

**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.: 14-004094
Issue No.: 2009
Case No.: ██████████
Hearing Date: September 8, 2014
County: Oakland (02)

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 September 8, 2014, from Madison Heights, Michigan. Participants included the above-named Claimant. ██████████ of ██████████ testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included ██████████, Specialist, and ██████████ Supervisor.

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 2/26/14, Claimant applied for MA benefits, including retroactive MA benefits from 11/2013.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 3/8/14, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 36-37).

4. On 3/12/14, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 6/4/14, Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On 8/5/14, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.17 (see Exhibits 146-152).
7. As of the date of the administrative hearing, Claimant was a ■-year-old male with a height of 5'10" and weight of 175 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant was a Healthy Michigan Plan recipient since 4/2014, and Adult Medical Program recipient from 6/2009-3/2014.
11. Claimant alleged disability based on impairments and issues including a history of heart attacks, knee arthritis, chest pain, extreme anxiety, and leg numbness.

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, an in-person 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 had not worked since [REDACTED]. Hospital records indicated that Claimant had several arguments at work (see Exhibit 42), thereby implying that Claimant was working as of [REDACTED]. 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.

Handwritten treatment documents (Exhibits 95-99) from ██████ were presented. (Exhibits 95-99). Diagnoses of the following were noted: dyslipidemia, severe GERD, osteoarthritis of bilateral knees, constipation, and anxiety.

A prescription note (Exhibit 143) dated ██████ was presented. It was noted that Claimant's physician prescribed a knee brace for Claimant.

Various physician treatment documents (Exhibits 119-128) ranging from ██████ were presented. It was regularly noted that Claimant complained of stress and panic attacks. It was regularly noted that Claimant received medication refills for treatment of anxiety and attention deficit disorder.

Various psychological counseling documents (Exhibits 78-94) from ██████ were presented. Claimant testified that he voluntarily attended therapy for drug counseling. It was noted that Claimant reported anxiety, racing thoughts, sleep disturbances, and delusions. Axis I diagnosis for dysthymic disorder and polysubstance disorder were noted. Claimant's GAF was noted to be 50. Claimant's testimony suggested that he stopped attending counseling due to a lack of transportation.

Hospital documents (Exhibits 103-118; 129-142) from an admission dated ██████ were presented. It was noted that Claimant presented with complaints of a radiating chest pain (pain level 10/10). It was noted that Claimant underwent emergency cardiac catheterization. It was noted that Claimant's condition improved. Noted discharge diagnoses included acute ischemic coronary syndrome and non ST elevation

myocardial infarction. A discharge date of [REDACTED] was noted. Discharge instructions included a follow-up appointment in 2 weeks.

Physician office visit documents (Exhibits A6-A9) dated [REDACTED] were presented. It was noted that Claimant denied any ongoing chest pain following catheterization.

Cardiovascular treatment documents (Exhibits 100-101) dated [REDACTED] were presented. It was noted that an EKG was performed and no acute changes, compared to a prior EKG, were noted. A handwritten physician statement indicated that Claimant could return to work with no restrictions.

Hospital documents (Exhibits 42-66; A10-A13) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain following an argument. It was noted that it was questionable whether Claimant was medication compliant and that Claimant continued to smoke. It was noted that an EKG revealed ST elevation myocardial infarction. It was noted that Claimant underwent left cardiac catheterization, coronary angiogram, left ventriculogram, successful recanalization of the left anterior descending artery at the stented segment, and angioplasty. It was noted that Claimant received IV nitro to relieve ongoing chest pain. Claimant's ejection fraction was noted to be 45-50%. It was noted that it was emphasized to Claimant that he quit smoking. It was noted that Claimant's medications were adjusted based on cost concerns. It was noted that Claimant was stable and pain-free at discharge. A discharge date of [REDACTED] was noted.

Physician office visit documents (Exhibits A1-A5) dated [REDACTED] were presented. It was noted that Claimant presented for cardiovascular evaluation and follow-up. It was noted that Claimant was asymptomatic. All systems were noted to be negative for symptoms. Claimant's gait was noted to be normal. Diagnoses of CAD, hypercholesterolemia, hypotension, tobacco smoker, and GERD were noted.

Claimant states that he has "extreme" knee arthritis. Claimant's complaints were not well documented but, for purposes of this decision, some degree of ambulation restriction will be presumed.

Claimant alleged disability, in part, due to anxiety. An approximate 5 week history of counseling was verified. It was also verified that Claimant sought treatment for anxiety as recently as [REDACTED]. The evidence was suggestive that Claimant may have some degree of impairment related to anxiety.

Claimant primarily alleged disability because of recurring chest pain and cardiac problems. It was established that Claimant was briefly hospitalized twice in [REDACTED] because of chest pain. It was also established that Claimant required stent placement and a need for ongoing medication compliance. Claimant testified that his cardiologist advised not to lift anything too heavy; the stated restriction is credible when considering

Claimant's cardiac history. It is found that Claimant has severe impairments 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 listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

Cardiac-related listings (Listing 4.00) were considered based on Claimant's cardiac treatment history. Claimant failed to meet any cardiac listings.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant had a complete inability to function outside of the home.

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.

A Medical-Social Questionnaire (Exhibits 71-72) dated 10/1/13 was presented. The form was completed by an unknown person. It was noted that Claimant had previous employment as a warehouse laborer, landscape, and valet attendant.

Claimant testified that he worked in a steel warehouse and that he was required to climb trucks. Claimant testified that he often jumped off trucks and suggested that he may have hurt his knees while doing this. Claimant expressed some doubt whether he could continue to climb down trucks.

Claimant testified that he only worked for one month as a valet. Claimant testified that his valet employment stopped because of knee pain. Claimant testified that the job required a lot of running which he can no longer perform.

Claimant testified that his landscaping employment was full-time summer employment. Claimant stated he performed part-time snow removal during winter months.

Claimant's testimony suggested that he could not perform any of his past employment due to knee pain. For purposes of this decision, Claimant's testimony will be accepted 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.

Physician statements of specific restrictions were not presented. Specific restrictions can be inferred based on the presented medical evidence.

Claimant testified that he can only walk a ½ block before knee pain prevents further walking. Claimant also testified that he experienced leg numbness when sitting down in the bathroom. Claimant's testimony was suggestive of an inability to perform sedentary employment.

Claimant presented evidence that he needed a knee brace; the evidence was dated more than 4 years before the date of hearing. Evidence of knee pain treatment after [REDACTED] was not presented. The only reference to musculoskeletal examination was in treatment documents from [REDACTED] and [REDACTED]. Both documents failed to note any knee problems or complaints. The evidence failed to verify any knee problems that would prevent Claimant's performance of sedentary employment.

As noted in step 2, Claimant has some anxiety issues. Claimant has no history of hospitalizations and a 5 week history of counseling. The evidence was not suggestive of anxiety problems other than a need for ongoing medication, an unspecified amount of panic attacks, and some degree of insomnia. As a former AMP and current HMP recipient, Claimant should have access to ongoing medications; thus, the general lack of treatment history cannot be excused by a lack of health insurance. The evidence did not verify what triggers Claimant's anxiety or how Claimant was affected by anxiety. Claimant's anxiety was not established to restrict his sedentary employment opportunities.

Claimant's heart problems appear to be minimal. The most recent physician statement indicated that Claimant was asymptomatic. In step 2, it was found that Claimant likely has some degree of lifting/carrying restrictions. Cardiac history of a stent placement is not enough to preclude Claimant's performance of sedentary employment. Based on the presented evidence, it is found that Claimant is minimally capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual 18-44), education (high school), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.28 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 2/26/14,

including retroactive MA benefits from 11/2013, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



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

Date Signed: **10/3/2014**

Date Mailed: **10/3/2014**

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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

