

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015728
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 8, 2015
County: Kalamazoo

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 January 8, 2015 from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's Authorized Hearing Representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED] Hearings Facilitator.

ISSUE

The issue is whether DHS properly denied Claimant's Medical Assistance (MA) eligibility 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 (Exhibits 3-4) from 11/2013.
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's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 375).
6. As of the date of the administrative hearing, Claimant was a 53 year old male.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's highest education year completed was the 12th grade.
9. Claimant has a history of semi-skilled employment, with no known transferrable job skills.
10. Claimant alleged disability based on impairments and issues including poor leg circulation, dyspnea, and cardiac problems.

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.* 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.

SGA means a person does the following: performs significant duties, 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 SGA. *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 testified that he was paid for painting an indoor wall a few months before the hearing. Claimant testified that he has not performed any other employment since applying for MA benefits. 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 the second step of the analysis.

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 presented medical documentation. The DHS medical packet appeared to be improperly numbered as numbering skipped from Exhibit 331 to Exhibit 372.

Hospital documents (Exhibits 37-83; 105-130; 152-313; 320-329) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain, ongoing for 1 year, worse with exertion. Echocardiography was noted to reveal moderate mitral valve regurgitation. Claimant's ejection fraction was noted to be 30% following catheterization, and 22% at a separate testing. Multiple stenosed arteries were noted. It was noted that Claimant underwent triple bypass surgery. A "fairly unremarkable" post-operative course was noted. An echocardiography report (Exhibits 318-319) dated [REDACTED] noted that Claimant's EF was 40%. Mildly reduced left ventricle systolic function was also noted. A summary of no pericardial effusion was noted. It was noted that Claimant ambulated independently and his pain was controlled. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 87-98; 137-141) from an encounter dated [REDACTED] were presented. Treatment details were not apparent.

A lower extremity venous duplex report (Exhibits 314-315) dated [REDACTED] was presented. An impression of a normal duplex study was noted. It was noted that there was no indication of deep vein thrombosis. A superficial phlebitis, unchanged from a study dated [REDACTED] (see Exhibits 316-317) was noted.

Cardiologist office visit documents (Exhibits 84-86; 131-134) dated [REDACTED] were presented. It was noted that Claimant complained of chest discomfort and other body aches. An impression of CAD, mild left ventricular systolic dysfunction (with moderate-to-severe hypokinesia), moderate-to-severe mitral regurgitation, and dyslipidemia were noted. It was noted that Claimant was an active smoker.

Hospital documents (Exhibits 99-104; 144-149) from an encounter dated [REDACTED] were presented. It was noted that Claimant was walking and that his breathing improved. It was noted that there were no signs of congestive heart failure.

Physician office visit documents (Exhibits 34-36) dated [REDACTED] were presented. It was noted that Claimant complained of numbness in right arm, left leg and chest, ongoing since open heart surgery. Various testing was noted as scheduled. Various medications were noted as prescribed.

Physician office visit documents (Exhibits 30-34) dated [REDACTED] were presented. It was noted that Claimant presented for lab testing and cholesterol treatment.

Physician office visit documents (Exhibits 27-30) dated [REDACTED] were presented. It was noted that Claimant complained of ongoing leg discomfort at the site of surgery. It was

noted that Claimant denied chest pain and fatigue. It was noted that a physical examination demonstrated no musculoskeletal, neurological, or cardiovascular abnormalities. Assessments of CAD, HTN, and hyperlipidemia were noted.

Various physician office visit documents (Exhibits A24-A37) from 1/2014 through 4/2014 were presented. The documents were not notable other than remaining consistent with previous and subsequent documentation.

Physician office visit documents (Exhibits A21-A24) dated [REDACTED] were presented. It was noted that Claimant reported intermittent chest pain left leg discomfort, worse with walking. Suspected claudication secondary to peripheral arterial disease was noted to be suspected.

Physician office visit documents (Exhibits A17-A20) dated [REDACTED] were presented. It was noted that Claimant had left leg circulation problems. A consultation with a vascular specialist was noted as planned.

Physician office visit documents (Exhibits A17-A20) dated [REDACTED] were presented. It was noted that Claimant complained of cough, sleeping difficulties, and eating problems. A 20 year history of alcohol abuse was noted. Claimant reportedly limited himself to 2 beers per week. It was noted that Claimant reported audio hallucinations. Recent respiratory testing noted 97% oxygen saturation. Several meds were noted as prescribed.

An Operative Note (Exhibits A213-A215) dated [REDACTED] was presented. A pre-operative and post-operative diagnosis of severe lifestyle limiting claudication in left leg was noted. It was noted that Claimant underwent bilateral common femoral artery endarterectomy.

Physician office visit documents (Exhibits A1-A2) dated [REDACTED] were presented. It was noted that Claimant "was doing quite well" following hospitalization. It was noted that Claimant denied chest discomfort and significant peripheral edema. Ongoing moderate-to-severe mitral regurgitation was noted. A follow-up appointment in 6 months was noted. Medical opinions appeared to be based, in part, on recent echocardiograph testing (see Exhibits A3-A5).

Physician office visit documents (Exhibits A14-A16) dated [REDACTED] were presented. It was noted that Claimant continued to drink alcohol despite physician advice against it. A diagnosis of depression and anxiety was noted.

Physician office visit documents (Exhibits A11-A13) dated [REDACTED] were presented. It was noted that Claimant quit smoking 3 months earlier. A review of physical systems was negative for all symptoms. An assessment of COPD was noted. Prescriptions for Spiriva and Albuterol were noted.

Sleep test documents (Exhibits A58-A79) dated [REDACTED] was presented. An impression of mild obstructive sleep apnea was noted.

Physician office visit documents (Exhibits A54-A55) dated [REDACTED] were presented. It was noted that Claimant complained of cough. An assessment of rhinitis was noted.

An Operative Note (Exhibits A84-A85) dated [REDACTED] was presented. A pre-operative and post-operative diagnosis of severe lifestyle limiting claudication in left leg was noted. It was noted that Claimant underwent multiple angiograms and angioplasties.

Numerous other medical documents from 2014 were presented. The documents were notable only for being consistent with above-cited records.

Claimant testified that he is limited in walking due to leg pain. Claimant's testimony is consistent with his medical history which verified cardiac and vascular problems throughout the previous two years.

It is found that Claimant has a severe impairment. Accordingly, the analysis may proceed to determine if Claimant meets a SSA listing.

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.

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 affective disorder (Listing 12.04) was considered based on diagnoses of depression. 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 required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

It is found that Claimant failed to establish meeting a 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 a history of performing odd jobs. Claimant cited painting and raking leaves as two of the jobs he performed.

Claimant testified that he worked for 2-3 years as a cook. Claimant testified that his duties also required him to wash dishes.

Claimant testified that he is unable to perform the standing required of his former employment. Claimant's testimony was consistent with presented records. It is found that Claimant cannot perform past relevant 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 light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Physician statements of Claimant restrictions were not presented. Restrictions can be inferred based on presented documents.

Claimant's medical history included open heart surgery in 12/2013 and multiple vascular procedures in 2014. Claimant's vascular physician diagnosed Claimant with severe lifestyle limiting claudication (even following vascular procedures) throughout 2014. For good measure, Claimant's ejection fraction appears to be sub-normal and mitral regurgitation and COPD appears to cause Claimant some degree of breathing problem. The evidence strongly established that Claimant would be incapable of performing the standing and/or ambulation required of light employment.

Evidence was suggestive that Claimant continues to smoke and drink alcohol despite his health problems. Despite Claimant's poor choices, the evidence was not indicative that a stoppage in tobacco or alcohol abuse has a material effect on Claimant's restrictions.

Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school with no direct entry into skilled employment), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly 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 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 11/2013;
- (2) evaluate Claimant's eligibility for 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 Nick Lyon, Interim Director
Department of Human Services

Date Signed: **1/30/2015**

Date Mailed: **1/30/2015**

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 48909-8139

CC:

