical restrictions.

It should be noted that Claimant was given additional time to verify impairments but failed to provide documentation. It is also worth noting that Claimant had access to health insurance through DHS, thus, a lack of finances should not have been an excuse to not providing documentation.

A consultative examiner determined that Claimant had psychological impairments. Claimant failed to pursue any treatment for his problems. The evidence was not compelling evidence to verify a restriction to last for 12 months or longer.

It was verified that Claimant had mouth abscesses requiring emergency oral surgery. Neither Claimant nor the evidence suggested that Claimant had problems related to the surgery.

Based on the presented evidence, it is found that Claimant failed to establish significant impairment to performing basic work activities for a period longer than 12 months. Accordingly, it is found that Claimant is not disabled and that DHS properly denied Claimant's MA benefit application

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 7/26/12 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: 1/8/2014

Date Mailed: 1/8/2014

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: [redacted]