

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-63363
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 19, 2014
County: Oakland (03)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on February 19, 2014, from Walled Lake, 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], Specialist.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED].
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 9-10).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED] Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.14
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1) 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 Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit treating physician documents.
12. On [REDACTED], Claimant submitted additional documents (Exhibits B1-B28)
13. 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.
14. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.14.
15. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
16. As of the date of the administrative hearing, Claimant was a 52-year-old male with a height of 5'10" and weight of 300 pounds.
17. Claimant has no known relevant history of alcohol or illegal substance abuse.
18. Claimant's highest education year completed was the 12th grade.
19. As of the date of the administrative hearing, Claimant had no medical coverage.

20. Claimant alleged disability based on impairments and issues including vision loss, asthma, diabetes mellitus, dyspnea, and neuropathy.

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 background based on testimony and a summary of relevant submitted medical documentation.

Claimant testified that he has a long history of diabetes. Claimant stated that his feet and legs suffer from neuropathy which limits his walking. Claimant testified that he does not have foot ulcers but he does walk with a limp. Claimant testified that he could walk one block but was unsure if he could walk farther. Claimant testified he treats foot pain by icing his feet. Claimant testified that the last "couple of years" his feet have gotten worse. Claimant testified that he was unable to obtain diabetes medication in the past but that he is currently insulin compliant.

Hospital documents (Exhibits 20-179) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of radiating chest pressure, ongoing for 3-4 days. Other reported symptoms included dyspnea, arm numbness, and arm weakness. A medical history that was "significant for diabetes" and neuropathy was noted; a history of hypertension was also noted. An impression of chronic kidney disease (Stage II or III) was noted. It was noted that Claimant was noncompliant (presumably referring to Claimant's diabetes). On [REDACTED], it was noted that a coronary angiography revealed 50% stenosis of an artery; an impression of coronary occlusive disease was noted. Claimant's ejection fraction was noted as 55%. It was noted that a

successful coronary angioplasty was performed; left ventriculography and right radial access were also noted procedures. A plan of long-term dual antiplatelet therapy was noted. On [REDACTED] Claimant's renal sufficiency was noted as stable.

A cardiologist letter (Exhibits 18-19; B3-B4) dated [REDACTED] was presented. It was noted that Claimant reported "feeling good". It was noted that Claimant's EKG was normal. It was noted that Claimant "desperately" needed long-term heart treatment.

Physician appointment records (Exhibits B20-B23) dated [REDACTED] were presented. A diagnosis of DM was noted.

A Medical Examination Report (Exhibits 16-17) dated [REDACTED] from Claimant's treating cardiologist was presented. Claimant's physician noted an approximate 1 month history of treating Claimant. Claimant's cardiologist diagnoses of retrosternal chest pain, back pain, heaviness, left arm numbness, and abdominal pain. Claimant's ejection fraction was noted as 55%. It was noted that Claimant may not lift any amount of weight. Sitting and standing restrictions were not addressed. A stent placement from [REDACTED] was noted. A list of 11 medications was noted. It was noted that Claimant can meet household needs.

Physician appointment records (Exhibits B20-B23) dated [REDACTED] were presented. A diagnosis of hypertension was noted.

Physician appointment records (Exhibits B16-B19) dated [REDACTED] were presented. A diagnosis of acute bronchitis was noted.

Physician appointment records (Exhibits B11-B15) dated [REDACTED] were presented. A diagnosis of acute pharyngitis was noted.

Physician appointment records (Exhibits B7-B10) dated [REDACTED] were presented. Claimant's physician that Claimant's dyspnea was improving with inhaler use. It was noted that previously reported ear pain was not improved. Diagnoses of asthma and ear pain were noted.

A Medical Examination Report (MER) (Exhibits B1-B2) dated [REDACTED] from Claimant's internal medicine physician was presented. Claimant's physician failed to note any history of treating Claimant. The physician provided diagnoses of diabetic neuropathy in Claimant's feet and legs. Asthma, dyspnea, and poor vision were also noted. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant was limited to occasional lifting of less than 10 pounds. Claimant's physician noted that over an 8-hour workday, Claimant was restricted to standing and/or walking of less than 2 hours and sitting less than 6 hours. It was noted that Claimant can meet household needs.

An undated list (Exhibit A1) of Claimant's medications was presented. Presumably, the list reflected Claimant's daily medications at the time of the hearing. Claimant's

medications included: Lopressor, Effient, Verapamil, Fenofibrate, Losartan, Hydrochlorothiazide, Lisinopril, and crestor.

Presented records verified that Claimant has significant walking and ambulation restrictions due to neuropathy. The evidence also established that Claimant's impairments have lasted at least since [REDACTED] the first month of MA benefits sought by Claimant.

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.

Claimant's most prominent impairment appears to be neuropathy. The listing most applicable is covered by 11.14, which reads (in combination with Listing 11.04B):

11.14 *Peripheral neuropathies.* With disorganization of motor function characterized by significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C), in spite of prescribed treatment.

Presented evidence failed to establish disorganization of motor function. Presented evidence also failed to show any notable period of medication compliance by Claimant. It is found that Claimant does not meet the listing for neuropathy.

A listing for visual acuity (Listing 2.02) was considered based on complaints of poor eyesight. This listing was rejected due to a failure to establish a corrected eyesight of worse than 20/200 in Claimant's worst eye.

A listing of chronic pulmonary insufficiency was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

A Work History Report (Exhibits 183-195). The report was completed by Claimant as part of a SSA disability claim. It was noted that Claimant was a construction laborer until 2006; it should be noted that Claimant's SSA earnings failed to reflect any reported income for Claimant for the years of [REDACTED]. It was noted that Claimant worked for a retail home improvement store in 2010; Claimant's earnings from this job were \$477.

Claimant's work history noted that he was required to lift up to 100 pounds in the performance of former construction laborer employment. Claimant testified that his job also required climbing ladders. Claimant testified that he is unable to perform the lifting and climbing required of his construction employment. Claimant's testimony was credible and consistent with presented evidence.

Claimant testified that his retail job required lifting 15-20 pounds and was a mostly standing job. Claimant testified that leg pain would preclude him from returning to retail employment. Claimant's employment sounded identical to what SSA describes as light employment. A finding concerning Claimant's ability to perform light employment will be reserved for step five of the disability analysis. For purposes of this decision, it is found that Claimant cannot perform past employment and the analysis will 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 provided two documents from his physicians addressing what he can and cannot do. The first document came from Claimant's cardiologist.

Claimant's cardiologist stated that Claimant cannot lift any amount of weight. This restriction is consistent with an inability to perform any employment. Claimant's cardiologist also noted that Claimant's condition was improving. How much and how fast Claimant's condition was improving makes it difficult to determine the amount of weight that Claimant currently can lift.

Claimant's cardiologist failed to cite any standing restrictions for Claimant. This is consistent with finding that Claimant's ability to stand would not impact his ability to perform light employment.

Claimant's treating physician noted that Claimant was restricted to walking of less than 2 hours per 8 hour workday. This is consistent with finding that Claimant cannot perform light employment.

Presumably, Claimant's walking restrictions are based on what Claimant's doctor described as "severe" neuropathy. Objective evidence of neuropathy was not well established as Claimant had several appointments, none of which appeared to concern neuropathic pain. Neuropathy is of such a nature that physical examination can reliably detect neuropathy. Claimant's doctor noted the following physical examination findings: bilateral leg numbness peripheral edema (2+), and fatigue with ambulation. The findings are sufficient to support a finding that neuropathy prevents Claimant's performance of light employment. This finding is further supported by Claimant's need for lifelong cardiac treatment.

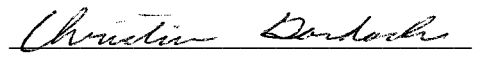
Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school- no direct entry into skilled work), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA 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 benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from [REDACTED];
- (2) evaluate Claimant's eligibility for MA 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 MA benefits.

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


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

Date Signed: 6/6/2014

Date Mailed: 6/6/2014

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.

2013-63363/CG

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:

