

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001539
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 14, 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 August 14, 2014, from Detroit, Michigan. [REDACTED] appeared and testified 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 3/2013.
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.
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 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.
7. On [REDACTED], an administrative hearing was held.
8. Claimant failed to appear for the hearing.

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's request was subsequently amended to a telephone hearing. The hearing was conducted in accordance with Claimant'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 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 failed to participate in the administrative hearing. Claimant's AHR contended that it can be found that Claimant did not have SGA since the date of application based on statements from various documents.

Claimant's AHR presented pages from a DCH-1426 (Exhibits B4-B8). The DCH-1426 is a Medical Assistance application. A signature page was not presented. Claimant's AHR credibly testified that Claimant completed the application on an unspecified date on or after [REDACTED]. The application noted that Claimant checked a box that he was "not employed" (see Exhibit A6).

For purposes of this decision, the checked box of "not employed" will be accepted as fact. A statement of "not employed" only verifies that Claimant was not working as of the moment that he submitted the application. Claimant's AHR contended that other documents verify Claimant's lack of employment since [REDACTED] (the date that Claimant submitted his application for MA benefits).

DHS presented a Medical-Social Questionnaire (Exhibits 1-3) dated [REDACTED]. The form was completed by a self-described "Medicaid Advocate". Claimant's AHR testified that the advocate was an employee of Claimant's representative agency. Based on his agency's business records, Claimant's AHR testified that the form was completed by the advocate following an interview with Claimant. The form listed that Claimant's only employment in the past 15 years was for the job title of "stock".

Claimant's AHR presented a Medical-Social Questionnaire (Exhibits B1-B3) dated [REDACTED]. The form was completed by a self-described "Medicaid Advocate". The form listed that Claimant's only employment from the past 15 years was for the job title of "stock".

Claimant's AHR noted that the Medical-Social Questionnaire is required by DHS in order to process a client's MA eligibility. The AHR contended that a person is potentially subject to prosecution if a document contains misinformation. Claimant's AHR further contended that if a person is subject to prosecution for reporting misinformation, then the document is essentially made under oath, and is as inherently reliable as testimony.

Presumably, any theoretical prosecution of a client would require proving a criminal intent to defraud. If a client was found to have less than fully reported employment on a Medical-Social Questionnaire, a virtually impenetrable defense of the allegation would be as easy as saying "Oops". A claim of negligence in completing the form would be functionally impossible for a prosecutor to disprove

Further, if a form isn't even completed by a client, it would too easy to blame the interviewer for failing to accurately record the interview. As noted above, Claimant's form was completed by a third party.

In reality, there is no realistic threat of prosecution for misreporting employment history on a Medical-Social Questionnaire. Without a realistic threat of prosecution, there is no inherent reliability to information presented on a Medical-Social Questionnaire.

A claimant's testimony is considered to be the best evidence concerning wages received since the date of MA application. A Claimant's hearing presence is also necessary to clarify questionable information concerning income. For example, if a claimant testifies that he/she has not worked since 2009, questions such as "How have you supported yourself?" or "How do you pay rent?" are appropriate inquiries. A client's responses can bolster or diminish a client's credibility. Based on personal experience, a client's testimony often references employment that is improperly omitted from a Medical-Social Questionnaire.

In establishing a claimant's employment history, the above-cited reasons point to a general practice of relying on testimony much more than a Medical-Social Questionnaire. Claimant's Medical-Social Questionnaires only bolster support for applying the general practice.

Both questionnaires indicated that Claimant's dates of employment were from "10/2009 2/2009". Unless Claimant mastered the ability to exist in reverse time, his dates of employment were misreported. Presumably, the reporting was accidental. Such carelessness could easily extend to an omission of current or recent employment.

Claimant's AHR also noted that DHS has access to databases which can retrieve Claimant's employment history. It was not disputed that such documents could only retrieve Claimant's taxable and reported employment. Such documents could not verify self-employment or "under-the-table" employment.

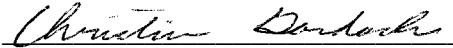
Barring compelling reasons, a claimant seeking MA benefits based on disability is expected to testify concerning recent and current SGA. Zero reason was provided to excuse Claimant's absence and lack of testimony concerning SGA.

Based on the presented evidence, it is found that Claimant failed to establish that he did not receive employment income amounting to SGA. Accordingly, it is found that Claimant is not disabled and that DHS properly denied Claimant's application for MA benefits.

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], including retroactive MA benefits from 3/2013, 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: 9/5/2014

Date Mailed: 9/5/2014

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: 

