

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003468
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 18, 2014
County: Wayne (19)

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 September 18, 2014, from Detroit, Michigan. Judith Sandy, 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 [REDACTED], Medical Contact Worker.

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 8/2013.
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 Exhibits 5-6).
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 died.
6. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by reliance on a Disability Determination Explanation (Exhibits 60-70) and application of Medical-Vocational Rule 201.28.
8. As of the date of Claimant's death Claimant was a 25 year old male.
9. Claimant alleged disability based on human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) symptoms and complications.

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.

Claimant died before his hearing date. Claimant's AHR presented Letters of Authority (Exhibit A4) for Claimant's estate. The Letters of Authority verified Claimant's AHR authority to proceed as an AHR.

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

Claimant died on 3/13/14. Claimant's death automatically established Claimant's disability for 3/2014.

There was no evidence that any of the above circumstances apply to Claimant for purposes of disability for the period of 8/2013-2/2013. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process to determine 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.

Generally, the best evidence to establish a lack of SGA is a client's testimony. Generally, when a client fails to testify concerning SGA, a client cannot establish a lack of SGA and will be found to be not disabled. In the present case, Claimant's death applying the general rule to the present circumstances would create an immensely unjust outcome. When a client is unable to testify due to death, it is appropriate to consider other evidence to determine whether the client performed SGA at any time after applying for MA benefits.

Claimant's mother testified that her son lost employment with a department store in 6/2013. Claimant's mother testified that her son was fired for missing too many days due to sickness. Claimant's mother also testified that her son never worked again. Claimant's mother's testimony was consistent with employment history provided on a Medical-Social Questionnaire (see Exhibits 10-12) and a Disability Determination Explanation (see Exhibit 69). No evidence was presented to suggest that Claimant worked since applying for MA benefits. It is found that Claimant was not performing SGA at any point after applying for MA benefits and 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 20-24) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of general illness; specific reported symptoms included the following: fever, abdominal pain, congestion, sore throat, swollen glands, muscle aches, and cough. Physical examination findings included tender left-side abdomen, mild erythema, and faint wheeze. It was noted that chest x-rays were negative. It was noted that a urinalysis and blood culture were normal.

Hospital documents (Exhibits 25-37; 40-42) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of ongoing fevers, mouth sores, involuntary loss of weight, and general illness. Initial blood tests revealed low platelets, white blood cells, and hemoglobin. It was noted that HIV was a possible explanation but that Claimant refused testing. It was noted that Claimant received antibiotics and that Claimant's fever resolved. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 38-39; 43-52) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of progressively worsening weakness, left leg pain, and fever. It was noted that Claimant's blood work verified acute hepatitis and mononucleosis. It was noted that Claimant was suspected to have HIV though Claimant "adamantly" refused any testing. A discharge date of [REDACTED] 4 was noted. It was noted that Claimant reported independence in ADLs.

Hospital documents (Exhibits 16-19) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant underwent groin surgery to remove left lymph node. Noted discharge diagnoses included HIV, splenomegaly, and fever. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits B1-B4) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, nausea, vomiting, and fatigue. A "prolonged and complicated" hospital course was noted. It was noted that several tests were performed and several medications were administered. Noted discharge diagnoses included resolving acute HIV illness, anasarca, left inguinal abscess, hemophagocytic lymphohistiocytosis, chronic hyponatremia, and hyperkalemia. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits A1-A3) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with excessive fluid retention, likely secondary to hypoproteinemia state. It was noted that Claimant received various medications and was discharged in fair condition on [REDACTED].

Physician office visit documents (Exhibits 71-74) dated [REDACTED] were presented. Noted physical examination findings included puffy face and 1+ pitting leg edema. It was noted that Claimant was on dialysis but no longer receiving it as of the date of office visit.

Claimant's mother testified that Claimant moved in with her in 5/2013 after Claimant began developing recurrent health problems. Claimant's mother testified that Claimant needed help with cooking, cleaning, and even going to the bathroom. Claimant's mother testified that Claimant began retaining fluid to the point where it was seeping out of his legs. Claimant's mother also testified that Claimant spent several weeks attending dialysis (two times per week).

The presented records verified that from 9/2013 through the month of death, Claimant suffered AIDS complications including weakness, fluid retention, fever, and body aches. The records also verified that Claimant required numerous hospital and physician interventions to control symptoms. It is found that Claimant had a severe impairment and the analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

A SSA listing for human immunodeficiency virus (Listing 14.08) was considered based on Claimant's treatment for AIDS. The applicable listing reads as follows:

14.08 Human immunodeficiency virus (HIV) infection.

With documentation as described in 14.00F and one of the following:

- A. Bacterial infections:**
 - 1. Mycobacterial infection (for example, caused by *M. avium-intracellulare*, *M. kansasii*, or *M. tuberculosis*) at site other than the lungs, skin, or cervical or hilar lymph nodes, or pulmonary tuberculosis resistant to treatment; or
 - 2. Nocardiosis; or
 - 3. *Salmonella* bacteremia, recurrent non-typhoid; or
 - 4. Multiple or recurrent bacterial infections, including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment three or more times in a 12-month period.
- B. Fungal infections:**
 - 1. Aspergillosis; or
 - 2. Candidiasis involving the esophagus, trachea, bronchi, or lungs, or at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or
 - 3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or
 - 4. Cryptococcosis, at a site other than the lungs (for example, cryptococcal meningitis); or
 - 5. Histoplasmosis, at a site other than the lungs or lymph nodes; or
 - 6. Mucormycosis; or
 - 7. *Pneumocystis* pneumonia or extrapulmonary *Pneumocystis* infection.
- C. Protozoan or helminthic infections:**
 - 1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or
 - 2. Strongyloidiasis, extra-intestinal; or
 - 3. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.
- D. Viral infections:**
 - 1. *Cytomegalovirus* disease (documented as described in 14.00F3b(ii)) at a site other than the liver, spleen, or lymph nodes; or
 - 2. Herpes simplex virus causing:
 - a. Mucocutaneous infection (for example, oral, genital, perianal) lasting for 1 month or longer; or
 - b. Infection at a site other than the skin or mucous membranes (for example, bronchitis, pneumonitis, esophagitis, or encephalitis); or
 - c. Disseminated infection; or
 - 3. Herpes zoster:
 - a. Disseminated; or
 - b. With multidermatomal eruptions that are resistant to treatment; or
 - 4. Progressive multifocal leukoencephalopathy.
- E. Malignant neoplasms:**
 - 1. Carcinoma of the cervix, invasive, FIGO stage II and beyond; or
 - 2. Kaposi's sarcoma with:

- a. Extensive oral lesions; or
 - b. Involvement of the gastrointestinal tract, lungs, or other visceral organs;
or
 3. Lymphoma (for example, primary lymphoma of the brain, Burkitt's lymphoma, immunoblastic sarcoma, other non-Hodgkin's lymphoma, Hodgkin's disease); or
 4. Squamous cell carcinoma of the anal canal or anal margin.
- F.** Conditions of the skin or mucous membranes (other than described in B2, D2, or D3, above), with extensive fungating or ulcerating lesions not responding to treatment (for example, dermatological conditions such as eczema or psoriasis, vulvovaginal or other mucosal *Candida*, condyloma caused by human *Papillomavirus*, genital ulcerative disease).
- G.** HIV encephalopathy, characterized by cognitive or motor dysfunction that limits function and progresses.
- H.** HIV wasting syndrome, characterized by involuntary weight loss of 10 percent or more of baseline (computed based on pounds, kilograms, or body mass index (BMI)) or other significant involuntary weight loss as described in 14.00F5, and in the absence of a concurrent illness that could explain the findings. With either:
1. Chronic diarrhea with two or more loose stools daily lasting for 1 month or longer; or
 2. Chronic weakness and documented fever greater than 38°C (100.4°F) for the majority of 1 month or longer.
- I.** Diarrhea, lasting for 1 month or longer, resistant to treatment, and requiring intravenous hydration, intravenous alimentation, or tube feeding.
- J.** One or more of the following infections (other than described in A-I above). The infection(s) must either be resistant to treatment or require hospitalization or intravenous treatment three or more times in a 12-month period.
1. Sepsis; or
 2. Meningitis; or
 3. Pneumonia; or
 4. Septic arthritis; or
 5. Endocarditis; or
 6. Sinusitis documented by appropriate medically acceptable imaging.
- K.** Repeated (as defined in 14.00I3) manifestations of HIV infection, including those listed in 14.08A-J, but without the requisite findings for those listings (for example, carcinoma of the cervix not meeting the criteria in 14.08E, diarrhea not meeting the criteria in 14.08I), or other manifestations (for example, oral hairy leukoplakia, myositis, pancreatitis, hepatitis, peripheral neuropathy, glucose intolerance, muscle weakness, cognitive or other mental limitation) resulting in significant, documented symptoms or signs (for example, severe fatigue, fever, malaise, involuntary weight loss, pain, night sweats, nausea, vomiting, headaches, or insomnia) and one of the following at the marked level:
1. Limitation of activities of daily living.

2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

Looking at Part K, it was established that Claimant had recurring symptoms of fatigue, muscle weakness, and fluid retention. It was also established that Claimant required repeated hospital and physician intervention throughout the final months of his life. The symptoms and treatment history was consistent with meeting the HIV listing.

Claimant did not help himself by initially refusing HIV testing. As it happened, most of Claimant's verified hospitalizations occurred before Claimant was diagnosed with HIV/AIDS. A consideration of medication noncompliance materiality was considered. The consideration was rejected because Claimant still required regular physician intervention and relatively extraordinary maintenance (e.g. dialysis) even after HIV treatment began. It could be found that once Claimant was diagnosed and began receiving HIV treatment, he did not meet listing requirements. Claimant's cause of death justify rejecting this notion.

A Certificate of Death (Exhibit 75) was presented. The certificate stated that Claimant died on [REDACTED] due to hemophagocytic lymphohistiocytosis and HIV nephropathy.

Both causes of death listed on Claimant's death certificate are known HIV/AIDS complications. Hemophagocytic lymphohistiocytosis is a blood disorder that occurs with immune system failure. HIV nephropathy is kidney failure caused by HIV and/or HIV medication. Claimant's causes of death are consistent with finding that Claimant suffered debilitating HIV/AIDS symptoms since 8/2013.

Based on the presented evidence, it is found that Claimant met the requirements of Listing 14.08 (K). Accordingly, Claimant was 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 [REDACTED], including retroactive MA benefits from 8/2013;
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant was a disabled individual; and
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial.

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**

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:

