

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002406
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 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 August 27, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Gerrine Strother, Claimant's sister, testified on behalf of Claimant. [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 10/2013.
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 former AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by reliance on a Disability Determination Explanation which found that Claimant did not have a severe impairment.
7. As of the date of the administrative hearing, Claimant was a 48 year old male with a height of 6'1" and weight of 300-320 pounds.
8. Claimant's highest education year completed was the 9th grade.
9. As of the date of the administrative hearing, Claimant was a Healthy Michigan Plan recipient since 4/2014.
10. Claimant alleged disability based on impairments and issues including depression, toe amputation, and charcot foot.

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 3-way telephone hearing was requested. Claimant's AHR appeared for the hearing, thus, only a 2-way telephone hearing was needed. Claimant's AHR testified that a 2-way hearing was an acceptable arrangement.

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.

DHS presented Claimant's wage history (Exhibit B23). The history listed that Claimant received a total of \$900 over the period of 7/2013-3/2014. Claimant denied knowing the source of income. Claimant's testimony was not particularly credible, however, the income Claimant received was far below presumptive SGA limits. 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.

Claimant testified that in 7/2013, his two smallest toes on his right foot were amputated. Claimant testified that uncontrolled diabetes was the cause of his toe amputations. Claimant's testimony was consistent with subsequently submitted records (see Exhibits A4-A5).

Hospital documents (Exhibits 8-29) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left leg swelling. Physical examination findings noted firm tender swelling from Claimant's mid-calf to Claimant's foot. It was noted that foot and ankle x-rays were taken of Claimant's left leg and foot; an impression of Charcots joint was noted. Osteomyelitis was noted to affect Claimant's tarsal bones, cuboid bone, calcaneus, and talus. At discharge, it was noted that Claimant was given a splint, but an appointment was scheduled the following day to apply a cast. It was noted that Claimant had uncontrolled diabetes. Impressions of obesity and polysubstance abuse were also noted. It was noted that Claimant required use of a walker due to right knee pain. It was noted that Claimant received a surgical shoe. A discharge date of [REDACTED] was noted.

An x-ray report of Claimant's knees (Exhibits A40-A41) dated [REDACTED] was presented. A conclusion noted that Claimant's knees appeared to be well maintained.

An x-ray report of Claimant's sacrum and coccyx (Exhibits A42-A43) dated [REDACTED] was presented. A finding of mild malalignment was noted.

An x-ray report of Claimant's lumbar (Exhibits A44-A45) dated [REDACTED] was presented. A finding of mild anterolateral spurs from L4 was noted.

Hospital documents (Exhibits A32-A33) from an encounter dated 3/20/14 were presented. It was noted that Claimant presented with complaints of left foot pain. It was noted that Claimant still had a splint on his leg instead of a cast because Claimant failed to attend an appointment. It was noted that Claimant had not removed his left leg splint. The splint was removed and an impression of Charcot foot was noted.

Hospital physician appointment documents (Exhibits A3-A6; A11-A17; A36-A39) dated 4/9/14 were presented. It was noted that Claimant was treated for management of Charcot foot and diabetic foot ulcers. It was noted that x-ray findings of Claimant's left ankle noted "destructive arthritis of the ankle and tarsal joints with bony fragmentation, bony debris, disorganization of the joint and significant soft tissue swelling". An impression of neuropathic joint disease was noted; it was also noted that the disease progressed from previous radiology. X-ray findings of Claimant's left foot noted "progressive destructive neuropathic joint disease of the hindfoot and ankle". A duration

of greater than 6 months was noted. It was noted that Claimant was unable to care for himself. Noted active problems included Charcot foot, diabetic ulcer, mid-foot fractures, chronic lymphedema, and DM with neuropathy. It was noted that Claimant was to elevate legs above heart when sitting. A 2 week follow-up appointment was noted.

A mental status examination report (Exhibits 2-14 2-17) dated [REDACTED] was presented. The report was completed by a consultative psychologist. It was noted that Claimant had to be interviewed in the waiting room because he was unable to stand up due to a foot injury. It was noted that Claimant reported being unable to perform cooking, driving, and cleaning. It was noted that Claimant reported depression symptoms.

Hospital physician appointment documents (Exhibits A7-A10; A18-A20; A24-A25) dated [REDACTED] were presented. Noted medical findings were functionally identical to [REDACTED] findings.

Hospital documents (Exhibits B1-B15; B18-B21) from an admission dated [REDACTED] were presented. It was noted that Claimant presented for elective left foot surgery. It was noted that conservative measures were attempted and exhausted. It was noted that talotibial calcaneal and talonavicular arthrodesis surgery was performed.

Radiology reports (Exhibits B16-B17) of Claimant's left ankle were presented. An impression of neuropathic joint disease was noted. It was noted that Claimant's talonavicular joint appeared to be broken.

Claimant testified that he has worn a left foot cast for several months and that he is marginally mobile. Claimant stated that he should not bear any weight on his left foot due to a deformed ankle. Claimant's testimony was consistent with presented evidence.

SHRT denied disability, in part, based on a finding that Claimant's injuries would improve after 12 months. The SHRT finding is appropriate for injuries such as a broken ankle. Claimant's injuries are much more severe.

A letter (Exhibit B22) dated [REDACTED] 4 from Claimant's foot doctor was presented. It was noted that Claimant started the initial stage of the reconstructive process of his left foot. It was also noted that multiple surgeries will be required in the upcoming months.

Toe amputations, Charcot foot, and reconstructive foot surgery are indicative of severe ambulation restrictions expected to last 12 months or longer. For good measure, Claimant appeared to suffer a serious setback when he broke his ankle, as verified on 8/26/14 radiology.

Claimant seeks a disability finding from 10/2013. Medical records from 10/2013 were not presented. Based on the nature of Claimant's injuries, it can be presumed that Claimant had restrictions at from 10/2013. It is found that Claimant has a severe impairment, beginning 10/2013, and the analysis may proceed 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.

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

The medical evidence established that Claimant lost two toes from his right foot and has severe ankle and foot deformities in his left foot. It was verified that Claimant received treatment for several months including a cast, foot reconstruction surgery, and an ankle injury following surgery. The medical evidence sufficiently verified that Claimant is unable to ambulate effectively. Accordingly, Claimant is disabled 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], including retroactive MA benefits from 10/2013;
- (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 benefits.

The actions taken by DHS are **REVERSED**.



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

Date Signed: **9/16/2014**

Date Mailed: **9/16/2014**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:

