

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-67881
Issue No.: 2009, 2001
Case No.: [REDACTED]
Hearing Date: January 16, 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 January 16, 2014, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. [REDACTED] Claimant's spouse testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] - [REDACTED] Medical Contact Worker.

ISSUES

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

The second issue is whether DHS properly failed to consider Claimant's MA eligibility based on status as a caretaker relative.

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 1/2013.

2. Claimant alleged eligibility for MA benefits based on disability and on being a caretaker relative.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 73-75; 91-92) informing Claimant of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 76).
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-A31) 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 an SSA Disability Determination Explanation (Exhibits B1-B13) which determined Claimant was not disabled.
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 44-year-old male with a height of 5'7" and weight of 217 pounds.
15. Claimant has a history of alcohol and/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 did not have health coverage.

18. Claimant alleged disability based on impairments and issues including lower back pain (LBP), gout, diabetes mellitus (DM), hypertension, sleep apnea, heart problems and psychiatric 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. Claimant alleged eligibility for Medicaid based on disability and for being a caretaker. Medicaid eligibility based on disability will first be considered.

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.

Claimant testified that he has a history of drug and alcohol use. Claimant testified that he stopped using alcohol and/or drugs after he attempted suicide in 2011 by jumping out in traffic. Claimant testified that he does not see a therapist or psychiatrist due to a lack of insurance.

Hospital documents (Exhibits 24-40) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of falling when getting out of bed.

A recommendation of a sleep apnea study as an outpatient was noted. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 41-55) form an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dyspnea and neck pain. A diagnosis of near syncope was noted.

Hospital documents (Exhibits 12-23) form an admission dated [REDACTED] were presented. It was noted that Claimant presented after a week of high blood sugar readings. Recent treatment for syncope from sleep apnea was noted. A history of cocaine and alcohol abuse was noted. An impression of uncontrolled diabetes and abdominal pain were noted. It was noted that Claimant had heart disease, which was controlled with medication. It was noted that Claimant's insulin levels were adjusted. It was noted that Claimant was discharged on [REDACTED].

Hospital documents (Exhibits A19-A31) form an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of nausea and vomiting. A diagnosis of diabetic ketoacidosis was noted. It was noted that Claimant was in poor compliance with medication. It was noted that Claimant's medications were adjusted and that Claimant's blood sugar level was reduced.

A consultative mental status examination report (Exhibits 94-99) dated [REDACTED] was presented. It was noted that Claimant reported the following characteristics: short temper, fear of crowds and laziness. A suicide attempt from 2012 was noted. Axis I diagnoses for polysubstance dependence (2 years remission), and adjustment disorder were noted. A "self-reported" diagnosis for schizophrenia was noted. Claimant's GAF was noted to be 75. It was noted that Claimant was mildly impaired in relating to others. Moderate impairments in remembering were noted. Moderate impairments were also noted in Claimant's ability to concentrate and withstand stress.

A consultative physical examination report (Exhibits 101-107) dated [REDACTED] was presented. It was noted that Claimant reported complaints of gout (in remission), hypertension, DM acid reflux and various psychological symptoms. It was noted that Claimant received a pacemaker 10 months prior. It was noted that Claimant could perform all 23 listed work abilities, which included sitting, standing, bending, pushing and carrying. Claimant had no restrictions in tested ranges of motion.

Various documents (Exhibits A1-A18) from 2013 medical appointments were presented. The appointments verified ongoing treatment for DM and back pain.

Presented records verified that Claimant has multiple psychological and physical problems including depression and diabetes. Claimant testified that his walking is restricted due to dyspnea. The presented evidence suggested that Claimant is a non-compliant diabetic and a recovering drug addict with psychological issues. Back pain and shortness of breath were not well-documented symptoms but were noted. Based on a de minimus standard, it is found that Claimant has ambulation and psychological

restrictions due to dyspnea and/or back pain. The problems were established to have lasted since at least 2012.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Psychological listings (12.00) were considered based on consultative examiner stated restrictions that Claimant has various impairments. The listings were rejected due to a failure to establish any marked restrictions or any other listing requirements.

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.

Claimant testified that he performed past employment as part of a framing crew. Claimant clarified that he built wall frames for homes. Claimant testified that he had to lift heavy weights, which he can no longer do. Claimant's testimony was credible and consistent with presented medical documentation. It is found that Claimant cannot perform past relevant employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d

321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as

reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Claimant testified that he is capable of sitting for 45-minute periods. Though Claimant has a history of complaining of back pain, no radiology was presented to verify any abnormalities. A history of back pain complaints, by itself, is not sufficient to presume any sitting restrictions.

Claimant testified that he has limited walking abilities due to shortness of breath. Claimant also conceded that his problem is improving, presumably due to diabetic medication compliance. Presented documents did not strongly suggest that Claimant is incapable of the ambulation required to perform sedentary employment.

Claimant established various psychological restrictions. Claimant's GAF was noted to be 75. A GAF within the range of 71-80 notes if symptoms are present, they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in schoolwork). Despite the relatively high GAF, specific restrictions were noted. Claimant was found limited in social, concentration and stress coping; Claimant was not found markedly limited in any of the abilities.

Based on the presented evidence, Claimant can minimally perform simple and repetitive employment involving small doses of social interaction. Though such jobs do not abound, it is presumed that Claimant's employment opportunities are not so limited as to presume a finding of disability.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (high school), employment history (unskilled), Medical-Vocational Rule 201.27 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of MA benefits.

As noted above, Claimant presented a second basis for Medicaid disability. Claimant's status as a caretaker must be considered. It was not disputed that Claimant was a married individual who lived with a step-child.

A caretaker relative is a person who meets all of the following requirements:

- Except for temporary absences, the person lives with a dependent child. Dependent child is defined later in this item.
- The person is the parent of the dependent child or the specified relative (other than a parent) who acts as parent for the dependent child. Specified relative is defined later in this item. Acts as parent means provides physical care and/or supervision.
- The person is not participating in a strike; and, if the person lives with his spouse, the spouse is not participating in a strike. Use the FIP striker policy in BEM 227.
- The MA eligibility factors in the following items must be met: BEM 220, Residence, BEM 221, Identity, BEM 223, Social Security Numbers, BEM 225, Citizenship/Alien Status, BEM 255, Child Support, BEM 256, Spousal/Parental Support, BEM 257, Third Party Resource Liability, BEM 265, Institutional Status and BEM 270, Pursuit of Benefits.

BEM 135 (7/2013), p. 3.

It was not disputed that Claimant's application only requested MA benefits for himself, not for his stepchild. DHS contended that Claimant's failure to apply for MA benefits for his stepchild was fatal to Claimant's claim as a caretaker. Whether a child receives or applies for MA benefits seems to be an irrational way to define a caretaker; nevertheless, the DHS contention is partially supported by DHS policy. Among the requirements for a dependent child is that the child be one of the following: FIP recipient, SSI recipient, MA applicant, active MA deductible, MA recipient or a MI Child recipient. *Id.*, pp. 2-3.

Claimant testified that his stepchild received SSI benefits. Claimant's testimony was neither verified nor rebutted. In fairness to DHS, the issue was not raised in Claimant's hearing request so DHS would understandably not be prepared to address the issue during the hearing. A finding cannot be made that Claimant is eligible as a caretaker based on his stepchild's receipt of SSI benefits. The below order reflects that DHS must reconsider Claimant's eligibility as a caretaker based on potential caretaker eligibility through a stepchild receiving SSI benefits.

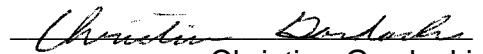
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly determined Claimant to be not disabled for purposes of an MA application dated [REDACTED], including retroactive MA benefits. The actions taken by DHS are **PARTIALLY AFFIRMED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly failed to consider Claimant's MA eligibility based on caretaker status. It is ordered that DHS perform the following actions:

- (1) reinstate Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from 1/2013;
- (2) process Claimant's MA eligibility subject to the finding that Claimant is potentially eligible for G2C eligibility if his stepchild is an SSI recipient; and
- (3) initiate a supplement of any benefits improperly not issued if Claimant is found eligible for MA benefits based on caretaker status.

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


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

Date Signed: 4/11/2014

Date Mailed: 4/11/2014

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:

