STATE OF MICHIGAN

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

IN THE MATTER OF:

Reg. No.: 2013 66414
Issue No.: 2009
Case No.:
Hearing Date: March 17, 2014
Wayne County DHS (17)

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 March 17, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. A witness, , also appeared and testified. Participants on behalf of the Department of Human Services (Department) included , Medical Contact Worker.

ISSUE

Did DHS properly deny Claimant's application for Medical Assistance MA-P 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 March 9, 2012, Claimant applied for Medical Assistance and sought one month retroactive coverage.

2. Claimant's only basis for Medical Assistance benefits was as a disabled individual.

3. On July 18, 2012, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1).

4. On July 23, 2012, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial. There was no information that the then Authorized Hearing Representative was provided a copy of the denial. Exhibit 1, pp. 30.

5. On September 6, 2013, the Claimant's then Authorized Representative timely requested a hearing disputing the denial of MA-P benefits and noting that it had never received the July 23, 2012 Notice of Case Action until July 19, 2013. There are numerous requests in the hearing packet by the then AHR to receive an update of the status of the file. The Claimant's AHR withdrew their representation of the Claimant prior to the date of the hearing. The Claimant's AHR's hearing request was timely.

6. On September 5, 2013, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual.

7. As of the date of the administrative hearing, Claimant was a 52 year-old male), with a height of 5'10'' and weight of 160 pounds.

8. The Claimant has a high school education. Claimant's past relevant work history included working as a welder in his own business.

9. Claimant has alleged physical disabling impairments due to hypertension, heart problems and liver cirrhosis and sinus problems.

10. Claimant has alleged mental disabling impairments due to depression and panic disorder and anxiety.

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 purusant 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 impariment 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.

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:

- 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 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. 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)
- 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 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).

Claimant has alleged physical disabling impairments due to hypertension, heart problems and liver cirrhosis and sinus problems.

Claimant has alleged mental disabling impairments due to depression and panic disorder and anxiety.

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.

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

A Consultative Examination was completed on April 7, 2014, at which time a mental status exam was completed. At the time of the examination, the Claimant reported panic disorder and depression as symptoms. The Claimant reported no psychiatric hospitalizations or outpatient treatment. The Claimant was not taking psychiatric medication as of the examination. At the time of the examination, the diagnosis was panic disorder and depression, and the prognosis was fair. The Claimant was deemed capable of managing his own benefit funds. No mental residual functional capacity assessment of any sort was completed.

A Consultative Examination and completion of a medical examination was performed on April 7, 2014. The Claimant reported a previous head injury and chronic headaches and dizziness. He also reported having a stroke which was minor. At the time of his examination, his blood pressure was 190/120 and 200/120. A mild tremor in Claimant's hands was noted. The Claimant was able to get on and off the exam table slowly. Tandem walk and heel walk and toe walk was done slowly. Claimant was able to squat 70% of the distance and recover, and bend to 70% of the distance and recover. The Impression given by the examiner was hypertension and that blood pressure was poorly controlled. The examiner noted that the examinee has chronic back pain and arthritis. Most of the examination was normal and the Claimant was evaluated as capable of performing all current neurologic and orthopedic abilities physically. No walking aid was deemed necessary.

The Claimant was admitted to the hospital on March 6, 2012 for a one-day stay due to jaundice and abdominal pain. At the time of the admission, a history of alcoholism was noted as was daily drinking of alcohol extensively. The Claimant was admitted due to jaundiced enlarged gallbladder with noted possible cirrhosis due to alcohol abuse. The Claimant was examined while in the hospital and was evaluated by a surgeon who determined that jaundice was likely secondary to cirrhosis. There was no indication of cervical intervention required. The distention of the gallbladder and loculated ascites around the right lobe of the liver was more consistent with hepatocellular disease. A gastrointestinal examination was also performed which determine that Claimant had probable cirrhosis of the liver and some undefined gallbladder problems.

The Claimant was also admitted to the hospital on March 15, 2012, and a non-ST-segment elevation myocardial infarction and hyperlipidemia was noted. The Claimant was noted as having jaundice at the time of his admission and had been referred by his primary care physician. At the time of the examination, the physical examination was essentially normal. At the time of the examination, the Claimant admitted to drinking vodka a couple days prior to admission and then began having abdominal pain.

On March 6, 2010, the Claimant was admitted to the hospital for a one-day stay due to lower and upper gastrointestinal bleeding. Noted history of alcohol abuse, hypertension, depression, anxiety and panic attacks were given as history. The Claimant reported to the emergency room due to bright red blood from the rectum. The exam notes that the patient had been drinking heavily for at least six years. Patient noted that he was attempting to drown out his misery with alcohol. Illicit drug use was denied. The Claimant was given a hemoglobin transfusion and was watched for alcohol withdrawal symptoms.

No other medical evidence was presented.

The Claimant testified to the following limitations, he could stand approximately 20 minutes due to shortness of breath. He could sit all day. He could walk about 2 blocks due to angina and could perform a squat and bend at the waist. The Claimant could shower and dress himself tie his shoes and touch his toes. The Claimant testified that both his hands and feet experienced numbness and that he does occasionally have angina. The Claimant testified he could carry up to a quart of milk.

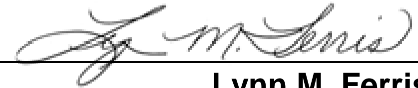
The most recent consultative examination in January 2014 found no physical limitations were required to be imposed, and normal respiratory examination and imposed no restrictions. The remainder of the evidence is from the hospital admissions which were in 2012 when Claimant was admitted to the hospital for a two day stay due to jaundice and then released. In light of the lack of medical evidence, the undersigned ordered additional examination, both mental status and physical consultative examinations, and both were within normal limits.

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 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 MA-P benefits.

The Claimant may apply at any time for [redacted], a medical benefit program that would provide him medical assistance.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA-P 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: August 26, 2014

Date Mailed: August 26, 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

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: