

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-017720
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 15, 2015
County: Wayne (15)

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 15, 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] medical contact worker.

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 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 1-2).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed written notice 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 to submit treatment documents since 8/2014.
9. On [REDACTED], Claimant submitted additional documents (Exhibits B1-B9)
10. Claimant alleged disability based on impairments related to a head injury and related symptoms which lasted less than 12 months.

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 authorized hearing representative (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 presented medical documentation.

An x-ray report of Claimant's ankle (Exhibits 68-69) dated [REDACTED] was presented. An impression of a normal right ankle was noted.

Hospital documents (Exhibits 32-36; 47-50; 105-117) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with altered mental status and complaints of right-sided weakness and headache. It was noted that Claimant fell on New Year's Eve. It was noted that Claimant was a daily alcohol drinker. It was noted that a CT of Claimant's head revealed a large subacute hemispheric subdural hematoma. It was noted that Claimant was taken to ICU for neurological monitoring. It was noted that Claimant received medications and that he "progressed well". Discharge documents noted "minimal, if any" right sided-weakness. It was noted that Claimant would be transferred to inpatient rehab for strengthening and neurological rehabilitation. It was noted that Claimant received 11 discharge medications. A discharge date of 1/23/14 was noted.

Hospital documents (Exhibits 23-31; 44-46; 70-86) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of speech difficulties and left-sided weakness. Diagnoses of expressive aphasia, and subdural hematoma were noted. It was noted that on [REDACTED], Claimant underwent a right frontal craniectomy with placement of the bone flap in the abdomen. It was noted that Claimant showed improved strength and speech the day after surgery. Noted discharge diagnoses included right subdural hematoma, and resolved dysarthria. A discharge date of [REDACTED] was noted. Follow-up in 2-3 weeks was noted as scheduled.

A physician office visit document (Exhibit 19) dated [REDACTED] was presented. It was noted that Claimant presented for staple removal. It was noted that Claimant had full strength and was healing appropriately.

A radiology report of Claimant's head (Exhibits 37-38) dated [REDACTED] was presented. An impression of no evidence of subdural fluid or other acute abnormality was noted.

Physician office visit documents (Exhibits 16-18; 89-91; A10-A12) dated [REDACTED] were presented. It was noted that Claimant reported no neurological symptoms. Claimant's muscle strength was noted as 5/5 in all muscle groups. Claimant's sensation was noted as intact. Claimant's stance was noted as normal. It was noted that Claimant "has recovered well" and that cranioplasty to replace Claimant's skull flap was recommended.

Hospital documents (Exhibits 21-22; 41-43; 87-88; A13-A17) from an admission dated [REDACTED] were presented. It was noted that Claimant presented for scheduled right-sided cranioplasty to replace skull flap from abdomen. It was noted that Claimant tolerated the procedure well. Intact neurology was noted. Claimant's pain was noted as well controlled. A discharge date of [REDACTED] was noted. Discharge instructions noted "light active" working/lifting.

Presented documents verified that Claimant underwent a traumatic brain injury. It took a few days before Claimant sought medical attention, but Claimant underwent surgery requiring sawing open Claimant's skull to treat bleeding of his brain and storing part of his skull in his abdomen. Four months after surgery, Claimant underwent a procedure to restore his skull. Claimant's medical history was indicative of seriously intense procedures over a four month period. Documentary evidence was not insightful into Claimant's condition since his surgery. The record was extended to allow Claimant to submit treatment records since 8/2014 so that ongoing restrictions could be verified.

Physician office visit documents (Exhibits B3-B5) dated [REDACTED] were presented. It was noted that Claimant presented for help to quit smoking. It was noted that Claimant felt healthy.

Physician office visit documents (Exhibits B1-B2) dated [REDACTED] were presented. It was noted that Claimant reported wanting to quit smoking. A review of systems was negative for any complaints. An assessment of tobacco abuse was noted.

Updated documents only verified that Claimant has made a wonderfully complete recovery from massive head trauma. Claimant's testimony also denied any lingering problems. Though Claimant was unlikely to be capable of working for the period from [REDACTED] through 5/2014, the evidence failed to verify any restrictions to performing employment that lasted 12 months or longer. Accordingly, it is found that Claimant does not have a severe impairment and that DHS properly found Claimant to be not disabled.

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] 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:

