

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

IN THE MATTER OF:



Reg. No.: 2014 28770
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: June 18, 2014
Wayne County DHS (57)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on June 18, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist and Assistance Payments Worker.

ISSUE

Did DHS properly denied Claimant's application for State Disability Assistance (SDA) on the basis 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 September 16, 2013, Claimant applied for SDA.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On February 11, 2014, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1).
4. On February 13, 2014, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On February 18, 2014, Claimant timely requested a hearing disputing the denial of SDA benefits.
6. On May 1, 2014, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by determining that Claimant's impairments did not significantly limit the Claimant's ability to perform basic work activities and that the Claimant had not met the severity requirements of BEM 261. (Exhibit 2)
7. As of the date of the administrative hearing, Claimant was a 50 year-old male (██████████), with a height of 6'0" and weight of 195 pounds.
8. The Claimant has a high school education. Claimant's past relevant work history included construction work, including repair of homes, and working as a licensed plumber on commercial and industrial projects.
9. Claimant has alleged physical disabling impairments due to chest pains and shortness of breath, and upper body pain with exertion and activity. History of right thoracotomy with closure of a ruptured bola, pleural abrasion in 1981.
10. Claimant has not alleged any mental disabling impairments.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

The controlling DHS regulations are those that were in effect as of August 2011, the month of the application which Claimant contends was wrongly denied.

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Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

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 at 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 (see BEM 260 at 1-2):

- 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).

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 at 8.

Substantial gainful activity means a person does the following:

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- 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. In the present case, Claimant denied having any employment since the date of the SDA 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). Multiple 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)

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- 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 minimis 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).

Claimant has alleged physical disabling impairments due to chest pains and shortness of breath, and upper body pain with exertion and activity. History of right thoracotomy with closure of a ruptured bola, pleural abrasion in 1981.

Claimant did not allege mental disabling impairments in his SDA application.

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation. A summary of the medical evidence follows.

The Claimant has alleged severe chest pains, shortness of breath with work activity with pain in the upper body from sneezing, yawning and coughing. The Claimant also uses an inhaler. The Claimant also has nodules on his lungs.

The Claimant has not alleged any mental disabling impairments.

A review of the medical evidence provided in this matter follows.

On January 25, 2014, a consultative Medical Exam was conducted. At the time of the exam, the Claimant was not using an inhaler and has never used an inhaler. The exam noted that the Claimant was positive for right tube thoracostomy and surgery for his lung. The respiratory examination found the chest was symmetrical and equal to

expansion. The lung fields were clear to auscultations bilaterally. There were no rales, rhonchi or wheezes noted. No restrictions were noted. No accessory muscle usage noted, no cyanosis noted. There is no cough. The cardiovascular examination noted normal sinus rhythm, S1 S2 no rubs, murmur or gallop. The examiner noted the Claimant did not use a cane or walking aid and was able to get on and off the table slowly. The examiner imposed no restriction on any physical abilities of the Claimant. The Impression was COPD . The examinee has a history of COPD. He has not been on any inhalers in the past. He states he did have surgery done in 1981, related to lobes and smoking and he had a collapsed lung, but he does continue to smokes, about 4 cigarettes a day. He continues to have chronic shortness of breath. He has not been seen by pulmonologist since 2010.

The Claimant was admitted for a one-day hospital stay in May of 2010. At the time of presenting, the Claimant complained of severe chest pain. Claimant was discharged with the diagnosis of atypical noncardiac chest pain.

A surgical record from 1981 was part of the medical records for a right thoracotomy with closure of a ruptured bola, pleural abrasion. At the time, the Claimant was [REDACTED] years of age.

A CT of the Claimant's thorax was done on July 14, 2010 due to right-sided chest pain, shortness of breath with history of pneumothorax status post thoracotomy 30 years ago. The Impression was to plural base nodules are noted in the right lower lobe measuring up to 5 mm. For patients at higher risk, such as smokers, a follow-up chest CT in 6 to 12 months was suggested if no intervention is planned.

The Claimant was seen on June 15, 2010 at the pulmonary clinic for evaluation of right-sided chest pain. The chest pain was associated with shortness of breath but wheezing and cough were denied. At the time of the examination of his chest, good air entry was noted bilaterally, no crackles or rhonchi and no murmurs. The assessment was chest pain etiology unclear to further evaluate a CT was ordered.

A CT of the chest and lungs was performed on July 15, 2010. The findings were biapical pleural-parenchymal, scarring is noted. A 4-5mm pleural based nodular opacity is seen in the right lower lobe on image. A 4mm pleural based nodule is noted on the right lower lobe. Several linear airspace opacities in the right middle and lower lobes likely relate to atelectasis and/or scarring. There is no consolidation or effusion. No pneumothorax is seen, the central airways are present. The Impression was: pleural based nodules noted in the right lower lobe measuring up to 5 mm. Correlate clinically with patient's risk factors. Depending on risk factor, follow-up chest CT is suggested.

A pulmonary function test was also conducted on July 16, 2010. The comments to the examination indicate the reason being chest pain with deep inspiration making FVC

efforts difficult but produced two repeatable efforts. Summary, this is a normal spirogram. The total lung capacity is normal. There is mild diffusing impairment. The Interpretation noted the FEV1/FVC is normal. FEV1 is within the range of normal. Forced vital capacity is normal. The total lung capacity is normal. The residual volume is reduced. There is no significant air trapping on lung volume measurements. The hemoglobin corrected diffusing capacity is mildly reduced. The airways conductance is normal. The specific conductance (correcting for lung volume) is normal.

No other medical evidence was presented.

The Claimant testified to the following limitations, he could stand approximately 40 minutes to one hour and sit approximately 90 minutes, then requiring that he get up and move. The Claimant did experience pain sitting for long periods. He could walk about 30 minutes. He could perform a squat, could bend at his waist with no limitation on range of motion. The Claimant could shower and dress himself. The Claimant could tie his shoes but reported getting light headed. The Claimant credibly testified that his hand/arms and legs/feet were fine. The Claimant testified he could carry approximately 5 pounds.

The most recent consultative examination in January 2014 found no physical limitations were required to be imposed, and normal respiratory examination imposed no restrictions. The remainder of the evidence is almost 4 years old and all the objective testing the CT in July of 2010, and the Pulmonary Function Test performed in July 2010, did not support a disabling condition based upon the Claimant's lungs and shortness of breath at that time.

During the hearing, it was disclosed by the Claimant that he was to see a pulmonary specialist on July 24, 2014 and the undersigned offered to extend the record to obtain more current medical information, and suggested that the Claimant obtain a DHS 49 from this Pulmonary Specialist. However, the Claimant was unwilling to extend the record and waive the 30 day time period for the issuance of the decision in this matter, as any test results and the DHS 49 would have required the undersigned submit the new evidence to the State Hearing Review Team.

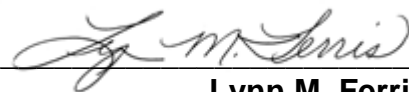
An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the Claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. Even applying a *de minimis* standard, it is found that Claimant failed to establish an impairment that has or is expected to last 12 months

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and which is severe. Thus, Claimant failed to establish having a severe impairment. Accordingly, it is found that DHS properly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied SDA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 8, 2014

Date Mailed: July 9, 2014

NOTICE OF APPEAL: 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).

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.

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

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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

LMF/tm

cc:

A large black rectangular redaction box covers the contact information for the cc field. The redaction is composed of several overlapping horizontal bars of varying lengths, completely obscuring any text that might have been present.