

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001170
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 2, 2014
County: Oakland (04)

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 October 2, 2014, from Pontiac, 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 Pamela Deaner, Specialist.

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.
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 9-10).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant does not have a severe impairment.
7. As of the date of the administrative hearing, Claimant was a 38 year old male with a height of 6'0" and weight of 145 pounds.
8. Claimant's highest education year completed was the 12th grade.
9. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
10. Claimant alleged disability based on impairments relating to right leg and hip pain.

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 a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 22-245) from an admission dated [REDACTED] were presented. It was noted that Claimant presented after he was run over by his spouse with a car. Diagnoses of right acetabulum fracture and right hip dislocation were noted. Claimant underwent open reduction internal fixation of right acetabulum fracture. It was noted that a neurovascular exam following surgery showed Claimant to be intact though diminished sensation was noted along Claimant's thigh and right leg reflexes were absent. It was noted that Claimant's pain was controlled with a combination of IV and oral medication. Claimant underwent occupational and physical therapy and was noted to make sufficient progress to be discharged. A discharge date of [REDACTED] was noted.

A Medical Examination Report (Exhibits 13-14) dated [REDACTED] was presented. The form was completed by an orthopedic surgeon with a 2 day history of treating Claimant. Noted diagnosis included right acetabulum fracture, sciatic nerve injury, and femoral nerve injury. Current medications of Dilaudid and Coumadin were noted. Right leg weakness and numbness were noted. Weakness in knee extension was noted. An impression was given that Claimant's condition was stable. It was noted that Claimant could not 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 was restricted to no lifting/carrying of any weight. It was noted that Claimant could not repetitively operate foot/leg controls.

Hospital notes (Exhibits A15-A41) from an admission dated [REDACTED] were presented. It was noted that Claimant underwent inpatient physical therapy for right hip fracture. A discharge date was not apparent.

An x-ray report of Claimant's right knee (Exhibit A7) dated [REDACTED] was presented. Impressions of no acute osseous abnormality, small knee effusion, and mild soft tissue edema were noted.

An MRI of Claimant's right knee (Exhibits A4-A5) dated [REDACTED] was presented. An impression of a subtle meniscus tear was noted to be possible.

An x-ray report of Claimant's pelvis and right knee (Exhibits A1-A2) dated [REDACTED] was presented. The following impressions were provided: healing non-displaced fracture at the left superior and inferior pubic rami, stable post-operative changes of right acetabular fracture, and unremarkable right knee.

A Medical Examination Report (Exhibits A42-A43) dated [REDACTED] was presented. The form was completed by an orthopedic physician with an approximate 9 month history of treating Claimant. Physical examination findings were note noted. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. Claimant's physician opined that Claimant was restricted from

operating repetitive right leg foot controls. Claimant's was restricted to occasional lifting/carrying of 10 pounds or less, never more than 20 pounds.

Presented medical documents verified that Claimant fractured his hip in 12/2013 after he was run over by a vehicle. Though less than 12 months have elapsed since the injury, the nature of the injury, cause of the injury and physician statements of ongoing restrictions make it probable that Claimant has ambulation, standing, and even sitting restrictions. 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 alleged disability based on hip dysfunction. The relevant SSA listing reads as follows:

- 1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
 - OR
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Claimant testified that he spent 59 in the hospital after his hip was shattered. Claimant stated that he was non-weight bearing for 6 weeks and that he could walk a very little bit after 2 months. Claimant testified that he underwent physical therapy for three times per week from 3/2014-8/2014. Claimant testified that he uses a cane most of the time. Claimant's testimony was not confirmed though it would be consistent with a hip fracture as suffered by Claimant. The severity of Claimant's injury is consistent with an inability to ambulate effectively.

Claimant and his mother testified that Claimant has good days and bad days. Claimant's mother testified that damp and cold days are particular painful for her son. Claimant's mother testified that Claimant spends such days in bed and under a

comforter. The testimony was consistent with a severe injury as suffered by Claimant and an inability to ambulate effectively.

The most direct evidence of ambulation difficulties came from Claimant's surgeon. On 9/12/14, Claimant's surgeon restricted Claimant as follows over an eight-hour workday: less than 2 hours of standing and/or walking, and less than 6 hours of sitting. An inability to sit or stand for a combined 8 hours is consistent with an inability to work full-time and an inability to ambulate effectively.

Consideration was given to Claimant's testimony that he does not take any pain medication. Claimant's testimony was suggestive that his ambulation would improve with pain meds. Claimant testified that his physician recommended against pain medication out of concern for addiction. Claimant's testimony was consistent with a MER which failed to list any current medications (see Exhibit 42).

It is mildly tempting to find that Claimant would ambulate effectively if pain medication was prescribed. Such a finding would be based on only speculation and would therefore be inappropriate.

Based on the presented evidence, it is found that Claimant is unable to ambulate effectively due to a previous hip fracture and lingering pain and stiffness. It is found that Claimant meets the SSA listing for major joint dysfunction.

DECISION AND ORDER

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 benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for MA 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: **10/28/2014**

Date Mailed: **10/28/2014**

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:

