

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

IN THE MATTER OF:

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████████████████████

Reg. No.: 2014-11489
Issue No.: 2009
Case No.: ██████████
Hearing Date: April 14, 2014
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 April 14, 2014, from Monroe, Michigan. Participants included the above-named Claimant. ██████████ testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included ██████████ ██████████, Hearings Facilitator.

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 9/3/13, Claimant applied for MA benefits, including retroactive MA benefits from 6/2013.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/11/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibit 1).

4. On 10/18/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 10/18/13, Claimant requested a hearing disputing the denial of MA benefits.
6. On 1/3/14, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational 202.20
7. On 4/14/14, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A20) 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 4/15/14, 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 90 days from the date of hearing.
12. On 6/6/14, SHRT determined that Claimant was not disabled, in part, by determining that Claimant's condition will improve within 12 months and that his condition does not preclude the performance of all work.
13. On 6/11/14, the Michigan Administrative Hearings System received the updated hearing packet and SHRT decision.
14. As of the date of the administrative hearing, Claimant was a ■-year-old male with a height of 5'11" and weight of 250 pounds.
15. Claimant has a distant history of substance abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since 2009, and likely, an ongoing Healthy Michigan Plan recipient.
18. Claimant alleged disability based on impairments and issues including headaches, neuropathy, hypertension, diabetes mellitus and diabetes 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. "Current" work activity is interpreted to include all time since the date of application. 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 a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 12-142) from an admission dated 8/26/13 were presented. It was noted that Claimant presented with complaints of a left foot ulcer, abdominal pain, and emesis. It was noted that Claimant complained of a foot ulcer, ongoing for 1 year. It was noted that Claimant reported not taking diabetes medication for the prior year due to a shortage of funds (see Exhibit 72). It was noted that Claimant had a deep ulcer on the ball of his left foot. It was noted that Claimant did not keep previous treatment appointments (Exhibit 29). It was noted that Claimant underwent wound debridement. It was noted that Claimant's left 2nd toe showed gangrenous necrosis and was amputated. It was noted that gross sensation was absent from all toes on Claimant's right foot; diminished sensation from mid-foot and distal were also noted. Diagnoses of peripheral neuropathy and peripheral vascular disease were noted (see Exhibit 36). It was noted that CTs of Claimant's abdomen and pelvis were unremarkable (see Exhibit 37). It was noted that Claimant's pain was controlled. It was noted that Claimant was discharged on 9/6/13. Two weeks of antibiotic treatment was noted.

Hospital documents (Exhibits A1-A18) dated 3/20/14 were presented. It was noted that Claimant had a deep necrotic ulcer on the ball of his right foot. It was noted that the

ulcer was staph-infected. It was noted that Claimant quit drinking alcohol, one year prior. It was noted that Claimant reported right foot neuropathy. A diagnosis of osteomyelitis was noted. It was noted that Claimant underwent right foot surgery of the following: second metatarsal head, second toe, and phalanx.

Following the hearing, Claimant's AHR submitted hospital documents related to a Claimant hospital encounter from 3/2014. MAHS received the documents on 6/25/14. It must be determined whether Claimant's submitted documents should be accepted as exhibits.

During the hearing, both sides agreed to an extension of the record to allow SHRT evaluation of disability based on records presented by Claimant at the hearing. The extension of the record was solely for SHRT evaluation. Claimant could have requested a record extension during the hearing; Claimant's AHR made no such request. This consideration is suggestive in not allowing Claimant's documents as exhibits.

During the hearing, a discussion occurred concerning adding documents sent by DHS as exhibits. Claimant's AHR reasonably objected to the addition of any documents forwarded by SHRT. It is somewhat hypocritical that Claimant's AHR seeks to submit documents not evaluated by DHS while objecting to documents sent by DHS. The hypocrisy is not as blatant as it appears because DHS has the ability to evaluate documents following the hearing (by SHRT evaluation), while Claimant's side does not. In the present case, Claimant's submission occurred after SHRT evaluation. A second SHRT evaluation for documents that were not expected to be submitted would be inappropriate. For the above stated considerations, Claimant's recently submitted documents were not admitted as exhibits.

Claimant testified that he is in immense pain due to an inability to obtain pain medications. Claimant's testimony was curious because Claimant should have access through pain medications through ongoing AMP/HMP eligibility. Claimant's testimony implied that his inability to get pain medication is a temporary and recent event occurring after DHS upgraded Claimant's medical coverage. DHS presented testimony suggesting that Claimant may have failed to select a provider following an upgrade in MA coverage. The loss of treating physician is presumed to be only temporary; thus, it is not an ongoing obstacle relevant to Claimant's allegation of disability.

Claimant alleged ongoing walking and lifting restrictions. Claimant's testimony is consistent with presented medical evidence. It is probable that Claimant's restrictions have lasted at least since 6/2013 and that the restrictions have and/or will continue for 12 months. Accordingly, Claimant established that he suffers a severe impairment and 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 peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

A listing for amputation (Listing 1.05) was considered. The listing was rejected because it was not established that Claimant has the inability to ambulate effectively.

It is found that Claimant failed to establish meeting an 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 part-time employment for several years as a furniture installer. Claimant testified that he is unable to perform the lifting required of this employment.

Claimant testified that he worked for a fast food restaurant. Presumably, Claimant's job required extensive standing. For purposes of this decision, it will be found that Claimant cannot perform the standing required of his past employment.

Based on the presented evidence, it is found that Claimant cannot perform past employment. Accordingly, the disability 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 presented various documents concerning lifting and ambulation restrictions.

A Medical Examination Report (Exhibits A19-A20) dated 11/8/13 from a physician was presented. The authoring physician noted no previous history of treating Claimant. The physician noted a diagnosis of toe amputation. The physician noted that Claimant could never lift or carry any amount of weight. No standing or sitting restrictions were noted. It was noted that Claimant could not perform repetitive foot control actions. It was noted that Claimant could not meet his needs in the home but specific assistance needed was not noted.

Generally, an inability to lift any amount of weight is persuasive evidence of an inability to perform any type of employment. In the present case, the cited restriction was not persuasive evidence of an inability to perform sedentary employment.

Generally, the longer the patient-client relationship, the more persuasive are the opinions of the treating physician. As noted above, the no-lifting restriction was cited by a physician with no treatment history with Claimant.

The form completed by Claimant's physician includes a section on sitting and standing restrictions. As it happened, Claimant's physician did not note that Claimant has any sitting or standing restrictions. It is somewhat inconsistent that Claimant's physician would restrict Claimant from lifting any weight while ignoring standing and walking restrictions.

Claimant's testimony conceded that his physician imposed a 15 pound weight lifting restriction. Claimant's stated restriction is consistent with an ability to perform sedentary employment.

Claimant testified that hand neuropathy prevents him from performing fine and gross movements with his hands. The presented medical records exclusively addressed Claimant's foot problems. It is possible that neuropathy affects Claimant's hands, however, without objective medical evidence, it cannot be found that Claimant is unable

to perform common sedentary employment actions (e.g. writing, typing, or light assembly).

The Medical Examination Report was not the only source of restrictions. Following Claimant's 8/2013 hospitalization, discharge instructions noted no restrictions on the following: driving, lifting, working, and hygiene (see Exhibit 137). This evidence is suggestive that Claimant has minimal lifting and ambulation restrictions.


It is also notable that Claimant's foot problems were caused, in part, by Claimant's medication and treatment noncompliance. Treatment noncompliance is notable because it is presumed that Claimant's foot ulcers will heal with proper treatment and medication.

Claimant likely has lifting or ambulation restrictions due to previous amputations and ongoing neuropathy. The evidence was not persuasive in establishing that Claimant's restrictions preclude his performance of sedentary employment.

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.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 9/3/13 based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



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

Date Signed: July 3, 2014

Date Mailed: July 3, 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/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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