

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

IN THE MATTER OF:



Reg. No.: 2013-54402
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 17, 2013
County: Wayne (35)

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 October 17, 2013, from Redford, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. 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]/12, Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED]/2012 (see Exhibits 10-11).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 28).

4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 2).
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant employment.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A167) 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 including the yet to be written SHRT decision.
11. On [REDACTED]/13, an updated hearing packet was forwarded to SHRT.
12. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by determining that Claimant can perform past relevant employment.
13. On [REDACTED]/13 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 55-year-old male with a height of 5'10" and weight of 240 pounds.
15. Claimant has a lengthy history of alcohol and marijuana abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since approximately [REDACTED]/2013.
18. Claimant alleged disability based on impairments and issues including bleeding ulcers and gastrointestinal problems.

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 performed employment working for a delicatessen from [REDACTED]/2013 through [REDACTED]/2013. Claimant testified that he worked approximately 16-24 hours for \$8.50/hour. Claimant's employment did not amount to SGA. It is found that Claimant has not performed SGA since his MA application date; 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 38-45, 53-54) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant presented with complaints of nausea, vomiting and abdominal cramps. The hospital noted that Claimant drinks alcohol on a daily basis. A discharge summary was not presented. The hospital noted that an abdominal x-ray did not show any obstruction. The hospital noted that a chest x-ray was clear. The hospital noted that surgery was performed. Presented documents noted that Claimant received IV fluids and that Claimant's condition improved.

Hospital documents (Exhibits 15-27, 55) from an admission dated [REDACTED]/13 were presented. The hospital noted that Claimant presented with a complaint of acute abdominal pain. The hospital noted that CAT scan revealed multiple perforated ulcers. The hospital noted that Claimant was in septic shock. The hospital noted that Claimant was treated with antibiotics, proton pump inhibitor and nasogastric tube decompression. The hospital noted that intestinal surgery was performed. The hospital noted that Claimant's condition improved and that abdominal drains were removed. The hospital noted that Claimant received Norco for pain. Discharge diagnoses included perforated jejunum secondary to multiple perforated ulcers, the history of gastrointestinal bleeding and a history of alcohol abuse. A discharge date of [REDACTED]/13 was noted.

Hospital documents (A1-A167) from an admission dated [REDACTED]/13 were presented. It was noted that Claimant presented with a complaint of abdominal pain. The hospital noted that Claimant reported ceasing alcohol consumption approximately 2 months prior to admission. The hospital noted that Claimant received medications and was discharged on [REDACTED]/13 after his condition stabilized. A discharge diagnosis of acute hypokalemia was noted.

A physician letter (Exhibit A163) dated [REDACTED]/13 was presented. The letter noted that claimant had a cyst on his upper back. The physician noted a recommendation of a surgery consultation. No evidence of restrictions caused the cyst was presented.

Hospital documents (Exhibits A94-A119; A164-A167) from an encounter dated [REDACTED]/13 were presented. The hospital noted that Claimant presented with complaints of nausea, vomiting and dizziness. The hospital noted that Claimant's condition improved after he received medications.

Psychological treatment documents (Exhibits A40-A93) were presented. The documents ranged in date from [REDACTED]1/13 through [REDACTED]13. The documents noted that Claimant appeared to make the initial steps towards his recovery. Diagnoses of polysubstance dependence and major depressive disorder were made by an unspecified individual. It was noted that Claimant's depression is caused by alcoholism.

Hospital documents (Exhibits A12-A39) from an admission dated [REDACTED]/13 were presented. The hospital noted that Claimant reported complaints of nausea vomiting and abdominal pain following consumption of "a lot of beer". The hospital noted that Claimant's liver was stable. The hospital noted that Claimant could be treated conservatively with Protonix. A hospital admission from two weeks prior was noted to have occurred following a drinking binge. Noted final diagnoses included dehydration leukocytosis and esophageal ulceration.

Various substance abuse treatment documents (Exhibits A120-A161) were presented. The documents ranged in date from [REDACTED]4/13 through [REDACTED]/13. The documents noted that Claimant has a 37-year history of alcohol and marijuana abuse. The documents noted that Claimant last used on [REDACTED]/13.

Claimant alleged disability, in part, based on ulcers and other gastrointestinal issues. The presented medical documents verified that Claimant was hospitalized twice due to ulcers; each time resulting in surgery and each time related to alcohol abuse. Subsequent hospital encounters also appeared to be related to ongoing alcohol abuse. Though Claimant reported brief periods of sobriety, hospital records verify continued alcohol abuse by Claimant. The only ongoing physical impairment verified by Claimant is an inability to drink alcohol caused by his years of abuse. It is found that Claimant failed to establish suffering a severe exertional impairment.

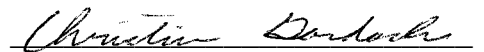
Claimant also failed to establish any psychological impairments that are severe. Claimant's two-week attempt at therapy followed by a hospital encounter caused by

binge drinking was not persuasive evidence of psychological problems. There was no compelling evidence that Claimant has any extended impairments despite his alcohol abuse. Though Claimant is surely depressed because of his continued abuse, the evidence tended to establish that Claimant's psyche would improve by stopping his abuse.

Based on the presented evidence, it is found that Claimant failed to establish having a severe impairment. Accordingly, DHS properly denied Claimant's MA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 12/13/12 based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 1/8/2014

Date Mailed: 1/8/2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

CG/hw

cc:

