

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-002748
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 3, 2014
County: Wayne (55)

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 September 3, 2014, from Hamtramck, Michigan. Participants included the above-named Claimant. [REDACTED], Claimant's mother 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], 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 10/2013 (see Exhibits 1-80 - 1-81).
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 1-3 - 1-4).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant's AHR of the denial.
5. On [REDACTED], the Medical Review Team (MRT) again determined that Claimant was not a disabled individual (see Exhibits 1-68 – 1-69).
6. On [REDACTED] Claimant's AHR requested a hearing disputing the denial of MA benefits.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.
8. On [REDACTED], an administrative hearing was held.
9. During the hearing, both parties waived the right to receive a timely hearing decision.
10. During the hearing, the record was extended 21 days for Claimant to submit a Medical Examination Report from a thoracic surgeon; an Interim Order Extending the Record was subsequently mailed to both parties.
11. On [REDACTED], Claimant submitted a Medical Examination Report (Exhibits A1-A2).
12. As of the date of the administrative hearing, Claimant was a 27 year old male with a height of 5'4" and weight of 162 pounds.
13. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
14. As of the date of the administrative hearing, Claimant has no ongoing health insurance.
15. Claimant alleged disability based restrictions related to a stab wound.

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 testified that he performs occasional roofing and landscaping jobs. Claimant estimated that he made a total of \$1,000 in 2014. Claimant's testimony was unrefuted. 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.

Hospital documents (Exhibits 1-75 – 1-79; 2-9 – 2-14) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with a stab wound to upper epigastrium. It was noted that Claimant underwent exploratory laparotomy and mediastinal sternotomy. It was noted that a laceration to Claimant's right ventricle was identified during surgery. It was noted that the laceration was repaired and that Claimant required 6 units of blood. Following surgery, Claimant was admitted to SICU and intubated before he became hyper-intensive. It was noted that Claimant developed tachycardia which was controlled by lopressor. It was noted that Claimant became hemodynamically stable and was discharged on 1 [REDACTED].

Hospital documents (Exhibits 1-11 – 1-34; 1-41 – 1-44; 1-50 – 1-53) from an admission dated 11/18/13 were presented. It was noted that Claimant presented with right-side chest pain, aggravated by movement. It was noted that an echocardiogram revealed moderate-to-severe tricuspid valve regurgitation; a plan for cardiac surgery follow-up was noted. It was noted that Claimant had a moderate ventricular septal defect (VSD) secondary to a stab wound. It was noted that Claimant may need surgical intervention to repair VSD. Follow-up for an acute kidney injury was also noted. At discharge, it was noted that Claimant's creatinine level was trending upwards and that he was hemodynamically stable. Discharge documents noted that Claimant should continue to treat HTN with lopressor. A discharge date of 1 [REDACTED] was noted.

A physician progress note (Exhibit 1-36; 1-45) dated [REDACTED] was presented. It was noted that tricuspid valve repair was recommended. It was noted that a second sternotomy near in time to a previous sternotomy would be difficult to perform. An expected surgery date after the holidays was noted. It was noted that aggressive treatment was thought to be superior to conservative treatment.

A physician progress note (Exhibits 1-37 - 1-40; 1-46 – 1-49; 1-54 - 1-56) dated [REDACTED] was presented. It was noted that Claimant was scheduled that day for tricuspid valve surgery but was first evaluated for complaints of fever. It was noted that Claimant refused admission because he was concerned about receiving IV antibiotics. It was noted that Claimant believed he developed kidney dysfunction during a previous admission because of antibiotics. It was noted that Claimant left against medical advice.

Hospital documents (Exhibits 2-15 – 2-48) from an admission dated [REDACTED] were presented. A diagnosis of pneumonia was noted. On [REDACTED] it was noted that lung radiology revealed small pleural effusions but improvement in Claimant's left lung appearance. Discharge documents were not presented.

An echocardiogram report (Exhibits 2-4; 2-8; 2-59) dated [REDACTED] was presented. It was noted that Claimant had hyperdynamic ejection fraction of 65-70%. A small ventricular septal defect with left-to-right shunting was noted.

Claimant testified that he has walking and lifting restrictions due to cardiac defects. Claimant's testimony was consistent with the presented evidence. The medical evidence also established that Claimant's walking and lifting/carrying restrictions have lasted since 10/2013, the first month that Claimant seeks MA benefits. 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.

Cardiac-related listings (Listing 4.00) were considered based on Claimant's cardiac treatment history. Claimant failed to meet any cardiac listings.

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 worked at a lumber mill for approximately one year. Claimant testified that his duties included running a machine and various laborer duties requiring heavy lifting.

Claimant also testified that he worked for a laundry service for approximately 8 months. Claimant testified that he was expected to lift wet clothes weighing up to 30 pounds.

Claimant also testified that he performs occasional landscaping and roofing jobs. Claimant testified that he is restricted in performing the employment due to his heart condition. Claimant also stated that he has not earned SGA from performing odd jobs.

Claimant testified that he cannot perform the lifting required of his past relevant employment. Claimant's testimony was consistent with presented evidence. It is found that Claimant cannot perform past relevant 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 sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10. Physician statements of specific restrictions were presented.

A Medical Examination Report (Exhibits 1-8 – 1-10) dated [REDACTED] was presented. The form was completed by a cardiac surgeon with an approximate 6 week history of treating Claimant. Claimant's physician listed diagnoses of ventricular septal defect and tricuspid valve insufficiency. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. The physician opined that Claimant was restricted as follows over an eight-hour workday, less than 2 hours of standing and/or walking, and less than 6 hours of sitting. Claimant's physician opined that Claimant was restricted from performing repetitive reaching and pushing/pulling. It was noted that Claimant would need tricuspid valve repair in a couple weeks.

A Medical Examination Report (Exhibits A1-A2) dated [REDACTED] was presented. The form was completed by a physician with a history of treating Claimant from [REDACTED] until [REDACTED]. Claimant's physician listed diagnoses of s/p open heart surgery. An impression was given that Claimant's condition was improving. It was noted that Claimant can meet household needs. Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and/or walking; sitting restrictions were unstated. Claimant's physician opined that Claimant was restricted to occasional lifting/carrying of 10 pounds or less, never more than 20 pounds. Restrictions were noted to have ended on [REDACTED].

The presented evidence verified that Claimant has significant restrictions while healing from open heart surgery. Though Claimant had physical restrictions, the restrictions ended within 7 months of surgery.

It is probable that Claimant has ongoing restrictions following open heart surgery. Based on presented records, it is unlikely that lingering restrictions preclude the performance of sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (high school equivalency), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.21 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly 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 properly denied Claimant's MA benefit application dated 11/27/13, including retroactive MA benefits from 10/2013, 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: **10/16/2014**

Date Mailed: **10/16/2014**

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:

