

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-66902
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 12, 2014
County: Wayne (19)

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 March 12, 2014, from Inkster, Michigan. Participants included the above-named Claimant. [REDACTED] of L&S Associates testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist, and [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. For the month of 1/2013, Claimant earned more than \$1,040 in gross employment income.
2. On 1/10/13, Claimant applied for MA benefits (see Exhibits 6-7), including retroactive MA benefits from 11/2012 (see Exhibits 8-9).
3. Claimant's only basis for MA benefits was as a disabled individual.

4. On 6/5/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 16-17).
5. On 6/10/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 14-15) informing Claimant and his AHR of the denial.
6. On 8/27/13, Claimant's AHR requested a hearing disputing the denial of MA benefits.
7. On 10/13/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.
8. On 3/12/14, an administrative hearing was held.
9. Claimant presented new medical documents (Exhibits A1-A115) at the hearing.
10. During the hearing, Claimant waived the right to receive a timely hearing decision.
11. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
12. On 3/27/14, Claimant submitted additional medical documents (Exhibits A1-A120).
13. On 4/4/14, an Interim Order Extending the Record was mailed to Claimant and DHS to allow 30 days from the date of hearing to submit Claimant's wage history.
14. Neither DHS nor Claimant submitted documents of Claimant's wage history.
15. On 4/30/14, 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 6/17/14, SHRT determined that Claimant was not disabled, in part, by determining that Claimant's condition would improve within 12 months.
17. On 6/23/14, the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
18. As of the date of the administrative hearing, Claimant was a 33 year old male with a height of 5'10" and weight of 180 pounds.

19. Claimant has no known relevant history of alcohol or illegal substance abuse.
20. Claimant's highest grade completed was 12th grade, via general equivalency degree.
21. As of the date of the administrative hearing, Claimant did not have ongoing health insurance but did receive Medicaid for the period of 6/2012-1/2014 (not counting the period of 11/1/13-11/21/13).
22. Claimant alleged disability based on impairments and issues including bipolar disorder, schizophrenia, and diverticulitis.

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. "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 testified that he worked from 3/2012-1/2013 for a bowling alley. Claimant testified that he worked approximately 30-36 hours per week. There are occasions when claimants provide inaccurate testimony. Following the hearing, Claimant and DHS were given additional time to submit accurate records of wage history. No employment records were submitted. Claimant's testimony was highly suggestive that Claimant earned SGA for at least the months of 11/2012-1/2013. It is found that Claimant performed SGA for the months of 11/2012-1/2013. The analysis may proceed for an evaluation of disability for the period from 2/2013.

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 records (Exhibits 32-68) from an admission dated 1/1/12 were presented. It was noted that Claimant presented with an abdominal stab wound, caused the previous evening. It was noted that Claimant underwent uncomplicated surgery. It was noted that Claimant complained of right ankle pain; an assessment of right ankle sprain was noted. On 1/2/12, it was noted that Claimant complaint of mild abdominal pain. A discharge date of 1/2/12 was noted.

Hospital records (Exhibits 26-31) from an admission dated 11/3/12 were presented. It was noted that Claimant presented with left-sided abdominal pain. It was noted that Claimant received IV antibiotics and a low residue diet was recommended. A discharge diagnosis of diverticulitis (improved) was noted. A discharge date of 11/5/12 was noted; other noted diagnoses were asthma, hypertension, and diverticulosis. Discharge instructions noted that Claimant had no driving or hygiene restrictions. A follow-up in 3 days with a gastroenterologist was noted.

Hospital documents (Exhibits A1-A7) dated 10/24/13 were presented. It was noted that Claimant complained of left lower quadrant abdominal pain, ongoing for 2 weeks. An assessment of acute diverticulitis was noted. It was noted that Claimant received antibiotics and a surgical plan consultation was scheduled. A medical history "significant for diverticulitis" was noted (see Exhibit A3); four previous hospital encounters for diverticulitis were noted (see Exhibit A5). It was noted that a CT of Claimant's abdomen demonstrated Hinchey II diverticulitis with moderate sized adjacent pericolonic abscess. It was noted that Claimant underwent CT-guided drainage of the abscess. It was noted that Claimant's condition and white blood count improved. A strong recommendation of a colonoscopy in 4-6 weeks, to rule out colon cancer and Crohn's disease, was noted. A discharge date of 10/28/13 was noted (see Exhibit A14).

Hospital documents (Exhibits A9-A18) from an admission dated 10/29/13 were presented. It was noted that Claimant presented with abdominal pain. Noted final diagnoses were complicated diverticulitis and intraperitoneal abscess. On 10/30/13, it was noted that Claimant's abscess decreased in size and now contained mostly gas (see Exhibit A8). It was noted that Claimant was to take Invanz, via PICC line (see Exhibit A94). A discharge date of 11/8/13 was noted.

Hospital documents (Exhibits A19-A45) from an admission dated 11/22/13 were presented. It was noted that Claimant presented with abdominal pain. It was noted that Claimant presented with abdominal pain. It was noted that a CT revealed severe inflammatory changes and multiple basilar lung nodules. A diagnosis of persistent diverticulitis was noted.

Hospital documents (Exhibits A85-A115; A118-A120) from an admission dated 1/19/14 were presented. It was noted that Claimant presented with fever, chills, diarrhea, and

some leukocytosis. It was noted that Claimant underwent a sigmoidectomy. It was noted that Claimant took medication for depression and that a psychiatrist was consulted to adjust Claimant's medication. It was noted that Claimant had pain and anxiety; a prescription for Percocet was noted. A discharge date of 2/2/14 was noted (see Exhibit A119). Discharge instructions highly recommended follow-up with a physician so Claimant could continue pain medications.

Claimant alleged disability in part, based on anxiety and bipolar disorder. Presented records noted that Claimant took psychiatric medications, however, the evidence failed to suggest any psychiatric impairments. It is found that Claimant failed to establish any psychological impairment.

Presented documents verified that Claimant had numerous hospital admissions related to diverticulitis. The admissions sufficiently verified some degree of restrictions and pain.

At step one of the analysis, it was determined that Claimant was not disabled for the months of 11/2012-1/2013. A reference to previous diverticulitis treatment was noted, however, specific dates were not provided. Medical documents failed to document any medical treatment or complaints from the period of 2/2013-9/2013. It cannot be inferred that Claimant's impairments were severe for the period of 2/2013-9/2013 solely based on a reference to a previous diverticulitis treatment history. It is found that Claimant established diverticulitis impairments as of 10/2013.

Presented records suggested that Claimant's impairments significantly reduced following surgery in 1/2014. Due to Claimant's repeated hospitalizations, it will be presumed that some degree of symptoms will persist for 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 recurring diverticulitis. SSA does not have a diverticulitis listing, however, diverticulitis symptoms are comparable to the symptoms caused by inflammatory bowel disorders. Listing 5.06 covers inflammatory bowel disorders and reads:

5.06 Inflammatory bowel disease (IBD) documented by endoscopy, biopsy, appropriate medically acceptable imaging, or operative findings with:

A. Obstruction of stenotic areas (not adhesions) in the small intestine or colon with proximal dilatation, confirmed by appropriate medically acceptable imaging or in surgery, requiring hospitalization for intestinal decompression or for surgery, and occurring on at least two occasions at least 60 days apart within a consecutive 6-month period.

OR

B. Two of the following despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or
2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or
3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or
6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

Presented records verified that Claimant had at least five hospital admissions involving diverticulitis complaints. Two of the admissions occurred at least 60 days apart and within a six month period. Claimant's history of hospitalizations is deemed sufficient to meet the SSA listing 5.06 beginning 10/2013. Accordingly, it is found that Claimant is disabled and that DHS improperly denied Claimant's MA application.

It should be noted that Claimant's condition has or will improve substantially now that Claimant received intestinal surgery. A review period of six months, rather than 12 months will be administered, in anticipation of Claimant's medical improvement.

DECISION AND ORDER

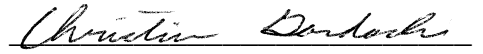
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant is not a disabled individual for the period of 11/2012-9/2013. The actions taken by DHS are **PARTIALLY AFFIRMED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 1/10/13;

- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual as of 10/2013;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in **six months** from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are **PARTIALLY REVERSED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/17/2014

Date Mailed: 7/17/2014

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:

