

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-69676
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 12, 2014
County: Wayne (18)

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 February 12, 2014, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED] appeared as Claimant's authorized hearing representative. [REDACTED], Claimant's spouse, testified on Claimant's behalf. [REDACTED], Claimant's nephew, appeared as Claimant's translator. 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) 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 benefits, including retroactive MA benefits from 2/2013.
2. Claimant's only basis for MA benefits was as a disabled individual.

3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 67-69; 71-73) informing Claimant's AHR of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing (see Exhibit 70) disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant work.
7. On [REDACTED], an administrative hearing was held.
8. Claimant's AHR presented new medical documents (Exhibits A1-A18) 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 medical 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 an additional 90 days.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by reliance on a Disability Determination Explanation which found that Claimant can perform past relevant work.
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 58 year old male with a height of 1 meter and 76 centimeters' and weight of 156 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant had no medical coverage.

18. Claimant alleged disability based on impairments and issues including crying spells, panic attacks, racing thoughts, shoulder pain and left arm 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).

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. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant testified that he worked 10 years as a dishwasher. Claimant testified that he last worked on [REDACTED]. Claimant initially testified that he stopped employment because of depression symptoms. Claimant subsequently testified that he stopped working because his place of employment closed. Claimant did not provide clarifying testimony concerning the amount of income he made in 8/2013. A consultative examination report (Exhibit 80) dated [REDACTED] noted that Claimant worked 25 hours/week. Based on Claimant's unskilled employment type, part-time hours, and less than a full month of employment, it is improbable that Claimant's wages exceeded SGA income limits. Accordingly, it is found that Claimant did not perform SGA in 8/2013 (or since) and 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.

A treating physician document (Exhibit 28; 51) dated 11/25/09 was presented. It was noted that Claimant underwent stent placement two years prior and sought treatment for coronary artery disease.

Various treating physician documents (Exhibits 52-56) from 2009-2011 were presented. It was noted that Claimant presented on various dates for treatment of an infected cyst.

A physician document (Exhibit 25) dated [REDACTED] was presented. It was noted that Claimant's surgical history involves placement of five heart stents. A previous diagnosis of coronary artery disease was noted.

A treating physician document (Exhibit 34) dated [REDACTED] was presented. It was noted that Claimant complained of neck and arm pain. It was noted that a neck x-ray showed some arthritis changes. It was noted that Claimant was prescribed Motrin and advised to perform motion exercises.

A radiology report (Exhibit 43; 57) from x-rays dated [REDACTED] was presented. DDD, worse at C5-C6, was noted.

Physical therapy documents (Exhibits 36-38; 59-61) concerning neck pain were presented. The documents reflected 3 different PT appointments for Claimant from [REDACTED]. On [REDACTED] it was noted that Claimant attended 20 appointments and met goals of reducing pain scale from 8-9/10 down to 2/10. A goal of increased range of neck motion was noted.

Physician documents (Exhibit 25-27; 49-50) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of a dry cough and arm pain. Medical history noted that Claimant was in physical therapy six months ago. A plan noted that Claimant was to use over-the-counter medication for symptomatic treatment. A referral for physical therapy was declined by Claimant.

Hospital documents (Exhibits 15-22) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of severe headaches and flu-like symptoms, ongoing for 15 days. It was noted that a CT of Claimant's head demonstrated chronic sinusitis and no acute process.

A reference to a 15-day hospital stay in 2/2013 was referenced in a treating physician document (see Exhibit A1). The presented hospital documents did not verify such a lengthy stay. A Claimant-drafted document (Exhibit 23) noted a 4-day hospitalization.

An EEG report (Exhibit A9) dated [REDACTED] was presented. An impression of a normal EEG for Claimant's age was noted.

A CT report of Claimant's head (Exhibit A10) dated [REDACTED] was presented. An impression of no acute intracranial process was noted. Mild chronic sinus disease was noted.

A cardiology report (Exhibit A11) dated [REDACTED] was presented. Impressions of no significant stenosis and no significant plaque were noted.

Physician encounter notes (Exhibit 49) dated [REDACTED] were presented. It was noted that Claimant's medical history included stents on Claimant's right side.

Physician treatment documents (Exhibits A14-A18) dated [REDACTED] were presented. Diagnoses of anxiety, hypercholesterolemia, hypotension, migraine headaches and encephalopathy were noted. A physical examination noted the following: 5/5 musculoskeletal strength in all extremities, normal ranges of motion, normal gait, no spasms. All psychiatric observations noted normal and/or good thought, speech and appearance.

Hospital documents (Exhibits 13-14) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dizziness, flu-like symptoms, migraines and seizure disorder. It was noted that blood cultures, liver function tests, urine samples and chest radiology were all negative.

Treating physician documents (Exhibits A1-A8) dated [REDACTED] were presented. It was noted that Claimant reported anxiousness, eye tiredness, insomnia, racing thoughts and panic attacks. A physical examination noted the following: 5/5 musculoskeletal strength in all extremities, normal ranges of motion, normal gait, no spasms. All psychiatric observations noted normal and/or good thought, speech and appearance.

A mental status examination report (Exhibits 80-84) dated [REDACTED] was presented. The report was noted as completed by a licensed psychologist. It was noted that Claimant reported ongoing nervousness and feelings of losing his mind. It was noted that Claimant took Xanax but that Claimant stopped taking other medications because of bad side effects. Noted examiner observations of Claimant included adequate contact with reality and goal directed mental activity. It was noted that Claimant had slight to moderate strengths in immediate memory and the capacity to pay attention. The examiner noted that Claimant appeared to have judgment problems. An Axis I diagnosis of adjustment disorder with mixed emotional features was noted. Claimant's GAF was noted to be 51. A fair prognosis was noted. The examiner opined that Claimant appeared capable of performing employment with slight degrees of complexity such as dishwashing.

Claimant alleged left arm shoulder and arm pain. PT for Claimant's neck from 2012 was verified. Weekly unspecified PT appointments from 11/2013 and 12/2013 (see Exhibit A19) but the documents failed to provide any details. It was also established that Claimant had no reported physical examination abnormalities in 3/2013 and 4/2013, as stated by a treating physician. Based on the presented evidence, Claimant failed to establish any impairments related to shoulder, neck or arm pain.

Treatment records established ongoing treatment for psychological obstacles. Claimant credibly testified that he has anxiety symptoms such as insomnia and racing thoughts. Claimant's testimony was verified through treatment records. Claimant's problems could affect his concentration and/or persistence. Based on the presented evidence, it is found that Claimant has significant psychological impairments which have lasted 12 months or longer. Accordingly, it is found that Claimant has a severe impairment and 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 anxiety-related symptoms. Anxiety disorders are covered by Listing 12.06 which reads:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

Claimant's GAF was found to be 51. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Moderate symptoms are not sufficient to meet the anxiety disorder listing.

Claimant has no history of psychiatric hospitalization. An absence of psychiatric hospitalizations is consistent with finding that Claimant does not meet anxiety listing requirements.

Examples of anxiety-symptoms, which are persuasive evidence of impairment from anxiety include psychomotor slowness, impaired speech and/or hallucinations. Claimant's physician noted no such psychiatric abnormalities for Claimant.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of arm pain. The listing was summarily rejected due to a general absence of ongoing restrictions and a failure to establish that Claimant cannot perform fine and gross motor movement with both arms.

Based on the presented 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.

Expanded Vocational Information (Exhibits 78-79) documents from an unknown source were presented. Claimant's past employment was noted as a dishwasher. The document was consistent with Claimant's testimony.

Claimant testified that psychological symptoms and a shoulder and arm pain prevents him from performing his past employment. A consultative examiner noted that Claimant can perform his past employment and Claimant's physician provided no persuasive evidence to suggest differently. Though Claimant may have physical and/or psychological impairments, the presented evidence does not support finding that

Claimant is unable to perform past relevant employment. It is found that Claimant can perform past relevant employment and that DHS properly denied Claimant's MA application based on a determination that Claimant is not disabled.

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 [REDACTED], including retroactive MA benefits from 2/2013, 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:

2013-69676/CG

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

