

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-9167
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 6, 2014
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on March 6, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

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 terminated Claimant's 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 an unspecified date in 2011, Claimant applied for MA benefits.
2. On an unspecified date in 2011, DHS denied Claimant's application for MA benefits.
3. On an unspecified date, DHS approved Claimant for SDA benefits.

4. Claimant's SDA benefit period was scheduled to expire beginning 10/2013.
5. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 20-21) for purposes of SDA eligibility.
6. On [REDACTED], Claimant reapplied for MA benefits.
7. Claimant's only basis for MA and SDA benefits was as a disabled individual.
8. On [REDACTED], based on the MRT denial from [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 2-4) informing Claimant of the denial.
9. On [REDACTED], DHS terminated Claimant's eligibility for SDA benefits, effective 11/2013, and mailed a Notice of Case Action (Exhibits 5-7) informing Claimant of the denial.
10. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits and termination of SDA benefits.
11. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.
12. As of the date of the administrative hearing, Claimant was a 44-year-old male with a height of 5'4" and weight of 205-210 pounds.
13. Claimant has no known relevant history of alcohol or illegal substance abuse.
14. Claimant's highest education year completed was the 12th grade.
15. As of the date of the administrative hearing, Claimant had no ongoing medical coverage.
16. Claimant alleged disability based on ankle 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 noted special arrangements in order to participate in the hearing. Claimant testified that he did not require any special arrangements for his hearing participation or attendance.

Claimant testified that he requested a hearing to dispute the denial of an MA benefit application from 2011. Claimant conceded that DHS informed him of the denial in 2011.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (7/2013), p. 5. The request must be received anywhere in DHS within the 90 days. *Id.*

Claimant requested a hearing on [REDACTED]. Claimant's hearing request was at least one year too late to dispute a 2011 dated application denial. It is found that Claimant failed to timely request a hearing concerning an application denial from 2011. Claimant's hearing request was timely to dispute a denial of the denial of an MA application submitted to DHS on [REDACTED].

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 credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the

severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with Claimant's medical background and a summary of the relevant submitted medical documentation.

Claimant testified that fractured his left ankle three years ago. Claimant testified that surgery was performed and screws were inserted into his ankle. Claimant stated that he believes that the screws are now loose and this creates a discomfort for him when he walks on stairs or for long distances.

A consultative examination report (Exhibits 14-18) dated [REDACTED] was presented. The examining physician noted conclusions of chronic pain in the left ankle, mild obesity, and upper left arm. A fair prognosis was provided.

A Medical Examination Report (Exhibits 11-13) dated [REDACTED] from a physician was presented. The form was completed by a consulting physician with a 1 day history with

Claimant. The physician provided diagnoses of obesity and left ankle pain. The physician noted that Claimant was restricted to occasional lifting of 50 or more but that Claimant could frequently lift or carry weights of 25 pounds or less. The examiner noted that Claimant could stand or sit at least 6 hours of an 8-hour workday. The physician noted that Claimant could not operate left foot controls. The physician noted a recommendation that Claimant see a physiatrist.

Claimant testified that he had walking restrictions due to ankle pain. Lifting and carrying restrictions, albeit relatively mild restrictions, were verified. The evidence was suggestive that Claimant's restrictions will continue without surgical intervention. The evidence also established that the restrictions existed since at least 10/2013. Claimant established a severe impairment since at least 10/2013. 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 listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of ankle pain. The listing was rejected due to a failure to establish an inability to ambulate effectively.

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 a supervisor for parking structure. Claimant also stated that he worked as a supervisor for a cleaning company. Claimant testified that he performed employment packaging various types of media. Claimant testified that he is unable to perform his past jobs because he cannot perform

the necessary standing and/or walking required of his past employment. Claimant's testimony was not supported by the medical evidence.

Evidence of Claimant's ability to stand and/or walk was presented. According to a physician, Claimant can perform at least 6 hours of walking and/or standing. The ability to walk and/or stand should allow Claimant to perform his past employment as a media packager or as a parking structure supervisor. It is found that Claimant can perform his past relevant employment. Accordingly, it is found that DHS properly denied Claimant's MA benefit application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

Claimant also requested a hearing to dispute an SDA termination. A termination of benefits requires applying an ongoing MA benefit analysis, which differs from the application analysis.

In evaluating a claim for ongoing MA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding if an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. This consideration requires a summary and analysis of presented medical documents.

It was already determined that Claimant does not meet a SSA listing. Thus, the analysis may proceed to the second step.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i).

A determination of medical improvement requires a consideration of documentation that was factored in the previous finding of disability. DHS presented no such evidence. It could be reasonably concluded that the DHS failure to verify improvement justifies a continuance of SDA benefits. In the present case, Claimant's evidence of ongoing disability was so underwhelming that medical improvement can be presumed. As noted above, the only evidence of restriction was occasional lifting of 50 pounds or more and an inability to operate left foot controls. It is improbable that Claimant's original basis for disability was based on such relatively slight restrictions. Thus, medical improvement is found despite the absence of previously considered evidence.

The third step of the analysis considers medical improvement and its effect on the ability to perform SGA. Medical improvement is not related to the ability to work if there has been a decrease in the severity of the impairment(s) present at the time of the most recent favorable medical decision, but *no* increase in functional capacity to do basic work activities. 20 CFR 416.994(b)(1)(ii). If there has been any medical improvement, but it is not related to the ability to do work and none of the exceptions applies, benefits will be continued. *Id.*

Again, the absence of the evidence to support the issuance of SDA benefits is problematic; again, the absence will be overlooked based on the relatively unpersuasive evidence of disability. It is found that Claimant has medical improvement which increases his functional capacity to perform basic work activities.

Step four considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). Step four lists two sets of exceptions.

The first group of exceptions allow a finding that a claimant is not disabled even when medical improvement had not occurred. The exceptions are:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.
20 CFR 416.994(b)(4)

If an above exception does not apply, then the process moves to step five. If an exception applies, then the analysis stops and the claimant is deemed not disabled.

The second group of exceptions allow a finding that a claimant is not disabled irrespective of whether medical improvement occurred. The exceptions are:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperated;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.
20 CFR 416.994(b)(4)

If an exception from the second group is applicable, the disability analysis stops and the claimant is to be found not disabled. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

The presented evidence does not justify applying any of the above exceptions to the finding that medical improvement did not occur. Accordingly, the analysis may proceed to step five.

Step five of the analysis considers whether all the current impairments in combination are severe. 20 CFR 416.994(b)(5)(v). It has already been determined that Claimant has a severe impairment so the analysis may proceed to step six.

The sixth step in analyzing a disability claim requires an assessment of the Claimant's RFC and past relevant employment. 20 CFR 416.994(b)(5)(vi). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.* .

It has already been determined that Claimant can perform past relevant employment. Accordingly, it is found that Claimant is not disabled.

One final procedural aspect must be addressed. Consideration was given to whether DHS should have continued Claimant's SDA eligibility pending the outcome of the hearing.

A timely hearing request is a request received anywhere in the department within 11 days of the effective date of a negative action. BAM 600 (7/2013), p. 22. When the 11th calendar day is a Saturday, Sunday, holiday, or other non-workday, the request is timely if received by the following workday. *Id.* While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. *Id.* Upon receipt of a timely hearing request, DHS is to reinstate program benefits to the former level for a hearing request filed because of a negative action. *Id.*

DHS initiated termination of Claimant's SDA eligibility on [REDACTED]. Claimant requested a hearing on [REDACTED]. DHS failed to continue issuing SDA benefits pending the hearing outcome. The DHS failure to do so is reversible error.

DECISION AND ORDER

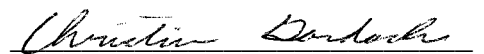
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant untimely requested a hearing to dispute an MA benefit application from 2011. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly initiated termination of Claimant's SDA eligibility, effective 11/2013. It is also found that DHS properly denied Claimant's MA application dated [REDACTED]. 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 continuously issue SDA benefits based on Claimant's timely submitted hearing request. It is ordered that DHS perform the following actions:

- (1) reinstate Claimant's SDA eligibility from 11/2013 through 3/2014, subject to the finding that Claimant submitted a timely hearing request; and
- (2) initiate a supplement of benefits improperly not issued.

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


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

Date Signed: 3/26/2014

Date Mailed: 3/26/2014

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:

