

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-29552
Issue No.: 2009; 4009; 5000; 3000
Case No.: [REDACTED]
Hearing Date: June 11, 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 June 11, 2014, from Inkster, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's mother, 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) and State Disability Assistance (SDA) 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 SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED] the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).

4. On [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of MA and SDA benefits; Claimant also requested a hearing concerning Food Assistance Program (FAP) and State Emergency Relief (SER) eligibility.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.
7. On [REDACTED] an administrative hearing was held.
8. During the hearing, Claimant waived the right to receive a timely hearing decision.
9. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
10. During the hearing, the record was extended 60 days from the date of hearing to allow Claimant to submit treating physician records; DHS was ordered to arrange intelligence testing for Claimant.
11. On [REDACTED], an Interim Order Extending the Record was mailed to Claimant and DHS.
12. On [REDACTED], DHS submitted additional documents (Exhibits 2-1 – 2-4); Claimant did not submit additional documents.
13. 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 an additional 90 days.
14. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.
15. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
16. As of the date of the administrative hearing, Claimant was a 49 year old male with a height of 6'3" and weight of 130 pounds.
17. Claimant has no known relevant history of alcohol or illegal substance abuse.
18. Claimant's highest education year completed was the 12th grade.

19. Claimant alleged disability based on impairments and issues including constant ringing in ears, back arthritis, teeth abscesses, and cognitive restrictions.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015. 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, it should be noted that Claimant's hearing request did not list an authorized hearing representative. During the hearing, Claimant testified that he wanted his mother to be his AHR. During the hearing, Claimant's mother gave her verbal authorization to be Claimant's AHR. Claimant's verbal authorization was accepted and the hearing was conducted accordingly.

Claimant testified that he receives FAP benefits. Claimant testified that he did not have a FAP dispute. Claimant's hearing request will be dismissed concerning FAP benefits.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049. Department policies are contained in the Department of Human Services Emergency Relief Manual (ERM).

Claimant's mother testified that she wanted a hearing to apply for medical expenses, help with a gas bill, and help with gas to transport Claimant to medical appointments.

The Michigan Administrative Hearing System may grant a hearing about any of the following:

- denial of an application and/or supplemental payments;
- reduction in the amount of program benefits or service;
- suspension or termination of program benefits or service
- restrictions under which benefits or services are provided;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

BAM 600 (7/2013), p. 3.

Claimant's mother conceded that her son did not apply for SER. Claimant's mother could not point to a SER decision made by DHS that was in dispute. Claimant's hearing request will be dismissed concerning SER.

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).

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.

Various physician encounter documents (Exhibits 32-49) were presented. The documents ranged in years from 2007-2012. Various complaints included the following: acute back pain, HTN, hypothyroidism, alcohol abuse, and weight loss

Various lab results (Exhibits 50-90) from 2007-2013 were presented. The results were not accompanied by physician analysis.

An x-ray report (Exhibit 92) dated [REDACTED] of Claimant's right ankle was presented. An impression of slight narrowing of tibiotalar joint space with no acute bony abnormality was noted.

An x-ray report (Exhibit 91) dated [REDACTED] of Claimant's lumbar was presented. An impression of vascular calcifications in the prevertebral soft tissues was noted.

A physician statement (Exhibit 11) dated [REDACTED] was presented. It was noted that Claimant was totally deaf in his right ear and that he has ringing in his left ear which affects his concentration.

Hearing tests results (Exhibit 12) dated [REDACTED] were presented. The results were not accompanied by analysis.

Various dental expense receipts (Exhibits 14-18, 20) were presented. The receipts were from various dates in 2013. The receipts were accompanied by a prescription note (Exhibits 15, 20) from a medical clinic indicating that Claimant was seen for an unspecified dental procedure.

Physician encounter documents (Exhibits 27-28) dated [REDACTED] were presented. It was noted that Claimant presented for a follow-up on his thyroid. A diagnosis of seizure disorder was noted. A plan to continue Claimant on Synthroid and Lisinopril was noted.

Physician encounter documents (Exhibits 26-27) dated [REDACTED] were presented. It was noted that Claimant complained of ear ringing and hearing loss. An assessment of right ear deafness was noted. A plan for an audiogram was noted.

Physician encounter documents (Exhibits 24-25) dated [REDACTED] were presented. It was noted that Claimant complained of neck pain. Tenderness to palpitation on the cervical spine was noted.

Physician encounter documents (Exhibits 23-24) dated [REDACTED] were presented. It was noted that Claimant reported dental pain. It was noted that Claimant has two teeth recently pulled and that he needs more teeth pulled. It was noted that Claimant reported no alcohol use for one year. An assessment of benign HTN was noted.

Various Patient Progress Notes (Exhibits 93-96) were presented. On [REDACTED] a #1 tooth extraction was noted. On [REDACTED], lower left swelling due to an abscess was identified.

Claimant testified that he was unable to walk for longer than 50 feet due to leg pain. Claimant also testified that he was unable to sit longer than 30 minutes due to back pain. Presented documents verified 7 year old radiology for Claimant's lumbar and Claimant's right foot. The findings were completely insufficient in verifying significant sitting and walking restrictions.

Presented medical documents verified that Claimant was seen regularly for HTN and hypothyroidism. Presented documents also verified that Claimant received medication for the problems. There was no compelling evidence of restrictions related to the conditions.

The most compelling evidence verified that Claimant has right ear hearing loss and left ear ringing which never stops. Claimant testified that his functioning is greatly affected by hearing loss.

Claimant's testified that he has not worked for several years and is reliant on his mother. Claimant also testified that he did not finish high school and was in special

education classes. Based on Claimant's testimony of cognitive difficulties, intelligence testing was ordered.

An intelligence testing report (Exhibits 2-1 – 2-4) dated [REDACTED] was presented. The report was noted as completed by a licensed psychologist and limited licensed psychologist. It was noted that Claimant showed genuine effort in the testing. Claimant's verbal comprehension was noted to be 61. Claimant's full scale IQ was 49. It was noted that Claimant's full scale IQ placed him in the "severely impaired" range. An impression of cognitive disorder was noted. A guarded prognosis was noted.

The presented medical evidence established that Claimant suffers cognitive restrictions which have lasted at least since 12/2013. It is found that Claimant has a severe impairment 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.

The most compelling medical evidence submitted involved Claimant's cognitive restrictions. Mental impairments are described under listing 12.00. The most applicable listing involves intellectual disability which reads as follows:

12.05 Intellectual disability. Intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or

3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

Claimant's full scale I.Q. of 49 places Claimant well below SSA listing requirements. It is found that Claimant is cognitively impaired, as defined by Listing 12.05 (B). Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's restrictions meet SSA Listing 12.05 (B). The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

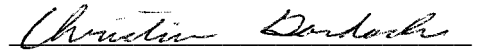
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant had no FAP benefit dispute. It is further found that Claimant has no basis for administrative hearing concerning SER eligibility. Claimant's hearing request is **PARTIALLY DISMISSED**.

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 and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED];

- (2) evaluate Claimant's eligibility for MA and SDA 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: 9/12/2014

Date Mailed: 9/12/2014

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:

