

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

IN THE MATTER OF:



Reg. No.: 2013-68972
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: February 6, 2014
County: Oakland (02)

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 February 6, 2014, 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], Claimant applied for MA and SDA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).
4. On [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 1-4) informing Claimant of the denial.

5. On [REDACTED], Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A4) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional documents considered and forwarded by SHRT.
11. 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 90 days from the date of hearing.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by reliance on a Disability Determination Explanation (Exhibits B1-B12).
13. On [REDACTED], the Michigan Administrative Hearings System received the updated hearing packet and SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 49-year-old male with a height of 5'11" and weight of 185 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 11th grade.
17. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient.
18. Claimant alleged disability based on impairments and issues including anxiety and lower back pain.

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 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.

Various medical clinic documents (Exhibits 21-25) were presented. The document verified that Claimant attended 5 appointments ranging in date from [REDACTED] through [REDACTED]. The documents consistently noted diagnoses of back pain and anxiety.

An MRI report of Claimant's lumbar (Exhibit 19) dated [REDACTED] was presented. An impression of Grade 1 anterolisthesis of L5-S1 with bilateral spondylosis was noted. Severe bilateral stenosis was also noted at L5-S1. Central disc protrusion was noted at L4-L5.

A treating physician letter (Exhibit 20) dated [REDACTED] was presented. Claimant's physician noted that Claimant should avoid work involving a foot pedal. It was further noted that a final diagnosis would be made in the following month.

A rehabilitation clinic physician letter (Exhibit 26) dated [REDACTED] was presented. The physician noted that Claimant failed to respond to physical therapy and remains markedly uncomfortable. Medications of omeprazole, Vicodin, Ibuprofen and Sertaline were noted. A recommendation of an epidural was noted. The physician noted that Claimant is to remain off of work for 2 weeks.

A rehabilitation clinic physician letter (Exhibit 27) dated [REDACTED] was presented. It was noted that Claimant continues to have back pain radiating to legs. It was noted that

Claimant began pelvic traction therapy, which diminished Claimant's back pain. The physician noted that Claimant is to not to work for 3 weeks.

A rehabilitation clinic physician letter (Exhibit 28) dated [REDACTED] was presented. It was noted that Claimant is improving with therapy and following an epidural, yet still "far from well enough" to return to work. The physician noted that Claimant is to remain off work for 4 more weeks.

A rehabilitation clinic physician letter (Exhibits 29-30) dated [REDACTED] was presented. It was noted that Claimant reported calf pain. It was noted that severe neural foraminal stenosis caused nerve root compromise at L5-S1. It was noted that Claimant was anxious to return to work. It was noted that Claimant could return to work on a 4 hour/day basis with unspecified restrictions. Surgery was noted to be a consideration.

A Physical Therapy Discharge Report (Exhibit 42) dated [REDACTED] was presented. Physical therapy documents (Exhibits 43-45) dated [REDACTED] were also presented. It was noted that Claimant's subjective reporting of pain improved 5-6/10 points on the McGill pain scale. It was noted that Claimant increased strength to 5/5 except for hip. It was noted that Claimant increased lumbar ranges of motion.

Rehabilitation clinic physician letters (Exhibits 39; 41) dated [REDACTED] were presented. It was noted that Claimant reported ongoing left buttock and left calf pain due to S1 radiculopathy. It was noted that Claimant's pain significantly improved following pelvic traction therapy but increased pain occurred two months after therapy ended. It was noted that Claimant underwent a left L5 epidural steroid injection.

A rehabilitation clinic physician letter (Exhibit 40) dated [REDACTED] was presented. It was noted that Claimant underwent a left L5 epidural steroid injection.

A mental status examination report and Psychiatric/Psychological Examination Report (Exhibits 31-38; 46-53) dated [REDACTED] were presented. The reports were signed by two consultative licensed psychologists. It was noted that Claimant reported severe panic attacks. It was noted that Claimant took Xanax (.5 mg x 3/day) and Zoloft but that he cannot afford therapy. Noted examiner observations of Claimant included: cooperative, polite, anxious mood and oriented x3. An Axis I diagnosis of generalized anxiety disorder was noted. Claimant's GAF was noted to be 55-60 A fair prognosis was noted.

An MRI report of Claimant's lumbar (Exhibits A2-A3) dated [REDACTED] was presented. The report noted that it was a comparison to an MRI report dated [REDACTED]. Multilevel degenerative changes were noted. It was also noted there were no significant changes. Severe left neural foramen stenosis was noted at L5-S1.

A rehabilitation clinic physician letter (Exhibit A1) dated [REDACTED] was presented. The physician noted that Claimant requires physical therapy to treat lumbar pain. It was noted that Claimant cannot receive therapy due to a lack of insurance.

Presented radiology and treating physician records established that Claimant has multiple lumbar back problems, which create pain and ambulation restrictions. The presented records verified that Claimant's lumbar problems have existed since 2/2013 (at the latest) and have continued for longer than 12 months. It is found that Claimant established having a severe impairment and the disability analysis may proceed 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 back pain from stenosis. Spinal disorders are covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Presented radiology specifically stated that Claimant suffers severe stenosis and nerve root compromise at L5-S1. Claimant's pain appeared to briefly diminish following physical therapy. Medical records verified that Claimant's pain returned. Epidural injections were performed but appeared to have any significant impact in diminishing Claimant's back pain.

Claimant credibly testified that he can walk 4 blocks on a good day and as few as 2 on a bad day. Claimant's testimony was consistent with presented radiology.

Claimant's physician noted on multiple occasions that Claimant was anxious to return to work. This evidence tended to establish that Claimant was not a malingerer and served to bolster Claimant's credibility concerning stated restrictions.

Immediately following physical therapy, Claimant's high point, slight diminished strength was noted. It is reasonable to presume further diminished strength after the effects of therapy passed.

Based on the presented evidence, it is found that Claimant meets the Listings for 1.04(a) and 1.04(c). Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA benefit application.

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.*

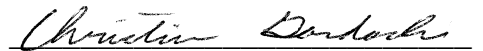
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet the requirements for SSA Listing 1.04. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly 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 improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for MA and SDA benefits subject to the finding that Claimant is a disabled individual;
- (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 one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

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


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

Date Signed: 4/14/2014

Date Mailed: 4/14/2014

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:

