

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-016867
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 14, 2015
County: Wayne (17)

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], specialist.

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 5-6; 9-10) 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 13-14).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibits 15-17) informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], an administrative hearing was held.
7. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 30 days to allow Claimant and DHS to submit Social Security Administration records concerning Claimant's most recent disability application.
9. On [REDACTED] Claimant submitted additional documents (Exhibits B1-B6).
10. As of the date of the administrative hearing, Claimant was a 23 year old male.
11. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
12. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
13. Claimant has a history of unskilled employment.
14. Claimant alleged disability based on lumbar pain and restrictions.

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.

It should be noted that Claimant recently applied for SSI benefits. If SSA denied Claimant's application and the decision is "final" the unfavorable disability decision may be binding on DHS. DHS policy describes "final" as when a claimant fails to timely appeal the denial or Claimant exhausted the SSA appeal process (see BEM 260).

DHS testimony indicated that their system indicated that Claimant did not appeal a denial of SSI benefits. Following the hearing, Claimant presented SSA correspondence (Exhibits B1-B6) dated [REDACTED]. The SSA correspondence verified that Claimant timely requested a hearing before an ALJ. The correspondence was persuasive proof that Claimant's SSI denial was not "final", and is therefore not binding on DHS. Accordingly, the disability analysis may proceed.

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 testimony denied performing any employment since 11/2013, a time before Claimant seeks MA benefits. Hospital records dated [REDACTED] noted that Claimant was working as a heavy duty carpet installer. Claimant made no mention of this employment during the hearing. Dates and wages of Claimant's carpet installation employment were not provided. The evidence suggested that Claimant worked since 1/2014, however, it cannot be determined with certainty whether Claimant's income exceeded SGA income limits. 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 presented medical documentation.

Hospital documents (Exhibits 25-63; A45-A75) from an admission dated [REDACTED] were presented. It was noted that Claimant presented following multiple falls in the past week including one caused by chest pain. It was noted that Claimant hurt his back in a recent fall. It was noted that Claimant reported syncopal episodes since he was 8 years old. It was noted that a CT of Claimant's abdomen demonstrated multiple large lymph nodes requiring follow-up treatment. It was noted that a CT of Claimant's lumbar demonstrated central disc protrusion at L5-S1 and multiple enlarged lymph nodes. An assessment noted that the episodes were likely vasovagal in nature. It was noted that Claimant was treated for acute kidney failure, noted to be likely caused by use of NSAIDs. CTs of Claimant's abdomen, neck, and thorax were noted to possibly demonstrate lymphoma. Noted discharge diagnoses included vasovagal episodes, fever, acute renal failure, and benign lymphadenopathy. A discharge date of [REDACTED] was noted. A discharge medication of hydrocodone-acetaminophen was noted.

Hospital documents (Exhibits A1-A6) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of sexually transmitted disease (STD). It was noted that Claimant was given antibiotics for STD. It was noted that Claimant complained of back pain; treatment was not apparent. Final impressions of urethritis and bilateral flank pain were noted. Documentation from Claimant's 12/2014 described a history of gonorrhea (see Exhibit 26).

Hospital documents (Exhibits A7-A44) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of sudden radiating back pain, ongoing for 3 days. It was noted that an MRI demonstrated an annular tear at L5-S1 resulting in severe spinal canal stenosis. It was noted that Claimant had a history of chronic back pain but that Claimant was still functional and working as a heavy duty carpet installer. It was noted that Claimant had full muscle strength. It was noted that left extremity testing was limited due to pain. Claimant underwent a lumbar epidural steroid injection. It was noted that inpatient rehabilitation was considered but that Claimant was discharged after his condition improved. Discharge instructions noted needs for skilled nursing, physical therapy, occupational therapy, and a social worker. Discharge medications included hydrocodone-acetaminophen, Norco, alprazolam, Valium, and Acetaminophen and Xanax. A discharge date of [REDACTED] was noted. A follow-up appointment in 2 weeks was noted as scheduled.

Claimant testified that he faints 1-2 times per day. Claimant testified that his spells last for 30 seconds and that he usually has a headache after a spell. Claimant testified that the episodes are often triggered by stress. Claimant testified that the episodes started when he was a child, and that episodes have increased over the last year. Claimant's testimony was highly indicative of disability.

Presented documents verified one hospital treatment for a fall related to a vasovagal episode. The one hospitalization was not highly suggestive of recurring symptoms as reported by Claimant. For purposes of this decision, it will be found that vasovagal episodes cause Claimant some degree of work-related impairments which have lasted 12 months.

Claimant testimony also alleged disability based on kidney disease, juvenile arthritis, and post-traumatic stress disorder. A treatment for acute kidney failure related to medication usage is not sufficient to verify a severe impairment. Treatment for PTSD and arthritis was not verified. It is found that Claimant failed to establish a severe impairment related to arthritis, PTSD, or kidney disease.

Claimant also alleged disability based on back pain. Hospital documentation verified a back pain injury in 12/2014. By 12/2014, DHS had already denied Claimant's MA application. The analysis will not consider Claimant's 12/2014 hospitalization as a basis for disability because Claimant's injury occurred after the DHS denial of MA benefits.

It is found that Claimant established a severe impairment. Accordingly, the analysis may proceed to Step 3 of the disability analysis.

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.

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 performed past employment as a hotel housekeeper, teacher's assistant, concessions worker, and security guard. Claimant testified that his previous job required more standing than he is capable of currently performing. Medical records referenced employment as a carpet installer. For purposes of this decision, it will be found that Claimant is unable to perform any past employment. Accordingly, the disability analysis may proceed 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.

In the second step of the analysis, it was found that Claimant could not establish disability from back dysfunction which began in 12/2014. Though Claimant's severe back pain began in 12/2014, it is likely that Claimant had back problems before 12/2014.

Claimant testified that he had back pain before 12/2014. Hospital documents from 1/2014 verified that Claimant's use of NSAIDs likely caused kidney dysfunction. NSAIDs are known to be often used to relieve back pain. It can be inferred that Claimant had some degree of back pain before 12/2014. The absence of radiology and medical treatment for back pain from before 12/2014 justifies a finding that Claimant's back pain did not restrict the performance of sedentary employment.

Claimant testified that vasovagal episodes restrict his ability to work. Reasonable restrictions would preclude the following: working at heights, working near open flames or water, driving, and operating heavy machinery. The restrictions would not preclude the performance of most types of sedentary employment.

The most compelling evidence of Claimant's ability to perform sedentary employment came from hospital records. Hospital records from 12/2014 noted that Claimant worked as a carpet installer. Claimant never mentioned the employment during the hearing but the hospital record would not include such information unless Claimant reported it. If

Claimant was capable of installing carpets, he was most likely capable of performing sedentary employment.

It is found that Claimant is capable of performing sedentary employment. Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (high school equivalency), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.21 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.

It should be noted that this decision only applies to Claimant's claimed disability from 1/2014 through 9/2014 (the month of DHS denial). This decision is purposely silent concerning the issue of Claimant's disability from 10/2014 and thereafter.

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 from 1/2014, 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: **2/17/2015**

Date Mailed: **2/17/2015**

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:

