

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-23135
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 9, 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 June 9, 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] Manager.

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 2/2013 (see Exhibits 39-40).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. 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], DHS mailed a Notice of Case Action (Exhibits 64-69) to Claimant's AHR.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.
8. On 6 [REDACTED], an administrative hearing was held.
9. Claimant presented new medical documents (Exhibits A1-A40) at the hearing.
10. During the hearing, Claimant waived the right to receive a timely hearing decision.
11. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
12. 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 90 days from the date of hearing.
13. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.
14. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
15. As of the date of the administrative hearing, Claimant was a 47 year old male with a height of 5'3" and weight of 190 pounds.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was a Medicaid recipient, ongoing for 3 months.
18. Claimant alleged disability based on impairments and issues including swollen legs, neck arthritis, and a history of cardiac surgery.

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. Claimant's AHR's amended hearing request was granted and the hearing was conducted accordingly.

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.

A cardiologist letter (Exhibit 58) dated [REDACTED] was presented. Diagnoses of acute coronary artery syndrome and acute myocardial infarction were noted. It was noted that Claimant did well following stent placements. It was noted that Claimant had no further complaints of pain.

Hospital documents (Exhibits 22-37; 51) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, cough, dizziness, fatigue and headaches. A weight loss of 30 pounds over 6 months was reported by Claimant. It was noted that Claimant reported recurrent fevers. It was noted that lumbar puncture results were unremarkable. A CT scan of Claimant's thorax and head were negative. A discharge diagnosis of gastritis with possible Mediterranean fever was noted. Recommended medications included Zofran, Pepcid, and Pepto Bismol. A discharge date of 2/8/13 was noted.

Hospital documents (Exhibits 45-48) from an encounter dated [REDACTED] were presented. Diagnosis of muscle spasm and pneumonia were noted. Diazepam and Tramadol were noted as prescribed.

Hospital documents (Exhibits 49-50; 53; A1-A19) from an encounter dated [REDACTED] were presented. It was noted that Claimant complained of neck, shoulder, and arm pain, ongoing for 3 weeks. A history of recurring headaches, every 3-4 months was also noted. Reduced strength (4/5) was noted in right pronators, right finger flexors, right interossei intrinsics, and right grip strength. It was noted that chest x-rays were taken; it was noted that Claimant's heart was mildly enlarged for a person post bypass surgery along with an impression of mild congestive heart failure. It was noted that an MRI revealed a disc bulge effacing the thecal sac at C2-C3. Central and foraminal stenosis was noted at C4-C5. Stenosis was also noted at C5-C6 and C6-C7. Toradol was noted as prescribed for headache treatment. A cervical soft collar was noted as given. A plan of surgery was noted if physical therapy fails.

Hospital documents (Exhibits 43-44; 60; A39) from an encounter dated [REDACTED] were presented. It was noted that Claimant reported right shoulder pain and numbness. A diagnosis of cervical nerve root disorder was noted. Diazepam and Tramadol were noted as prescribed.

Hospital documents (Exhibits A20-A23) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of shoulder pain. It was noted that Claimant tried physical therapy 2-3 times but saw no improvement. Physical examination findings noted no restrictions in range of motion. It was noted that views of Claimant's right shoulder were negative; an MRI was recommended but no evidence of an MRI was provided. A diagnosis of cervical radiculopathy was noted; the problem was noted as moderate. It was noted that Claimant was given a sling and advised to perform passive ranges of motion.

Hospital documents (Exhibits A24-A27) from an encounter dated [REDACTED] were presented. It was noted that Claimant reported cough, chest pain, and body aches. Normal range of motion was noted in Claimant's neck (see Exhibit A25). It was noted that chest radiology revealed no acute cardiothoracic process. Discharge and treatment information were not apparent.

Hospital documents (Exhibits A28-A32) from an encounter dated [REDACTED] were presented. It was noted that Claimant reported fatigue, chest pain, and body aches, ongoing for 2 weeks. It was noted that Claimant was positive for vomiting, abdominal pain, myalgias, back pain, gait problem, weakness, and headaches. It was noted that x-rays of Claimant's chest showed no acute process. Discharge and treatment information were not apparent.

Hospital documents (Exhibits A33-A38) from an encounter dated [REDACTED] were presented. It was noted that Claimant reported increasing neck pain and stiffness,

ongoing for 4 days. It was noted that a neck MRI was performed; a general impression of multi-degenerative changes were noted. The following specific findings were noted: thecal sac effacement with no stenosis at C2-C3, thecal sac effacement with "very mild mass effect" on the cervical spine and mild facet arthropathy at C3-C4, mild neuroforaminal stenosis at C4-C5, C5-C6, and C6-C7. It was also noted that normal cervical lordosis was reversed and there is a redemonstration of a Tornwaldt's cyst.

Presented documents verified spinal abnormalities and cardiac problems. Presented documents tended to verify gait and lifting restrictions. Claimant's complaints of pain were well documented; Claimant's pain likely adversely affects Claimant's ability to concentrate. The medical evidence also established that Claimant's restrictions have lasted at least since 2/2013, 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.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of shoulder pain. The listing was rejected due to a failure to establish that Claimant is unable to perform fine and gross movements.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's neck and back pain complaints. A diagnosis of cervical nerve root disorder was suggestive of a compromised nerve root. This listing was rejected due to radiology failing to verify sensory or reflex loss, restriction in range of motion of neck, or worse than mild stenosis.

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.

A Medical-Social Questionnaire (Exhibits 13-15) dated [REDACTED] was presented. The form was noted as completed by a Medicaid advocate. It was noted that Claimant's medical history consisted of cashier employment.

Claimant testified that he worked previously as a gas station attendant. Claimant also testified that he worked for a smoke shop. Claimant testified that he could not perform the lifting required of his smoke shop employment or the standing required of gas station attendant employment. Claimant's testimony was consistent with presented medical records. It is found that Claimant is unable to 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 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.

Claimant testified that he could only sit approximately 10-15 minutes. Claimant also testified that he could only walk for ½ of a block before leg cramps prevented further ambulation. Claimant's testimony was highly suggestive of an inability to perform any type of employment.

Individually, none of Claimant's diagnoses were disabling. There is some basis to consider that the sum of Claimant's problems to be disabling.

Claimant's 2/2013 hospitalization concerned gastrointestinal complaints. Further gastrointestinal complaints were not documented again until 1/2014. As noted in step two of the analysis, hospital documents from 1/2014 noted complaints, but very little treatment. A diagnosis of "possible" Mediterranean fever was noted in 2/2013. Mediterranean fever could be an exacerbating condition to body pain. The condition cannot be seriously considered as a factor in Claimant's pain due to the speculative diagnosis and lack of further gastrointestinal treatment other than the lightly detailed 1/2014 hospital records.

Various reductions in strength to Claimant's right arm were noted in 4/2013. Neck abnormalities were also verified. Stenosis was absent from initial radiology in 4/2013, though Claimant's problems were described as "moderate" in 5/2013. Multi-degenerative changes were noted which is suggestive of a worsening condition. A change in spinal curvature ("reversal of normal lordosis") was also indicative of degeneration. Descriptions of "very mild mass effect" on the cervical spine and mild facet arthropathy were not indicative of disabling conditions.

Most notably, Claimant had normal range in neck motion as of 1/2014. Normal range of neck motion is not consistent with disabling neck restrictions that would preclude the walking, lifting, or extended sitting required of sedentary employment.

When Claimant's complaints are factored with mild congestive heart failure and complaints of headaches (every 3-4 months), it is probable that Claimant would have difficulties in performing long periods of standing and/or ambulation. The evidence was not persuasive in verifying lifting, standing or ambulation restrictions that preclude the performance of sedentary employment.

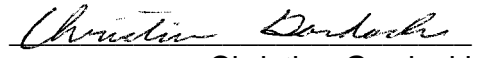
It is presumed that Claimant's sedentary employment job base is slightly eroded due to headaches and less than full right-side strength. These conditions are not presumed to be so limiting that ample sedentary employment opportunities are not available to Claimant.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (high school), employment history (semi-skilled with no 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 3/14/13 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: 9/4/2014

Date Mailed: 9/4/2014

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:

