

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-29931
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 27, 2014
County: Wayne (82)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on May 27, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED]

[REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). 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 1-2).

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. SHRT did not issue a disability decision before the administrative hearing.
7. On [REDACTED], an administrative hearing was held.
8. On [REDACTED], an Interim Order Extending the Record was mailed to Claimant and DHS to allow 7 days from the date of hearing to submit additional hospital records.
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 additional documents considered and forwarded by SHRT.
11. On [REDACTED], Claimant presented medical documents (Exhibits A1-A168); additional documents were not presented.
12. 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.
13. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.
14. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
15. As of the date of the administrative hearing, Claimant was a 48-year-old male with a height of 6'0" and weight of 151 pounds.
16. Claimant has a relevant history of alcohol abuse.
17. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
18. As of the date of the administrative hearing, Claimant was a Healthy Michigan Plan recipient since approximately [REDACTED]; claimant received Adult Medical Program benefits from [REDACTED].

19. Claimant alleged disability based on impairments and issues including COPD, chronic pancreatitis, dyspnea, and leg pain.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, a telephone hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

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.*, 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 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 13-52) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with radiating epigastric abdominal pain (10/10), ongoing for 1 day. A history of chronic pancreatitis and polysubstance abuse was noted. It was noted that Claimant drank his usual daily five-to-six 24 ounce beers. "Heavy continuing alcohol abuse" (see Exhibit 40), marijuana use, and tobacco use were noted. It was noted that during admission, Claimant was irritable, attempted to leave against medical advice, and tried to smoke. It was noted that Claimant used an inhaler to treat COPD. It was noted that a CT of Claimant's abdomen demonstrated a large cyst above Claimant's spleen; a small pancreatic cyst was also noted. It was noted that a cyst was previously drained and that Claimant was to follow-up with his physician, but failed to do

so. It was noted that Claimant underwent drainage of the pseudocyst, but there were technical difficulties that led to Claimant being placed in ICU. A primary diagnosis of pancreatic pseudocyst was noted.

A mental status examination report (Exhibits 55-59) dated [REDACTED] was presented. It was noted that Claimant was psychiatrically hospitalized while in prison. It was noted that Claimant reported reducing his alcohol abuse. Axis I diagnoses of alcohol abuse and schizoaffective disorder were noted. Claimant's GAF was noted to be 51. A medical source statement noted that Claimant had cognitive function difficulties. Slight strength in immediate memory and paying attention were noted. It was opined that Claimant appeared capable of performing 3-4 step tasks of a repetitive nature. It was opined that Claimant was best suited to tasks requiring little, if any, independent judgment.

Hospital documents (Exhibits A1-A6) dated [REDACTED] were presented. It was noted that Claimant presented with abdominal pain. An impression of hypertension was noted. It was noted that Claimant displayed "meds seeking behavior"; it was noted that Claimant was warned against seeking pain medication from multiple sources.

Hospital documents (Exhibits A8-A10; A19-A23; A52-A58; A96-A97; A122-A128) dated [REDACTED] were presented. It was noted that Claimant presented with a complaint of radiating epigastric pain (10/10). It was noted that Claimant drank 1-2 beers to alleviate his pain. An impression of pain likely secondary to chronic pancreatitis was noted. An impression of pain medication seeking behavior was also noted.

Hospital documents (Exhibits A93-A95; A117-A119) dated [REDACTED] were presented. It was noted that Claimant reported abdominal pain after drinking alcohol.

Hospital documents (Exhibits A65-A67; A98-A100; A110-A113) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant was discharged after radiology and pain control. An impression of opioid dependence was noted.

Hospital documents (Exhibits A100-A102) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain after drinking on New Year's Eve and New Year's Day.

Hospital documents (Exhibits A68-A70; A114-A116; A120-A121) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of penile draining after having sex with a new partner. It was noted that Claimant had been drinking and was verbally abusive. An alcohol level of 323 was verified by testing. An impression of acute urethritis was noted.

Hospital documents (Exhibits A24-A51; A59-A64; A103-A106) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant had medication, but he inconsistently took his meds. It was noted that Claimant felt unwell after a previous night of drinking

alcohol. It was noted that lab results were normal. It was noted that radiology showed a worsened pancreatic cyst. It was noted that Claimant continued heavy drinking despite previous warnings. It was noted on [REDACTED] that Claimant felt better.

Hospital documents (Exhibits A71-A82) dated [REDACTED] were presented. It was noted that Claimant was brought by police after Claimant was found in the middle of the street. It was noted that Claimant drank alcohol to treat abdominal pain. An impression of alcohol intoxication and pancreatitis was noted.

Hospital documents (Exhibits A107-A109; A134-A135) dated [REDACTED] and [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant's labs were normal and that radiology was negative. Claimant received pain medication and was discharged.

Presented medical documents verified a history of abdominal pain, medical noncompliance, and alcohol abuse. SSA provides guidance on how alcohol abuse and medical noncompliance affects disability claims.

Claimants have the burden of proof to establish disability. SSR 13-2p. When drug and/or alcohol abuse (DAA) is applicable, SSA applies the steps of the sequential evaluation a second time to determine whether the claimant would be disabled if he or she were not using drugs or alcohol. *Id.* It is a longstanding SSA policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. *Id.* Noted considerations made by SSA concerning drug materiality include the following:

- Does the claimant have DAA?
- Is the claimant disabled considering all impairments, including DAA?
- Is DAA the only impairment?
- Is the other impairment disabling by itself while the claimant is dependent upon or abusing drugs and/or alcohol?
- Does the DAA cause or affect the claimant's medically determinable impairments?
- Would the other impairments improve to the point of non-disability in the absence of DAA

SSA applicants must follow treatment prescribed by their physician in order to get benefits if the treatment can restore the ability to work. 20 C.F.R. 404.1530 (a). If the applicant does not follow the prescribed treatment without a good reason, SSA will not find the applicant disabled or, if already receiving benefits, SSA will stop paying benefits. 20 C.F.R. 404.1530 (b). Good reason may be factored into whether someone refuses treatment. The following are examples of a good reason for not following treatment:

- (1) The specific medical treatment is contrary to the established teaching and tenets of an applicant's religion.
- (2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.

- (3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
- (4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky; or
- (5) The treatment involves amputation of an extremity, or a major part of an extremity.

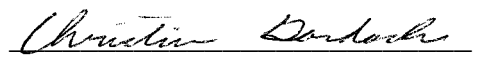
Presented medical records verified that Claimant was treated numerous times for pancreatitis and/or pancreatic cysts(s). The records were highly persuasive in identifying Claimant's alcohol abuse and medication non-compliance as the cause for most, if not all, of Claimant's hospital encounters. It is possible that Claimant may have restrictions even if he was medication noncompliant and ceased alcohol abuse. Presented evidence was not suggestive in entertaining the possibility.

Claimant is left with diagnoses of schizoaffective disorder and COPD. Psychological treatment records were not presented. Spirometry testing was not presented. The presented evidence was insufficient to infer any restrictions related to COPD or schizoaffective disorder.

It is found that Claimant failed to verify a severe impairment where alcohol abuse and medication compliance were immaterial factors. Accordingly, Claimant is not a disabled individual and it is found that DHS properly 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 properly denied Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from [REDACTED], 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: 7/29/2014

Date Mailed: 7/29/2014

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:

