

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001118
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 4, 2014
County: Wayne (15)

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 August 4, 2014, from Detroit, Michigan. Participants included the above-named Claimant, via telephone. [REDACTED]

[REDACTED] (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist, via telephone.

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 9/2013.
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 6-7).
4. On [REDACTED] DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 4-5) informing Claimant of the denial.

5. On [REDACTED], Claimant's 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 application of Medical-Vocational Rule 202.17 and the materiality of drug abuse.
7. As of the date of administrative hearing, Claimant was a 26 year old male.
8. Claimant has a relevant history of alcohol abuse.
9. Claimant's highest education year completed was the 11th grade.
10. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 5/2014.
11. Claimant alleged disability based on impairments and issues including explosive anger disorder, scoliosis and back pain, chronic kidney stones, asthma, and dyslexia.

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).

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 the following:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 15-37) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left flank pain and painful urination. It was noted that an ultrasound revealed multiple calculi in both of Claimant's kidneys. It was noted that Claimant's pain improved. It was noted that Claimant was given pain clinic information for back pain treatment. A diagnosis of urinary tract infection was noted.

Hospital documents (Exhibits 38-73) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of flank pain due to urinary stone. It was noted that a stent was placed and a kidney stone was removed. It was noted that Claimant also received medication for hypertension, anxiety, and back pain. It was noted that Claimant last used marijuana the day before admission. It was noted that Claimant's schizophrenia was stable. It was noted that Claimant was discharged on [REDACTED] in "very stable" condition.

Hospital documents (Exhibits 74-109) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left-sided flank pain and back pain. It was noted that Claimant received Norco which "fairly controlled" pain. It was noted that drowsiness may be caused by Seroquel which may need adjusting by a psychiatrist. It was noted that Claimant was psychiatrically examined and a diagnosis of schizoaffective disorder was noted. Observations of Claimant included the following: cooperative, normal speech, logical thought process, "a little depressed", and blunted and restricted affect. Claimant's GAF was noted to be 35. A discharge date of 9/15/13 was noted. Discharge instructions included urology follow-up appointments in 9/2014. Claimant's low GAF was not consistent with known descriptions. It was possibly based on Claimant's drowsiness which was noted as medication related. It was noted that Claimant was believed to be intoxicated due to adding home benzos to prescribed narcotics (see Exhibit 110).

Hospital documents (Exhibits 110-121) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of pain from a recent ureteral stent placement. An impression of a stable exam was noted following views of Claimant's pelvis. A stent removal surgery date of [REDACTED] was noted.

Hospital documents (Exhibits 122-136) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left-side flank pain, nausea, and vomiting. It was noted that a urinary stent was recently removed following Claimant's pain complaints. It was noted that labs, ultrasound, and KUB were all within normal limits. Claimant was given pain medication and discharged.

Hospital documents (Exhibits 137-192) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of severe bilateral flank pain and hematuria. An impression of multiple right renal caculi was noted. It was noted that Claimant would undergo urinary stent placement. Noted symptoms of urinary stent placement included gross hematuria, persistent flank pain, urinary urgency and frequency, and dysuria.

A mental status examination report (Exhibits 214-218) dated [REDACTED] was presented. It was noted that the examination was completed by a consultative psychiatrist. It was noted that Claimant reported guilt from the death of a friend who overdosed on Claimant's medication. It was noted that Claimant was a slow learner and reported 3.8-5.3 functioning levels. Noted observations of Claimant included spontaneity in speech, and relevant and coherent conversation. A history of teenage alcohol and drug abuse was noted. Noted Axis I diagnoses included schizoaffective disorder, alcohol and cannabis abuse (with recent relapse), and history of learning disorder. Claimant's GAF was noted to be 55. A poor prognosis was noted. It was noted that Claimant was unable to handle funds due to extensive abuse history.

Claimant alleged disability, in part, due to scoliosis. A reference to scoliosis was noted in Claimant's medical history. Treatment for scoliosis was not verified. Back radiology was not presented. The evidence was insufficient to infer a severe impairment based on back pain.

Claimant testified that he was scheduled to have meniscus surgery. The presented records failed to support Claimant's testimony or any knee-related restrictions.

Multiple hospitalizations related to kidney stones were verified. The records were suggestive that Claimant is particularly susceptible to developing kidney stones. Impairments related to kidney stones is an unusual basis for a disability claim. Kidney stones are typically thought to be temporary problems causing short period of pain, but not to cause work restrictions expected to last 12 months or longer. Some degree of discomfort related to a ureteral stent can be inferred; it is possible that such pain could limit Claimant's concentration.

Due to Claimant's recurrent kidney stone problem, documentation from a physician detailing Claimant's problem would have been helpful. The record was extended specifically to allow Claimant to submit an updated Medical Examination Report (MER). A MER was not submitted. Concerning kidney stones and/or urinary pain, Claimant failed to establish physical impairments expected to last 12 months or longer.

Submitted documents concerning psychological problems were compelling. Schizoaffective disorder is understood to potentially cause severe functioning restrictions. The diagnosis alone is sufficient to infer some degree of concentration and

persistence problems. Claimant's GAF of 55 and poor prognosis are also suggestive that Claimant has severe impairments.

The evidence tended to establish that Claimant's psychological symptoms have lasted at least since 9/2013, the first month that MA benefits are sought. It is found that Claimant has severe psychological impairments 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.

Claimant alleged disability, in part, based on schizoaffective disorder. The SSA listing for schizoaffective disorders reads as follows

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
4. Emotional withdrawal and/or isolation;

AND

B. 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;

OR

C. Medically documented history of a chronic schizophrenic, paranoid, or other psychotic disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with

symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Moderate symptoms are not consistent with meeting listing requirements.

It is also problematic for Claimant that no treatment for psychological problems was presented. A poor prognosis was noted by a consultative examiner; a poor prognosis does not guarantee that Claimant's function levels would not improve with treatment.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for intellectual disabilities (Listing 12.05) was considered based on statements of a reported learning disability. The listing was rejected due to a failure to establish intellectual testing that meets 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.

Claimant testified that he performed past employment as a press operator. Claimant testified that he performed lifting up to 50 pounds which is the most that he can lift. The evidence tended to support that press operator was a job within Claimant's physical abilities.

Press operator is a job that would seem to require little social interaction and modest degrees of concentration and persistence. The job appears to be one that Claimant is capable of performing. It is found that Claimant can perform past relevant employment, and is therefore not disabled.

It should be noted that presented records referenced numerous unverified problems. If Claimant refiles, he is encouraged to develop the record better concerning learning disabilities, back pain, and specific psychological restrictions.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated [REDACTED] based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



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

Date Signed: **10/15/2014**

Date Mailed: **10/15/2014**

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:

