

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016665
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 14, 2015
County: Wayne (35)

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 14, 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] [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 (see Exhibits 10-11 from 1/2014).
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 12-13).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a notice (Exhibits 3-4) informing Claimant's AHR of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. As of the date of the administrative hearing, Claimant was a 43 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 Associate's Degree in graphic design.
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 kidney disease (stage III), uncontrollable HTN, and paresthesia of hands.

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.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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 submitted medical documentation.

Hospital documents (Exhibits 26-63) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of kidney pain, ongoing for 3 days. Noted discharge diagnoses included chronic kidney disease (stage 3), hypokalemia secondary to diuretics, possible new onset diabetes, HTN, and hyperlipidemia. A discharge date of [REDACTED] was noted. Discharge recommendations included avoiding NSAIDs and follow-up in 4-6 weeks.

An x-ray report of Claimant's lumbar (Exhibit 158) dated [REDACTED] was presented. An impression of bilateral L5-S1 facet joint degenerative change and mild spondylosis at L3 and L4 were noted.

Hospital documents (Exhibits 64-84) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of right knee and ankle pain. A history of gout flare-ups was noted. It was noted that the hospital gave Claimant Norco to control pain. It was noted that Claimant felt better after taking meds. An assessment of gout was noted.

Hospital documents (Exhibits 85-126) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with body pain resembling previous gout flare-ups. It was noted that Claimant ran out of colchicine one week earlier. It was noted that radiology of Claimant's left shoulder, right knee, right ankle, and right foot demonstrated degenerative changes and soft tissue swelling. It was noted that Claimant was not following a gout diet. Discharge diagnoses of gout and kidney disease were noted.

Physician office visit documents (Exhibits 153-157;159-160) dated [REDACTED] were presented. Diagnoses of uncontrolled and uncomplicated DM (type 2), low back pain, and HTN were noted. Norco was prescribed for Claimant's back pain. Prescribed HTN meds included Amaryl, Catapres, Cozaar, and Tenoretic.

HTN specialist office visit documents (Exhibits A2-A6) dated [REDACTED] were presented. Lab results (Exhibit A7) were also presented. Physical examination findings included normal gait, normal neurology, and normal cardiovascular system. A plan of a low cholesterol and low sodium diet was noted. HTN was noted to be "not ideally controlled". A follow-up in 2 months was noted.

Physician office visit documents (Exhibits A15-A21) dated [REDACTED] were presented. Ongoing treatment for back pain, HTN, and DM were noted. Various meds were noted to be prescribed.

An internal medicine examination report (Exhibits 14-24) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. The examination included blood testing. It was noted that Claimant reported a history of HTN, diabetes, hyperlipidemia, gout, back pain, kidney disease, and sleep apnea. Reductions in motion ranges for lumbar flexion and hip forward flexion were noted. The examiner noted that Claimant slowly performed tandem walk, toe walk, and heel walk. Claimant's blood pressure was noted to be under fair control under Claimant's current drug regimen. It was noted that Claimant does not follow a diabetic diet. It was noted that Claimant was able to perform all 23 listed work-related activities; listed activities included: sitting, standing, lifting, carrying, stooping, bending, and reaching, though most activities were performed with pain.

Physician office visit documents (Exhibits A9-A14) dated [REDACTED] were presented. Ongoing treatment for back pain, HTN, and DM were noted. Various meds were noted to be prescribed.

Claimant alleged disability, in part, due to gout. Presented records established hospital admissions related to gout flare-ups. Each admission tended to verify that each admission was related to not taking meds. Each admission also tended to verify that Claimant was discharged within one day after meds were administered. Gout was not listed by Claimant's physician as an ongoing diagnosis. The evidence failed to establish disability based on gout.

Claimant alleged disability based on hand paresthesia. Presented evidence did not appear to contain any reference of hand tingling and/or numbing. Hand restrictions were also not apparent. Claimant failed to establish disability based on hand paresthesia.

Claimant testified that he needs a sleep study. Claimant's testimony may be true but it was not indicative of restrictions related to sleep apnea. One of the few medical references to sleep apnea was a hospital physician statement ruling it out as a diagnosis (see Exhibit 59). Claimant did not establish restriction based on sleep apnea.

Presented records established that Claimant has ongoing difficulties with lumbar spondylosis, HTN, kidney disease, and DM. Claimant testified that he has ambulation, standing and lifting/carrying restrictions which are related to his chronic problems. Claimant's testimony was credible and consistent with presented documents.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, it is found that Claimant established having a severe impairment and the disability analysis may move 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 spinal disorders (Listing 1.04) was considered based on Claimant's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

Kidney disease listings (Listings 6.00) were considered based on a diagnosis of chronic kidney disease (stage 3). The listing were rejected due to a failure to establish any of the following: hemodialysis, transplant, or other sufficient complications.

A listing for inflammatory arthritis (Listing 14.09) was considered based on gout treatment history. The presented medical records were insufficient to establish that Claimant has an inability to ambulate effectively, perform fine and gross movements, or suffers inflammation or deformities with a diagnosis of ankylosing spondylitis or other spondyloarthropathies, or suffers repeated manifestations of inflammatory arthritis (when medication compliant). Some degree of back spondylosis was established, but not enough to meet this listing.

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 was a sanitation engineer for 3 years before needing to quit due to the heavy lifting required of his employment. Claimant testified that he last worked in 2001 as an auto parts inspector. Claimant testified that he is unable to perform the standing and heavy lifting required of his past employment.

Claimant's testimony was consistent with presented records. It is found that Claimant cannot perform past employment and the analysis may move to the final step.

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

Claimant testified that he sometimes uses crutches. Use of crutches can be indicative of an inability to perform the lifting/carrying or ambulation required of sedentary employment. In 7/2014, a consultative examiner stated that Claimant had no medical basis for a walking assistance device (see Exhibit 21). There was no evidence that Claimant's physician prescribed a walking assistance device to Claimant. The evidence was not supportive in finding that Claimant needs crutches to ambulate.

Claimant alleged fatigue and or tiredness based on medications. It was verified that Claimant takes several medications including a fairly strong narcotic for back pain. The evidence was not sufficient to establish that Claimant cannot complete a 40 hour work week.

Back abnormalities were verified. An impression of mild spondylosis and facet degenerative changes would restrict Claimant's lifting/carrying/standing, and standing. The diagnosis would not preclude Claimant from performing the relatively small amount of lifting, standing, and ambulation required of sedentary employment. The diagnosis would not prevent Claimant from the sitting requirements of sedentary employment. It is found that Claimant can perform the requirements of sedentary employment.

Presented medical records tended to verify that Claimant's gout and HTN are stable with medication. The conditions could cause fatigue, which along with kidney disease and narcotic pain medication could restrict Claimant's employment opportunities. The evidence was not sufficient to restrict Claimant beyond typical restrictions related to seizures (e.g. no driving, no heights, no heavy machinery...). Such restrictions are not likely to significantly restrict Claimant's sedentary employment opportunities to the point that vocational expert evidence to determine the amount of available jobs for Claimant. It is presumed that Claimant has ample opportunities.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 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 [REDACTED], including retroactive MA benefits, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/4/2015**

Date Mailed: **2/4/2015**

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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

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:

