

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

IN THE MATTER OF:

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Reg. No.: 14-002329
Issue No.: 2009
Case No.: ██████████
Hearing Date: August 27, 2014
County: Macomb (20)

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 August 27, 2014, from Detroit, Michigan. Participants included the above-named Claimant. ██████████ testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included ██████████ ██████████ Hearings Facilitator.

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 12/30/13, Claimant applied for MA benefits, including retroactive MA benefits from 9/2013.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 2/14/14, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 14-15).
4. On 2/19/14, 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 5/8/14, Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On 7/2/14, SHRT determined that Claimant was not a disabled individual, in part, by reliance on a Disability Determination Explanation and application of Medical-Vocational Rule 201.28
7. As of the date of the administrative hearing, Claimant was a ■ year old male with a height of 6'4" and weight of 166 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 since 5/2014.
10. Claimant alleged disability based on pancreatitis symptoms.

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, a 3-way telephone hearing was requested. Claimant's AHR's 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. The 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

Claimant testified that he worked as a restaurant chef for 4 weeks in or near [REDACTED]. Claimant testified that he received no income because the owner failed to pay his employees. Claimant testified that he filed with Wage & Hour in an attempt to receive compensation for his work. Claimant testified that Wage & Hour was unable to locate the restaurant owner and that Claimant still remains unpaid for his work.

Claimant testified that he also worked briefly for a restaurant in [REDACTED]. DHS presented employer documents listing Claimant's pay history (Exhibits 68-70). Claimant received the following gross earnings: \$474.75 on [REDACTED] \$277.65 on [REDACTED] and \$533.86 on [REDACTED]

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 with a summary of relevant presented medical documentation.

Medical center documents (Exhibits A21-A23) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of increased abdominal pain. An assessment of decompensated liver disease, status post paracentesis, was noted.

Treating physician office visit letters (Exhibits A17-A20) were presented. On [REDACTED], it was noted that Claimant had several hospitalizations associated with liver disease and ascites. On [REDACTED] it was noted that Claimant was doing well with diuretics and ascites have not returned. On 7/23/13, it was noted that Claimant was doing well with alcohol abstinence and that Claimant was maintaining his weight of 174 pounds.

Medical center documents (Exhibits 24-33; A12-A16) from an admission dated [REDACTED] were presented. It was noted that Claimant complained of upper-left abdominal pain (pain level 10/10), ongoing for 1 day. It was noted that Claimant reportedly stopped drinking alcohol 13 years prior. A history of cirrhosis was noted. It was noted that Claimant was hospitalized 3 times in [REDACTED] due to ascites but that his liver disease is now stable. It was noted that an ultrasound of Claimant's gallbladder demonstrated non-obstructive renal calculi. An MRI of Claimant's abdomen was noted to demonstrate chronic pancreatitis with a pseudocyst. A plan of IV fluids and labs was noted. An assessment of cholelithiasis (i.e. gallstones) with a plan for surgery was noted. Other assessments included hematuria, chronic anemia, and a history of cirrhosis and deep vein thrombosis. It was noted that Claimant tolerated his diet well and was discharged on [REDACTED]

Hospital documents (Exhibits 34-54) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant reported ongoing abdominal pain with weekly flare-ups associated with nausea and vomiting. It was noted that a CT of Claimant's abdomen demonstrated chronic pancreatitis including a pseudocyst which increased in size compared to

████████ radiology. A plan of IV fluids, ice chip, proton-pump inhibitor was noted. A surgery evaluation noted that pseudocysts may need time to mature (presumably before surgery could be performed). A discharge date was not specified though ██████████ was the most recent medical note provided.

Medical center documents (Exhibits A9-A11; A49-A55) from an admission dated ██████████ were presented. It was noted that Claimant presented with complaints of increased abdominal pain since a recent urinary stent removal. Claimant's pain was noted as caused by a pancreatic cyst rupture. A plan of IV fluids, ice chips, pain control, and surgery evaluation was noted. It was noted that Claimant was treated with various medication. A discharge date of ██████████ was noted.

Medical center visit documents (Exhibits A5-A8) dated ██████████ were presented. It was noted that Claimant presented with complaints of vomiting and nausea, ongoing for 1 day. A history of alcohol abuse was noted; it was also noted that Claimant denied recent use. Abdominal tenderness was noted. A course of action was not apparent.

Medical center documents (Exhibits A3-A4; A50-A57) from an admission dated ██████████ were presented. It was noted that Claimant presented with complaints of abdominal pain and vomiting, ongoing since a urinary stent removal from a previous Wednesday. It was noted that Claimant was supposed to follow-up with a hospital to get a pancreatic stent but was unable to do so due to a lack of insurance. It was noted that a CT was consistent with chronic pancreatitis and pseudocysts; cholelithiasis and colon diverticula was also noted. It was noted that Claimant was noncompliant. It was noted that Claimant's lab results and pain improved. A discharge date of ██████████ was noted.

A Medical Examination Report (Exhibits A1-A2) dated ██████████ was presented. The form was completed by a gastro-intestinal physician. Claimant's first date of examination with the treater was not legible, however, it was noted that Claimant had not been seen since ██████████. Claimant's physician listed diagnoses of ascites and pancreatic pseudocysts. It was noted that Claimant's records from ██████████ were requested (presumably, not received as of the report completion date). An impression was given that Claimant's condition was improving.

The physician opined that Claimant was restricted to 2 hours of standing and/or walking over an 8 hour workday. Claimant's physician opined that Claimant was restricted from performing any of the listed repetitive actions (e.g. reaching, simple grasping, pushing/pulling, and fine manipulating) with his arms. It was opined that Claimant was restricted to occasional lifting/carrying of 10 pounds, never 20 pounds or more.

A hospitalization from an admission dated ██████████ was referenced (see Exhibit A83). It was noted that Claimant underwent cyst gastrotomy. A discharge date of ██████████ was noted.

A mental status evaluation report (Exhibit 84-86) dated [REDACTED] was provided. The report was noted as completed by a consultative licensed psychologist. Observations of Claimant included the following: alert, cooperative, polite, spontaneous and well organized mental activity stream, eurythmic emotional reaction, and orientation x3. It was noted that Claimant reported that he is independent in daily activity completion. Diagnoses of somatic disorder with predominant pain (moderate), alcohol disorder (in sustained remission), and cannabis use (mild). A guarded prognosis was noted.

Hospital documents (Exhibits A59-A89) from an admission dated [REDACTED] were presented. It was noted that Claimant reported a baseline abdominal pain of 4/10 but it has increased to 7/10 over the past 4-5 days. An admission physical examination revealed tachycardia and blood in stool. It was noted that Claimant ran out of pain medication. It was noted that a CT abdominal scan was performed and that Claimant still has a pancreatic pseudocyst. It was noted that Claimant was treated with Heparin and placed on a liquid diet. It was noted that Claimant underwent cyst gastrostomy surgery. It was noted that a change in medication from Heparin to Xeralta reduced Claimant's pain. It was noted that Claimant tripped and fell on date of discharge and that x-rays of Claimant's knee were negative. A discharge date of [REDACTED] was noted. A follow-up in 4 weeks to check on stent placement was noted.

Hospital documents (Exhibits A90-A92) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chronic abdominal pain. It was noted that a CT showed improvement of the pseudocyst. A final diagnosis of "none" was noted.

Claimant testified that he is restricted in walking and lifting due to abdominal pain and dizziness. Claimant also testified that he has good days but mostly bad days (20 to 23 per 30 day period).

Claimant reported that he was hospitalized for one week in every month for the last year (see Exhibit 84). Claimant's testimony was not technically verified, but from [REDACTED] hospitalizations were verified. Claimant's repeated hospitalizations for chronic pseudocyst treatment was sufficient to infer that Claimant has ongoing work-related restrictions. The documents also tended to verify that surgeries and medications have helped, but that Claimant still has chronic pain from pseudocysts.

The medical evidence also established that Claimant's walking and lifting/carrying restrictions have lasted since [REDACTED], 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.

Digestive disorder listings (Listings 5.00) were considered based on Claimant's multiple hospitalizations related to pancreatitis. Claimant presented insufficient evidence that he meets any digestive disorder listing.

It is found that Claimant failed to establish meeting an 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 has extensive work history as a chef. Claimant testified that he is not capable of performing the concentration and physical requirements of chef employment due to chronic pancreatitis. Claimant's testimony was consistent with presented evidence. 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.

Though Claimant may be capable of performing some degree of sedentary employment, it is doubtful that Claimant can maintain the employment successfully. Claimant credibly testified that he lost one job due to absences related to pancreatitis flare-ups. The evidence tended to verify that Claimant is medically compliant, ceased alcohol use, and still suffers pancreatic flare-ups requiring regular medical intervention.

Based on the presented evidence, it is doubtful that Claimant can maintain any type of employment due to abdominal pain caused by chronic liver disease and/or pancreatic pseudocysts. Accordingly, Claimant is a disabled individual and it is found that DHS improperly 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 improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 12/30/13, including retroactive MA benefits from 9/2013;
- (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: **9/26/2014**

Date Mailed: **9/26/2014**

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

