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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-31894
Issue No.: 2009; 4009; 5000
Case No.: [redacted]
Hearing Date: August 13, 2014
County: Macomb (36)

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 13, 2014, from Sterling Heights, Michigan. Participants included the above-named Claimant. [redacted], Claimant's fiancé and caregiver, appeared and testified as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted], Supervisor.

ISSUE

The first issue is whether Claimant is entitled to a hearing concerning State Emergency Relief (SER).

The second issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 and SDA benefits.

2. Claimant did not apply for SER.

3. Claimant's only basis for MA and SDA benefits was as a disabled individual.

4. On [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4).

5. On [redacted] DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

6. On [redacted] Claimant's AHR requested a hearing disputing the denial of MA and SDA benefits; Claimant also requested a hearing concerning SER.

7. On [redacted] SHRT determined that Claimant was not a disabled individual, in part, by reliance on a Disability Determination Explanation and application of Medical-Vocational Rule 202.21.

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, both parties agreed to extend the records by 30 days to allow Claimant to submit treating physician documents; an Interim Order Extending the Record was subsequently mailed to both parties.

11. Claimant did not submit additional medical documents.

12. As of the date of administrative hearing, Claimant was a 33 year old male.

13. Claimant's highest education year completed was the 11th grade.

14. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 4/2014.

15. Claimant alleged disability based on impairments and issues including multiple sclerosis and seizures.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and by Mich Admin Code, R 400.7001 through R 400.7049. Department policies are contained in the Department of Human Services Emergency Relief Manual (ERM).

Claimant requested a hearing, in part, concerning SER. Claimant testified that he wanted assistance with moving. Claimant testified that he could not recall applying for

SER. During the hearing, Claimant's Assistance Application dated [redacted] was checked to see if the application noted a request for SER benefits; it did not.

The Michigan Administrative Hearing System may grant a hearing about any of the following:

- denial of an application and/or supplemental payments;
- reduction in the amount of program benefits or service;
- suspension or termination of program benefits or service
- restrictions under which benefits or services are provided;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

BAM 600 (7/2013), p. 3.

Claimant cannot cite any basis for an administrative hearing remedy concerning SER because he never applied for the benefits. Claimant's hearing request will be dismissed concerning SER.

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. Claimant testified that he needed his caretaker/fiancé to assist him during the hearing. Claimant's caretaker/fiancé was allowed to assist Claimant during the hearing. Claimant testified that he needed no other special arrangements.

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 CRF 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 2014 monthly income limit considered SGA for non-blind individuals is $1,070.

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 F2d 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 Medical Examination Report (Exhibits 11-13) dated [redacted] was presented. The form was completed by a physician with an unspecified history of treating Claimant. Claimant's physician listed diagnoses of "M.S. seizure epaleptic". An impression was given that Claimant's condition was improving. It was noted that Claimant can meet household needs. Claimant's physician did not state that Claimant had any walking or sitting restrictions. Claimant's physician stated that Claimant should never lift 50 pounds or more, but that Claimant was capable of occasional lifting of 25 pounds and less.

Hospital documents (Exhibits 14-30; A1) from an admission dated [redacted] were presented. It was noted that radiography of Claimant's brain was performed; an impression of multiple white matter changes likely relating to demyelinating process/plaques. It was note that radiography was consistent with a diagnosis of MS though other processes were possible. Hospital admission, course of action, and discharge documents were not presented. A discharge date of [redacted] was noted.

Substance abuse rehabilitation center documents (Exhibits 31-34) were presented. It was noted that Claimant was admitted on [redacted] for alcohol dependency. It was noted that Claimant drank a 12 pack of beer and a pint of liquor per day for the past several years. A history of cocaine and opiate abuse was noted. It was noted that Claimant was sober for 23 days until a recent diagnosis for MS. Admission diagnoses included mood disorder, polysubstance abuse, and cognitive impairment. Marginal insight and judgment were noted. It was noted that Claimant had poor coping skills. A plan to have Claimant participate in outpatient psychiatric care following discharge was noted. It was noted that Claimant was administratively discharged on [redacted] after he improperly fraternized with a female patient. A poor discharge prognosis was noted.

A physician treatment letter (Exhibit A2) dated [redacted] was presented. It was noted that Claimant was doing much better and that he has returned to baseline, other than unspecified mild sensory loss. It was noted that Claimant reported significant improvement with depression. It was noted that Claimant needed to be placed on Copaxone or other disease modifying medication once Claimant can obtain insurance.

A treating physician letter (Exhibit A8) dated [redacted] was presented. It was noted that Claimant was diagnosed with general seizure disorder and MS. It was opined that Claimant could not work in any capacity.

A mental status examination report (Exhibits 59-63) dated [redacted] was presented. The report was completed by a consultative licensed psychologist. It was noted that Claimant reported progressively worsening MS and seizure symptoms including tremors and increased seizures. Observations of Claimant included the following: friendly, reality-based responses, good insight into condition, clear and pointed responses, appropriate affect, and orientation x3. Axis I diagnoses of recurrent major depressive disorder and anxiety disorder were noted. The examiner opined that Claimant had

moderate impairment in following and understanding simple instructions. The examiner opined that Claimant had adequate social abilities. It was opined that Claimant was unable to manage funds. A guarded prognosis was noted.

A mental impairment questionnaire (Exhibits A3-A4; A11) dated [redacted] was presented. The questionnaire was completed by a neurologist with a 6 month history of treating Claimant. Noted symptoms included: memory impairment, sleep disturbance, mood disturbance, emotional lability and impulse control impairment, blunt or flat or inappropriate affect, and decreased energy. Claimant was slightly impaired in the following: remembering work-like procedures and simple instructions, maintaining attention, performing activities within a schedule while maintaining punctuality, working in coordination with others, interacting appropriately with public, accepting instructions and responding appropriately to criticism, getting along with coworkers, maintaining socially appropriate behavior, and responding appropriately to work setting changes. It was opined that Claimant would have to miss an average of more than 3 times per month of work.

Physician office visit documents (Exhibits A9-A10) dated [redacted] was presented. It was noted that Claimant reported thoughts of suicide. It was noted that Claimant reported ceasing polysubstance abuse. It was noted that Claimant had multiple uncontrolled neurological disorders which prevented Claimant from being employed. It was noted that Claimant had life-threatening conditions and that he needed to take his medications. It was noted that Claimant used a walker for ambulation. It was noted that Lamictal was restarted.

Physician office visit documents (Exhibit A5, A7) dated [redacted] were presented. It was noted that Claimant had the following ongoing medical issues: anxiety, MS, urine retention, physical debility, tobacco abuse, and depression. It was noted that Claimant requested a wheelchair due to pain in legs and spinal cord; an outcome was not noted.

Hospital documents (Exhibits A13-A14) from an encounter dated [redacted] were presented. A diagnosis of seizure disorder and various medications were noted. Details and a hospital course of action were not provided.

Claimant testified that he has ambulation and lifting/carrying restrictions. Claimant's testimony was consistent with presented documents which verified diagnoses and ongoing treatment for MS and seizure disorder. The medical evidence also established that Claimant's walking and manipulating restrictions have lasted since 1/2014, 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.

Claimant's most prominent impairment appears to be multiple sclerosis. MS is covered by Listing 11.09 which states that disability is established by the following:

> ***Multiple sclerosis***. With:
> A. Disorganization of motor function as described in 11.04B; or
> B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
> C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Listing 11.04B requires "significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C). The evidence was not suggestive that Claimant's motor function was so impaired. The evidence was also not indicative of significant visual impairment or fatigue.

Claimant testified that he uses a wheelchair all of the time. Claimant's AHR testified that her fiancé's health is comparable to that of a nursing home patient. Claimant's fiancé testified that her caretaker duties include the following: holding Claimant up while he urinates, wiping Claimant after a bowel movement, cleaning, cooking, catheterizing, and dressing. Claimant's and his fiancé's testimony were highly consistent with meeting the above listing. Presented medical evidence was less persuasive.

Use of a wheelchair should be easily verified. Presented document verified Claimant's request for a wheelchair, but not a need for a wheelchair. The record was extended 30 days specifically for Claimant to submit documents verifying his need for a wheelchair and/or other reported limitations; in response, Claimant failed to submit any documents. This consideration lends to finding that Claimant does not meet the above listing.

Even if Claimant's restrictions were verified, there was uncertainty as to the duration of reported symptoms. For example, medical records verified that within 4 months of Claimant's wheelchair request, Claimant was a substance abuser who was kicked out of substance abuse rehab. This evidence was suggestive that substance abuse may have caused a temporary flare-up of MS and/or seizure symptoms. Substance abuse abstention would not cure MS or seizure disorder, but Claimant's symptoms could be substantially diminished by abstention.

Statements emphasizing the need for medical compliance were somewhat suggestive that Claimant has a history of medication noncompliance. This consideration would nullify a finding of disability if noncompliance was material.

Claimant's use of a walker was verified. This is suggestive that Claimant has extreme difficulty with ambulation. Claimant's physician letters supporting a finding of disability were also evidence supporting a finding of disability.

Based on the presented evidence, it is found that Claimant has disorganization of motor function in multiple extremities. Accordingly, it is found that Claimant meets the MS listing and that Claimant is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA application by finding that Claimant was not disabled.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id*. To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet SSA Listing 11.09. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to establish administrative hearing jurisdiction concerning a SER dispute. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

(1) reinstate Claimant's MA and SDA benefit application dated [redacted];
(2) evaluate Claimant's eligibility for MA and SDA benefits subject to the finding that Claimant is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by DHS are **REVERSED**.

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

Date Signed: 10/13/2014

Date Mailed: 10/13/2014

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: [redacted]