

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-59634
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 18, 2013
County: Monroe

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 September 18, 2013, from Monroe, 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 7-8).

4. On [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (exhibits 4-6) 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 determining that Claimant did not have a significant impairment to performing basic work activities.
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. On [REDACTED], an Interim Order Extending the Record was mailed to Claimant to allow 60 days from the date of hearing to submit treating physician documents.
11. On [REDACTED] Claimant submitted additional documents (Exhibits B1-B4).
12. 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.
13. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.21 (see Exhibit C1).
14. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
15. As of the date of the administrative hearing, Claimant was a 44 year old male with a height of 6'2" and weight of 170 pounds.
16. Claimant has no known relevant history of alcohol or illegal substance abuse.
17. Claimant's highest education year completed was the 12th grade.
18. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient.
19. Claimant alleged disability based on impairments and issues including back pain, arm pain, acquired immune deficiency syndrome (AIDS) and related complications.

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

Claimant denied performing 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.

A letter (Exhibit 19) from a treating physician was presented. The letter was undated. It was noted that Claimant was treated for AIDS, chronic diarrhea, hypertension, depression and chronic fatigue. It was noted that Claimant took 10 different medications including Valium, Vicodin, lisinopril, and Pravastatin.

An undated physician statement (Exhibit 113) was presented. Claimant's physician wrote that Claimant has AIDS and uncontrolled chronic diarrhea.

Various medical and non-medical records (Exhibits 147-233) from 2011 and earlier were presented. The documents were scanned but not deemed relevant other than verifying ongoing treatment for AIDS.

Various treatment documents (Exhibits 20-93) were presented. [REDACTED], it was noted that Claimant tested HIV positive in 4/2003 and that he has been without medications for the prior four months. [REDACTED], a medical history of neuropathy was noted. On [REDACTED], it was noted that Claimant reported no diarrhea and an occasional headache. On [REDACTED], it was noted that Claimant reported abdominal discomfort. On [REDACTED], it was noted that Claimant reported complaints of fatigue. On [REDACTED], it was noted that Claimant reported complaints of fatigue and loose bowels.

Hospital treatment documents (Exhibits 96-104) from an encounter dated 10/30/12 were presented. Claimant's CD4 level was noted to be 424. A complaint of fatigue was noted. It was noted that Claimant's weight was stable.

A radiology report (Exhibit 126) dated [REDACTED] was presented. It was noted that radiography of Claimant's chest revealed no acute cardiopulmonary process.

Various treating physician records (Exhibits 127-145) were presented. On [REDACTED], it was noted that Claimant complained of right arm pain; Claimant was prescribed Vicodin, Zithromax and Valium. On [REDACTED] it was noted that Claimant complained of numbness and tingling in both of his arms; a history of neuropathy was noted.

Hospital treatment documents (Exhibits 105-112) from an encounter dated [REDACTED] were presented. It was noted that Claimant developed a numbness of his arms that recurs every 15 days. It was noted that Claimant's CD4 level was 480. It was noted that Claimant's weight was stable at 184 pounds.

Numerologist records (Exhibits A1-A4) dated [REDACTED] were presented. It was noted that Claimant complained of a radiating chest pain, ongoing for several months. And interpretation of mild chronic bilateral C7-C8 polyradiculopathies was noted.

A radiography report (Exhibit B1) dated [REDACTED] was presented. It was noted that an MRI showed moderate endplate osteophytosis at C3-C4, C4-C5 and C6-C7.

Treating physician documents (Exhibits B2-B3) dated [REDACTED] were presented. It was noted that Claimant complained of chronic diarrhea, ongoing for 3 to 4 years. It was noted that Claimant had diarrhea 7 to 12 times per day. It was noted that Claimant expressed difficulty with walking up to half a mile due to leg pain. Cervical spine abnormalities and stenosis were noted by the physician.

A Disability Determination Explanation (Exhibits C2-C14) dated [REDACTED] was presented. It was noted that SSA listings for affective disorders and anxiety disorders were considered. A determination of "not disabled" was noted.

Presented medical records verified that Claimant had regular AIDS treatment to address complaints of diarrhea. At least one physician described the symptom as chronic. The complaint was documented on at least three occasions over a period of more than one year. It is found that Claimant established a significant impairment to performing basic work activities.

Presented documents also established that Claimant complained of neck pain. Multiple abnormalities were verified by radiography. Some degree of pain can be presumed based on radiography verifying moderate endplate osteophytosis at three neck vertebrae spaces.

It was also verified that Claimant's medical history verified neuropathy and an ongoing problem with arm tingling and numbness. Some degree of arm restrictions can be presumed based on Claimant's complaints.

It is found that Claimant has significant impairments expected to last 12 months or longer. The evidence also established that Claimant's impairments existed at least since Claimant's application date. It is found that Claimant has a severe impairment since 5/2013. 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.

A SSA listing for human immunodeficiency virus (Listing 14.08) was considered based on Claimant's treatment for AIDS. The applicable listing reads as follows:

14.08 Human immunodeficiency virus (HIV) infection.

With documentation as described in 14.00F and one of the following:

A. Bacterial infections:

1. Mycobacterial infection (for example, caused by *M. avium-intracellulare*, *M. kansasii*, or *M. tuberculosis*) at site other than the lungs, skin, or cervical or hilar lymph nodes, or pulmonary tuberculosis resistant to treatment; or
2. Nocardiosis; or
3. *Salmonella* bacteremia, recurrent non-typhoid; or
4. Multiple or recurrent bacterial infections, including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment three or more times in a 12-month period.

B. Fungal infections:

1. Aspergillosis; or
2. Candidiasis involving the esophagus, trachea, bronchi, or lungs, or at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or
3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or
4. Cryptococcosis, at a site other than the lungs (for example, cryptococcal meningitis); or
5. Histoplasmosis, at a site other than the lungs or lymph nodes; or
6. Mucormycosis; or
7. *Pneumocystis* pneumonia or extrapulmonary *Pneumocystis* infection.

C. Protozoan or helminthic infections:

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or
2. Strongyloidiasis, extra-intestinal; or
3. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

D. Viral infections:

1. *Cytomegalovirus* disease (documented as described in 14.00F3b(ii)) at a site other than the liver, spleen, or lymph nodes; or
 2. Herpes simplex virus causing:
 - a. Mucocutaneous infection (for example, oral, genital, perianal) lasting for 1 month or longer; or
 - b. Infection at a site other than the skin or mucous membranes (for example, bronchitis, pneumonitis, esophagitis, or encephalitis); or
 - c. Disseminated infection; or
 3. Herpes zoster:
 - a. Disseminated; or
 - b. With multidermatomal eruptions that are resistant to treatment; or
 4. Progressive multifocal leukoencephalopathy.
- E. Malignant neoplasms:**
1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or
 2. Kaposi's sarcoma with:
 - a. Extensive oral lesions; or
 - b. Involvement of the gastrointestinal tract, lungs, or other visceral organs; or
 3. Lymphoma (for example, primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other non-Hodgkin's lymphoma, Hodgkin's disease); or
 4. Squamous cell carcinoma of the anal canal or anal margin.
- F. Conditions of the skin or mucous membranes (other than described in B2, D2, or D3, above), with extensive fungating or ulcerating lesions not responding to treatment (for example, dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal *Candida*, condyloma caused by human *Papillomavirus*, genital ulcerative disease).**
- G. HIV encephalopathy, characterized by cognitive or motor dysfunction that limits function and progresses.**
- H. HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (computed based on pounds, kilograms, or body mass index (BMI)) or other significant involuntary weight loss as described in 14.00F5, and in the absence of a concurrent illness that could explain the findings. With either:**
1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or
 2. Chronic weakness and documented fever greater than 38°C (100.4°F) for the majority of 1 month or longer.
- I. Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.**
- J. One or more of the following infections (other than described in A-I above). The infection(s) must either be resistant to treatment or require hospitalization or intravenous treatment three or more times in a 12-month period.**
1. Sepsis; or
 2. Meningitis; or
 3. Pneumonia; or
 4. Septic arthritis; or
 5. Endocarditis; or
 6. Sinusitis documented by appropriate medically acceptable imaging.

K. Repeated (as defined in 14.00I3) manifestations of HIV infection, including those listed in 14.08A-J, but without the requisite findings for those listings (for example, carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08I), or other manifestations (for example, oral hairy leukoplakia, myositis, pancreatitis, hepatitis, peripheral neuropathy, glucose intolerance, muscle weakness, cognitive or other mental limitation) resulting in significant, documented symptoms or signs (for example, severe fatigue, fever, malaise, involuntary weight loss, pain, night sweats, nausea, vomiting, headaches, or insomnia) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

Claimant testified that he suffers chronic fatigue and chronic diarrhea. Presented treatment records consistently noted Claimant's complaints. A notable weight loss was not documented. It was also not documented that Claimant's diarrhea complaints were so severe that Claimant required intravenous assistance or tube feeding. Though Claimant's symptoms do not meet subsections A through J, the symptoms are deemed to be serious enough to markedly affect Claimant's daily activities.

Claimant testified that he routinely has up to 15 bouts of diarrhea per day. Claimant also testified that he has marked difficulties with performing any activities due to fatigue. Based on the presented evidence, it is found that Claimant meets the listing of 14.08 (K). Accordingly, Claimant is found to be a disabled individual and that DHS erred in denying 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.

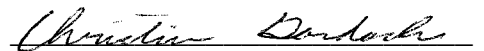
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet SSA Listing 14.08. The analysis and finding applies equally for Claimant's SDA benefit application. For good measure, Claimant is categorically eligible for SDA benefits simply based on his AIDS diagnosis. 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 and SDA 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: 2/28/2014

Date Mailed: 2/28/2014

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:

