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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-33005
Issue No.: 2009
Case No.: [redacted]
Hearing Date: July 23, 2014
County: Wayne (17)

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 July 23, 2014 from Detroit Michigan. Participants included the above-named Claimant. [redacted] 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) 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 6/2013 (see Exhibits 15-16).

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

3. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 5-6 informing Claimant of the denial.

4. On [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 12-13).

5. On [redacted], Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 2).

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, the record was extended 30 days to allow Claimant to submit a Medical Examination Report and supporting documentation; an Interim Order Extending the Record was subsequently mailed to Claimant to DHS.

9. Claimant failed to submit additional medical documents.

10. As of the date of the administrative hearing, Claimant was a 57 year old male with a height of 5'6'' and weight of 175 pounds.

11. Claimant has no known relevant history of alcohol or illegal substance abuse.

12. Claimant's highest education year completed was the 12th grade.

13. As of the date of the administrative hearing, Claimant was an ongoing Medicaid recipient, since 4/2014, and an Adult Medical Program recipient from 4/2013-3/2014.

14. Claimant alleged disability based on impairments and issues including high blood pressure and coronary artery disease.

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, an in-person hearing was requested. Claimant's AHR subsequently

amended the request to a telephone hearing. The hearing was conducted in accordance with Claimant's AHR's amended request.

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 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. "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 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).

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.

An undated physician letter (Exhibit A17) was presented. The letter stated that Claimant has a history of HTN and endothelial dysfunction which causes significant anginal symptoms which prohibits Claimant from doing his daily job. The statement "doing his daily job" is suggestive that Claimant was working or recently worked at the time of the letter's drafting. Claimant stated that he last worked in 10/2012.

Hospital documents (Exhibits 25-32) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of chest pain, ongoing for months. It was noted that Claimant reported having syncopal episodes. A hospitalization from the year before was noted; it was also noted that a stress test and echocardiogram were both negative. A chest x-ray was noted as negative. It was noted that Claimant was a smoker. It was noted that Claimant was taking medication (see Exhibit 26), but elsewhere it was noted that Claimant did not have insurance and was unable to take medication. Claimant's DHS specialist testified that Claimant received state-issued insurance in 6/2013, thus, there would appear to be no reasonable excuse for medication noncompliance. It was noted that Claimant received various medications. Noted discharge diagnoses included resolved syncope, controlled hypertension, depression, and reversed acute renal insufficiency. A discharge date of [redacted] was noted.

The hospital record oddly noted that Claimant had an incentive to be sick because he was filing for disability (see Exhibit 25). Many hospital patients are applying for disability but such a statement is not usually included in records. The statement's author's intent is not known, but the context was suggestive that that Claimant feigned or exaggerated symptoms for the purpose of receiving disability benefits.

A physician letter (Exhibit A16) dated [redacted] was presented. The letter noted Claimant was unable to work due to his health conditions.

A physician office visit document (Exhibit A14) dated [redacted] was presented. It was noted that Claimant complained of chest pain, ongoing for 1 year. A physical examination noted no abnormalities. An assessment of HTN and dyslipidemia was noted. A plan for a heart catheterization was noted.

A physician office visit document (Exhibit A13) dated [redacted] was presented. It was noted that Claimant complained of ongoing chest pain, 7/10 in intensity. Claimant also complained of dyspnea and walking restrictions of a few blocks. It was noted that Claimant had a heart catheterization on [redacted] which showed non-obstructive CAD with slow flow (see Exhibit A11). A likely cause was noted to be endothelial dysfunction. A two month follow-up was noted.

A physician office visit document (Exhibit A12) dated [redacted] was presented. It was noted that Claimant complained of dyspnea and dizziness. Physical examination findings were all normal.

A physician office visit document (Exhibit A11) dated [redacted] was presented. It was noted that Claimant recently went to the emergency room due to an episode of palpitations and chest pain. It was noted that Claimant quit smoking a few months ago. Physical examination findings were all normal.

A physician office visit document (Exhibits A10) dated [redacted] was presented. The complaints, subjective, observations and assessment were the same as a previous appointment. A plan to add Lisinopril was noted.

Physician office visit document (Exhibits A8-A9) dated [redacted] was presented. It was noted that Claimant reported chest pain with exertion, swollen feet when standing, and right arm pain. Chest pain and shortness of breath were noted to be mainly due to high blood pressure. A plan to increase doses of Lopressor was noted.

A physician office visit document (Exhibits A7) dated [redacted] was presented. It was noted that Claimant reported ongoing chest pain and dyspnea. It was additionally noted that Claimant reported right arm pain (8/10 in severity) and finger numbness. A plan to prescribe Ramexa was noted.

A physician office visit document (Exhibits A6) dated [redacted] was presented. It was noted that Claimant reported ongoing chest pain, fatigue, and leg claudications. Claimant reported increasing dizziness and dyspnea. Physical examination findings were all normal. Noted assessments were unstable angina, PAD, HTN, and hyperlipidemia. A plan to increase Ramexa dosage to increase blood flow was noted.

A physician letter (Exhibit A15) dated [redacted] was presented. The letter noted Claimant diagnoses for unstable angina, endothelial dysfunction, CAD, HTN, and hyperlipidemia. It was noted that Claimant needed to continue receiving medical treatment.

Presented evidence verified diagnoses of endothelial dysfunction and unstable angina. Claimant's diagnoses are such that they cause plaque build-up along arterial walls which restrict blood flow to the heart. Lack of blood flow to the heart is understood to be a cause of dyspnea and/or fatigue. Dyspnea and/or fatigue could reasonably restrict Claimant's ambulation and lifting/carrying abilities.

It is known that Claimant was a smoker as of 6/2013. There was also evidence of medication noncompliance from 6/2013. Neither smoking nor medication noncompliance appear to be relevant considerations after 6/2013.

Based on the presented evidence, sufficient evidence of cardiac restrictions was verified since at least 6/2013, the first month that Claimant seeks MA benefits. The evidence was also sufficient that Claimant's impairments have lasted for 12 months or longer. Accordingly, 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.

A listing for peripheral artery disease (Listing 4.12) was considered based on PAD diagnoses. The listing was rejected due to the absence of blood pressure test results meeting listing requirements.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id*.

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

A Medical-Social Questionnaire (Exhibits 20-24) dated [redacted] was presented. The form was noted as completed by a Medicaid Advocate. It was listed that Claimant had previous employment as a security guard and as a hi-lo driver. The information was consistent with Claimant's testimony.

Claimant testified that his full-time security guard employment consisted of picking up checks from banks and delivering them to a central location. Claimant testified that his employment required up to 50 pounds of lifting which he can no longer perform.

Claimant testified that his hi-lo driving job was relatively simple. Claimant's testimony implied that he does not have the physical strength to perform this job.

Claimant's testimony that he was unable to perform his past employment was credible and consistent with presented evidence. It is found that Claimant cannot perform past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are

additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id*.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform medium employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Medium employment requires comparable standing and walking standards, but with a heavier lifting requirement than light employment.

Claimant testified that he passed out and fell twice in the last 12 months. Claimant also testified that he does not drive because he is afraid of passing out. Presented records did not verify any history of falls or fainting.

Claimant testified that he unable to dress himself or shave himself. Claimant also testified that he is restricted to 5 pounds of lifting and ½ of a block of walking. Claimant's testimony may not have been exaggerated, but it is unsupported by presented records. Claimant's diagnoses were not described as particularly severe or debilitating. A physician statement of disability was presented, however, a one sentence letter which is silent to Claimant's abilities is not definitive evidence of long-term disability.

Claimant's treatment for cardiac problems appeared to be extremely conservative. A heart catheterization in 8/2013 was referenced, but other treatment appeared to be limited to medications. There was no evidence of bypass surgery, stent or angioplasty as a recommended treatment. The lack of invasive treatment techniques is indicative that Claimant's condition is perhaps not as restrictive as alleged.

A finding of disability is further impeded by the lack of specific restrictions from Claimant's physician. The record was extended specifically to allow for verification of physician restrictions and no records were submitted.

Presented records from 6/2013 were suggestive that Claimant exaggerated symptoms. Subsequently presented records tended to vindicate Claimant's symptom reporting as credible. For example, Claimant takes over 10 pills per day (see Exhibit A5), most of which are to treat blood pressure and circulation. The amount of medication is highly suggestive of fairly serious heart dysfunction.

The overall evidence of restrictions was not compelling, however, it was sufficient to justify finding that medium employment is an unrealistic expectation. It is found that Claimant is restricted to performing light employment.

Based on Claimant's exertional work level (light), age (advanced age), education (high school with no direct entry into skilled employment), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 202.06 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

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 6/2013;
(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 MA benefits.

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

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

Date Signed: 9/23/2014

Date Mailed: 9/23/2014

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: [redacted]