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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-16608
Issue No.: 2009
Case No.: [redacted]
Hearing Date: May 14, 2014
County: Wayne (19)

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 May 14, 2014, from Inkster, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted], Medical Contact Worker.

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.
2. On [redacted], Claimant's AHR applied for MA benefits, including retroactive MA benefits form [redacted].
3. Claimant's only basis for MA benefits was as a disabled individual.

4. On [redacted] the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).

5. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

6. On an unspecified subsequent date, SSA issued SSI benefits to Claimant, effective [redacted], based on presumptive eligibility.

7. On an unspecified date, DHS issued MA benefits to Claimant, effective [redacted].

8. On [redacted], Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit A42).

9. On [redacted], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.

10. On [redacted], an administrative hearing was held.

11. Claimant presented new medical documents (Exhibits A1-A42) at the hearing.

12. During the hearing, Claimant waived the right to receive a timely hearing decision.

13. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.

14. 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 90 days from the date of hearing.

15. On [redacted], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.

16. On [redacted], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

17. As of the date of the administrative hearing, Claimant was a 39 year old male with a height of 5'10'' and weight of 185 pounds.

18. Claimant has no known relevant history of alcohol or illegal substance abuse.

19. As of the date of the administrative hearing, Claimant was an ongoing Medicaid recipient.

20. Claimant alleged disability based on impairments related to a stroke.

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.

DHS presented unrefuted testimony that Claimant received Medicaid benefits beginning [redacted] through the date of hearing. This decision will address Claimant's MA eligibility for the period of [redacted] (the first month of MA benefits requested) through [redacted] the most recent month in which MA benefits were not issued.

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

Claimant testified that he received SSI benefits based on a "presumptive" determination of disability. A presumptive disability determination is understood to be a temporary determination of disability that is applicable for certain medical conditions. The determination is understood to be a method to offer qualified applicants financial support until SSA makes a final determination of disability.

During the hearing, it was not disputed that Claimant's presumptive eligibility began 9/2013, the same month in which DHS determined began Claimant's MA eligibility. Claimant's presumptive eligibility is not deemed to have a positive effect on Claimant's eligibility from [redacted] because Claimant was not found disabled for any of those months.

Consideration was also given to denying Claimant's MA eligibility for the period of [redacted] based on an apparent denial by SSA of SSI eligibility. Denying Claimant's MA eligibility on the basis of an SSI determination was rejected because Claimant's SSI eligibility was not final (see BEM 260). Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id*., p. 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*., p. 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 CRF 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 testified that he previously worked for 40 hour weeks for $12 per hour. Claimant initially testified that he was employed until [redacted] Claimant then testified that he did not work after he was hospitalized beginning [redacted] the date he suffered a stroke. It is possible that Claimant's income from [redacted] exceeded presumptive SGA limit, however, such a finding is purely speculative. Based on the presented evidence, it is found that Claimant's income did not exceed SGA income limits since [redacted].

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 F2d 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 15-23; A6-A36) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of headache, dizziness dyspnea, and slurred speech, ongoing for 24 hours. On [redacted], it was noted that a speech pathologist noted that Claimant had communication and concentration deficits. The speech pathologist noted that Clamant had language deficits which interfered with his ability to communicate for basic needs. A recommendation of 3-5 times per week treatment was noted. It was noted that a CT of Claimant's head was performed; an impression noted large areas of low density on the left side. A follow-up MRI was performed; it was noted that Claimant's brain demonstrated several areas of restricted diffusion which were suspicious for areas of acute ischemia. It was noted that a US duplex carotid bilateral was performed; an impression of an "essentially normal" study was noted. A final diagnosis of dizziness with headache and cerebrovascular accident was noted. A discharge date of [redacted] was noted. It was noted that Claimant was prescribed aspirin and Lipitor. A one-week follow up appointment was noted.

Hospital documents (Exhibits 26-27) dated [redacted] were presented. It was noted that an MRA of Claimant's head was performed; an impression of an unremarkable MRA was noted. It was noted that an MRA of Claimant's neck was performed; an impression of mild narrowing involving left carotid artery with less than 50% stenosis was noted.

A physician treatment document (Exhibit A2) dated [redacted] was presented. It was noted that Claimant presented as a new patient for the purpose of establishing ongoing treatment. Noted observations of Claimant included the following: slurred speech, ambulates with cane, slightly weakened left upper extremity but no paraplegia, and slow but adequate recollection. It was noted that Claimant required a cane to stabilize his gait because of poor balance since his stroke.

A physician treatment document (Exhibit A1) dated [redacted] was presented. It was noted that Claimant presented to discuss lab results. Diagnoses of mild right hemiparesis, tattooism, and recurring headaches were noted.

A Progress Note (Exhibit A37) dated [redacted]. The note was signed by a treating physician. The note was handwritten and was largely illegible other than noting that Claimant was seen for treatment following a stroke from [redacted].

A Radiological Report (Exhibits A38-A39) dated [redacted] was presented. It was noted that an MRI of Claimant's brain was performed. An impression noted bilateral basal

ganglia, bilateral occipital and cerebellar foci, compatible with Claimant's brain MRI from 4/2013.

A Radiological Report (Exhibits A40-A41) dated [redacted] was presented. It was noted that an MRI of Claimant's brain was performed. An impression of stable multifocal old infarctions was noted. It was noted that findings most likely represent mild tonsillar ectopia.

Claimant testified that a stroke he suffered in [redacted] restricts his walking, standing, lifting, and speech. Claimant's testimony was consistent with presented evidence. The evidence also suggested that Claimant's impairments began in [redacted] and have lasted continuously since.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, Claimant established having 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.

Claimant's most prominent impairment appears to be right-sided weakness related to a stroke. Listing 11.04 covers vascular accidents and reads:

> **11.04** ***Central nervous system vascular accident****.*
> With one of the following more than *3* months post-vascular accident
> A. Sensory or motor aphasia resulting in ineffective speech or communication; or
> B. 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).

Claimant testified that he stutters since suffering a stroke. Presented documents verified that Claimant has slurred speech. Claimant stuttered throughout the hearing but was not difficult to understand. Presented medical evidence was not suggestive that Claimant has ineffective speech.

Medical records verified that Claimant has right-sided weakness because of his stroke. In [redacted], Claimant's physician described Claimant's right-sided weakness as "mild" though Claimant's physician also conceded that Claimant required a cane for balance. "Mild" weakness is not consistent with significant motor function disorganization. Use of a cane is somewhat consistent with significant motor function disorganization.

Claimant testified that he cannot go up and down stairs. Claimant testified that he does not drive. Claimant also testified that he is capable of only walking ½ of a block and

standing of only 5-10 minutes. Claimant's testimony was credible and consistent with presented evidence. This evidence is suggestive with finding that Claimant has significant and persistent disorganization of motor function affecting two extremities. When factoring Claimant's slurred speech and recurring headaches, the evidence is sufficiently persuasive to find that Claimant is unlikely able to perform and maintain any employment.

Based on the presented evidence, it is found that Claimant meets Listing 11.04. Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA application.

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];
(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: 7/22/2014

Date Mailed: 7/22/2014

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: [redacted]