

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-23530
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 2, 2014
County: Monroe

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 June 2, 2014, from Monroe, 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 6/2013.
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 Exhibit 5-6).

4. On [REDACTED] DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant and Claimant's AHR 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 reliance on a Disability Determination Explanation which denied disability based on application of Medical-Vocational Rule 204.00.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A18) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
11. During the hearing, the record was extended 30 days to allow Claimant to submit psychological treatment records; an Interim Order Extending the Record was subsequently mailed to Claimant.
12. Additional treatment documents were not received by the Michigan Administrative Hearings System (MAHS)
13. 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.
14. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00
15. On [REDACTED], MAHS received the hearing packet and updated SHRT decision.
16. As of the date of the administrative hearing, Claimant was a 22 year old male with a height of 6'4" and weight of 175 pounds.
17. Claimant's highest education year completed was the 10th grade.
18. Claimant alleged disability based on impairments and issues including bipolar disorder, leg pain, seizures, attention-deficit hyperactivity disorder (ADHD).

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:

- 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 background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant testified that he was a SSI recipient as a child. Claimant testified that he continued receiving SSI until the time of an incarceration. Claimant testified that he has tried to obtain disability benefits since his jail release.

An Initial Psychiatric Assessment (Exhibits A1) dated [REDACTED] was presented. Noted Axis I diagnoses of oppositional defiant disorder, post-traumatic stress disorder, generalized anxiety disorder, dysthymic disorder, and major depressive disorder were noted. Claimant's GAF was noted as 50.

Individualized Education Program (IEP) documents (Exhibits A2-A18) dated [REDACTED] were presented. The documents appeared to be drafted by persons affiliated with Claimant's high school in an attempt to improve Claimant's school performance. It was noted that Claimant was failing English and math. It was noted that Claimant read at a 5th grade level. It was noted that Claimant comprehended 80% when tested at a 4th grade level. It was noted that Claimant expressed daily frustrations by walking out of high school class; it was noted that Claimant expressed eagerness to learn at a career center where he studied culinary arts. It was noted that Claimant needed to control impulsivity and his reactions when frustrated.

Hospital documents (Exhibits 44-57) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of body rash (ongoing for 5 weeks) and headache, ongoing for one day. It was noted that Claimant has a history of seizures. It was noted that Claimant took only 100mg of Dilantin when he was prescribed a dosage of 400mg. It was noted that Claimant's rash was likely due to insect bites. Noted home medications included: Keflex, Dilantin, IBU, triamcinolone cream, divalproex, phenytoin, citalopram, Lamictal, and Ventolin.

Hospital documents (Exhibits 14-28; 31-43) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left leg pain. It was noted that Claimant reported that he used a cane to assist with ambulation. It was noted that x-rays of Claimant's knee were normal (see Exhibit 26) and there was no evidence of deep vein thrombosis. It was noted that the treating hospital gave Claimant an ACE wrap for compression. A short course of Norco was also given. Claimant was instructed to apply ice and follow-up with a physician.

Claimant credibly testified that he attended special education classes and only completed the 10th grade. Claimant testified that he can read and write but stated that he is limited to relatively simple reading and/or writing. Claimant's testimony was consistent with a seven year old psychiatric evaluation which noted an Axis II diagnosis of borderline intellectual functioning vs. mild retardation. Claimant sufficiently verified having severe cognitive impairments.

Claimant testified that he is restricted in walking due to leg fatigue. Claimant was once treated for leg pain, however, treatment records were not suggestive of an ongoing leg problem.

A history of seizures was referenced in hospital records, however, there was no documentary evidence of recent seizure activity or treatment. The evidence was insufficient to verify a severe impairment related to seizures.

Evidence of treatment for a rash related to insect bites was presented. The evidence was not suggestive in finding that Claimant has long-term restrictions due to rash.

A seven year old psychiatric treatment verified that Claimant was diagnosed with various disorders. Claimant testified that he avoids stressful situations. Claimant's testimony implied that he has ongoing struggles with various psychiatric disorders. Some degree of psychological obstacles will be inferred based on Claimant's testimony and presented treatment documents.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, Claimant established having a severe impairment and the disability analysis may move 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 knee pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

A listing for chronic skin infections (Listings 8.04) was considered based on Claimant's treatment for rash. The listing was rejected due to a failure to establish extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing prescribed treatment.

A listing for cognitive dysfunction (Listing 12.05) was considered. The listing was rejected due to an absence of intelligence testing.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

Listings for epilepsy (Listings 11.02 and 11.03) were considered based on Claimant's medical history of seizures. The listings were rejected due to a failure to establish a detailed seizure history,

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 for 2 weeks as a factory worker. Claimant testified that he quit this job because his legs hurt.

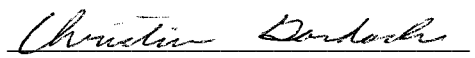
Claimant testified that he worked for 2 days shoveling coal. Claimant testified that he quit this job because it was an unbearably hot environment. Claimant also testified that he worked at a department store warehouse.

In step 2 of the analysis, it was determined that Claimant has severe cognitive and psychological restrictions. Though Claimant has difficulty reading and writing, Claimant's cognitive impairments should not restrict his ability to perform most types of physical labor. Accepting that Claimant has recurrent seizures would restrict him from driving, climbing ladders, and working at heights. The absence of recent psychological treatment records renders it nearly impossible to infer that Claimant has psychological restrictions to performing his past employment.

Despite Claimant's cognitive and psychological impairments, the evidence tended to verify that Claimant could perform past relevant employment as a factory and/or warehouse worker. Accordingly, Claimant is not disabled and it is found that DHS properly denied Claimant's MA application.

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: 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:

