

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20136238
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 11, 2013
County: Monroe DHS

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on February 11, 2013, from Monroe, Michigan. Participants included the above-named claimant. [REDACTED] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

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 7/19/12, Claimant applied for MA benefits, including retroactive MA benefits from 5/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 8/15/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 10/22/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 8/21/12, DHS received a hearing request from Claimant's AHR disputing the denial of MA benefits.
6. On 12/11/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 84-85), in part, by application of Medical-Vocational Rule 203.22.
7. On 2/11/13, an administrative hearing was held.
8. During the hearing, Claimant presented new medical documents (Exhibits A1-A30).
9. The new medical documents were forwarded to SHRT.
10. On 4/21/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.10.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 6'0" and weight of 210 pounds.
12. Claimant has a relevant history of tobacco and alcohol abuse.
13. Claimant's highest education year completed was the 11th grade.
14. As of the date of the administrative hearing, Claimant had no medical coverage.
15. Claimant alleged that he is disabled based on impairments and issues including: diabetes, pancreatitis, seizures and a rotator cuff injury.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

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 at 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 at 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. *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 at 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 2011 monthly income limit considered SGA for non-blind individuals is \$1,000. The 2012 income limit is \$1010/month.

In the present case, 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.

Hospital documents (Exhibits 49-80) related to an admission dated [REDACTED] were presented. It was noted that Claimant was admitted to the intensive care unit in acute diabetic ketoacidosis. It was noted that Claimant was released from prison two weeks earlier and that he was given no diabetic medications. An impression of uncontrolled diabetes was noted. It was noted that Claimant had a psychiatric disorder and was taking pills to control the disorder. It was noted that views of Claimant’s abdomen resulted in an impression of a normal abdomen. It was noted that views of Claimant’s chest resulted in an impression of a normal chest.

Hospital documents (Exhibits 42-48) related to an encounter dated [REDACTED] were presented. An “exitcare” document appeared to note a diagnosis of diabetes, type 2.

Hospital documents (Exhibits 7-41; 83) related to an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of vomiting, epigastric pain and mid-abdominal pain. It was noted that Claimant drinks alcohol daily. It was also noted that Claimant is a smoker. Previous hospitalizations for pancreatitis and hyperglycemia were noted. A discharge summary was not provided, but an MRI report of Claimant’s abdomen noted an impression of cholelithiasis without definitive evidence of cholecystitis.

A hospital document (Exhibits A27-A28) dated [REDACTED] was presented. It was noted that an endoscopic retrograde cholangiopancreatography was performed on Claimant.

Hospital documents (Exhibits A29-A30) related to an encounter dated [REDACTED] were presented. Noted impressions included: cholelithiasis, hepatic steatosis, chronic pancreatitis and bilateral spondylolysis at L5-S1.

Hospital documents (Exhibits A3-A6) related to an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant denied any alcohol use, but that lab results verified alcohol presence. It was noted that Claimant was treated with IV Dilaudid. It was noted that Claimant returned with an alcohol level of 325, at which point, the treating physician determined that continued narcotics would not be in Claimant’s best interest; it was noted that Claimant was anxious to leave the hospital after being so advised. It was

noted that Claimant left against the wishes of the treating physician. Diagnoses of abdominal pain and acute alcohol intoxication were noted.

A Medical Examination Report (Exhibits A16-A17) was completed by a nurse practitioner. The document was undated, but the form was created by DHS on [REDACTED]. It was noted that the nurse practitioner's first and last examination of Claimant occurred on [REDACTED]. Diagnoses of diabetes, esophagitis, cholelithiasis and hiatal hernia were noted. A physical examination noted no abnormalities. An impression was given that Claimant's condition was improving.

Hospital documents (Exhibits A8-A13) related to encounters dated [REDACTED] and [REDACTED] were presented. It was noted that Claimant presented with requests for medication refills.

Hospital documents (Exhibits A7-A8) related to an encounter dated [REDACTED] were presented. It was noted that Claimant presented with requests for refills of needles, psychiatric meds and pain meds. It was noted that Claimant requested narcotic meds but was denied. Diagnoses of hypertension, chronic liver disease, diabetes, epilepsy and depression were noted. An assessment of chronic pancreatitis was noted.

The presented medical records established that Claimant had multiple problems, most notably, chronic pancreatitis, cholelithiasis (gall bladder disease) and poorly controlled diabetes. The above diagnoses are, by themselves, sufficient to establish the existence of restrictions to Claimant's lifting abilities.

The nature of Claimant's diagnoses is such that Claimant's lifting restrictions will likely be permanent. Accordingly, Claimant meets the durational requirements for establishing a severe impairment.

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 chronic pancreatitis. Listing 5.05, which covers chronic liver disease, is the most applicable listing to Claimant's impairment. This listing would mandate a finding of disability if Claimant's condition meets the following:

- A.** Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other

appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least 2 evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:

1. Paracentesis or thoracentesis; or
2. Appropriate medically acceptable imaging or physical examination and one of the following:
 - a. Serum albumin of 3.0 g/dL or less; or
 - b. International Normalized Ratio (INR) of at least 1.5.

OR

C. Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm³

OR

D. Hepatorenal syndrome as described in 5.00D8, with on of the following:

1. Serum creatinine elevation of at least 2 mg/dL; or
2. Oliguria with 24-hour urine output less than 500 mL; or
3. Sodium retention with urine sodium less than 10 mEq per liter.

OR

E. Hepatopulmonary syndrome as described in 5.00D9, with:

1. Arterial oxygenation (PaO₂) on room air of:
 - a. 60 mm Hg or less, at test sites less than 3000 feet above sea level, or
 - b. 55 mm Hg or less, at test sites from 3000 to 6000 feet, or
 - c. 50 mm Hg or less, at test sites above 6000 feet; or
2. Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan.

OR

F. Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and
2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or
3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1:
 - a. Asterixis or other fluctuating physical neurological abnormalities; or
 - b. Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or
 - c. Serum albumin of 3.0 g/dL or less; or
 - d. International Normalized Ratio (INR) of 1.5 or greater.

OR

G. End stage liver disease with SSA CLD scores of 22 or greater calculated as described in 5.00D11. Consider under a disability from at least the date of the first score.

There was no medical evidence of: blood transfusions, bacterial peritonitis, hepatorenal syndrome, hepatopulmonary syndrome, Hepatic encephalopathy or end stage liver disease. There was no evidence that any of Claimant's lab work met the above requirements. It is found that Claimant does not meet Listing 5.05.

Listings for anxiety-related disorders (Listing 12.06) and affective disorders (Listing 12.04) were considered based on diagnoses for anxiety and depression. The listings were rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant had a complete inability to function outside of home or that Claimant required a highly supportive living arrangement. It was also not established that Claimant suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

A listing for epilepsy (Listing 5.05) was considered based on Claimant's reporting of a history of seizures. The listing was rejected due to a lack of medical evidence.

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's past employment was as a mechanic and a truck driver. Claimant testified that he is unable to drive due to his history of seizures. Claimant also testified that his past employment required significant lifting, which he can no longer perform. Based on the presented medical records, Claimant's testimony was reasonably supported. 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). For purposes of this decision, only an analysis of light work will be undertaken.

It was determined at step two that Claimant's diagnoses established lifting restrictions. The diagnoses, by themselves, are not sufficient to establish the degree of Claimant's restrictions.

Many of Claimant's hospital encounters related to alcohol and/or narcotic abuse. Alcoholic and narcotic abuse does not negate the existence of pancreatitis, however, it may be relevant in determining how the conditions affect Claimant. The hospital encounters from 6/23/12 and 7/5/12 appeared to be direct results of alcohol and drug abuse. When factoring the direct effect of Claimant's abuse, Claimant's hospital encounter frequency is not compelling evidence of Claimant's difficulties.

The only presented document relevant to Claimant's abilities was the Medical Examination Report. The nurse practitioner noted that Claimant can meet household needs. When also factoring that Claimant's condition was noted as improving (possibly due to a stoppage in alcohol abuse), presuming a high degree of work restrictions is difficult.


The medical evidence also suggested that Claimant has psychological disorders. However, there was no evidence of any hospitalizations or treatments. It is difficult to presume psychological restrictions without any treatment or examination records.

Though Claimant undoubtedly has serious conditions requiring medical treatment, the evidence tended to establish that Claimant is getting sufficient medical treatment and that Claimant can have extended periods of good health when not abusing alcohol or drugs. The evidence supported a finding that Claimant is capable of performing light employment.

Based on Claimant's exertional work level (light), age (approaching advanced age), education (less than high school), employment history (unskilled), Medical-Vocational Rule 202.10 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 7/19/12 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: 5/9/2013

Date Mailed: 5/9/2013

NOTICE: 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)

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 was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639

20136238/CG

Lansing, Michigan 48909-07322

CG/hw

cc:

