

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-018362
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 11, 2015
County: Oakland (2)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on February 11, 2015 from Madison Heights, 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] Manager.

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 3/2014
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 5-6).
4. On [REDACTED], DHS mailed a Health Care Coverage Determination Notice informing Claimant of a denial of MA benefits from 3/2014.
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 29 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 (via general equivalency degree).
9. Claimant has a history of semi-skilled employment, with no known transferrable job skills.
10. Claimant alleged disability based on restrictions related to Multiple Sclerosis (MS).

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).

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 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 presented medical documentation.

An MRI report of Claimant's brain (Exhibit 29) dated [REDACTED] was presented. An impression of multiple white matter T2 FLAIR hyper-intensities was noted.

Neurologist treatment documents (Exhibits 42-46) dated [REDACTED] were presented. A diagnosis of probable MS was noted. It was noted that Claimant would benefit from

disease modifying treatment. It was noted that Claimant complained of recurring blurry vision.

Physician office visit documents (Exhibits 21-22) dated [REDACTED] were presented. A review of systems noted complaints of dizziness, blurry vision, and anxiety. Diagnoses of MS, GERD, and anxiety were noted.

Physician office visit documents (Exhibits 23-24) dated [REDACTED] were presented. It was noted that Claimant reported dizziness, blurry vision, and leg weakness, ongoing for 1 day. It was noted that GERD symptoms diminished after Claimant took Omeprazole.

Physician office visit documents (Exhibits 25-26) dated [REDACTED] were presented. It was noted that Claimant reported continued blurry vision, dizziness, and weakness in right leg. It was noted that Claimant also reported paresthesia of his tongue and lips.

Neurologist treatment documents (Exhibits 38-41) dated [REDACTED] were presented. Reported right leg pain was noted; right leg weakness was specifically noted as absent. Physical examination findings noted no abnormalities. An assessment of probable MS was noted.

Physician office visit documents (Exhibits 27-28) dated [REDACTED] were presented. It was noted that Claimant reported a worsening of right leg weakness. It was noted that Claimant reported recurring periods (lasting several minutes) of right arm discomfort, accompanied by blurry vision; Claimant estimated 20 such occurrences per day. It was noted that Claimant was awaiting his first Copaxone injection.

A Medical Examination Report (Exhibits 15-16; 18-20) dated [REDACTED] was presented. The form was completed by a family medicine physician with an approximate 2 month history of treating Claimant. Claimant's physician listed diagnoses of MS, upper and lower extremity with paresthesia, abnormal vision, anxiety, reflux, and frequent dizzy spells. Current medications were noted to be Omeprazole and Xanax. Physical examination findings noted intact neurology, appropriate affect, and full range of motion in all extremities. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs. Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and/or walking per 8 hour workday. Claimant's physician opined that Claimant was restricted from performing the following repetitive actions: simple grasping, reaching, pushing/pulling, fine manipulating, and operating foot/leg controls. Claimant was restricted from ever lifting/carrying any amount of weight. Stated restrictions were based on Claimant's confirmed MS diagnosis. No mental restrictions were noted.

A Medical Examination Report (Exhibits 30-32) dated [REDACTED] was presented. The form was completed by a neurologist with an approximate 3 month history of treating Claimant. A diagnosis of MS was noted. A medication of Capaxone was noted. An

impression was given that Claimant's condition was stable. It was noted that Claimant needed help with driving to appointments.

Neurology treatment documentation (Exhibits 33-37) dated [REDACTED] was presented. Complaints of dizzy episodes, right face numbness, right leg numbness, and episodes of blurred and double vision which last a few seconds. It was noted that Claimant reported such episodes at the end of the long day or when he is overheated from working-out. It was noted that radiology of Claimant's brain was consistent with demyelinating disease. An impression of probable MS was noted. It was noted that Claimant had no history of transient neurological symptoms other than one incident when he was much younger. It was noted that Claimant began copaxone treatment. It was noted that previous vision complaints were resolved. It was noted that Claimant had no new symptoms suggesting acute relapse. Physical therapy and/or Gabapentin were noted as possible future treatments. It was noted that if Claimant developed new symptoms, the neurologist was to be contacted.

Claimant testified that his medication does not address his daily symptoms, only his long-term prognosis. Claimant testified that he is unable to work due to daily symptoms from MS. Claimant testified he is capable of snow blowing and helping his mother with cooking and cleaning. Claimant also stated that he is regularly limited by MS symptoms.

MS is known to cause the following symptoms: incontinence, fatigue, blurry vision, hand numbness, warm temperature intolerance, and spasms. Claimant testified that he experienced each of these symptoms. Claimant testified that he experiences blurry vision and photo-sensitivity. Claimant testified that he has a limited amount of energy each day and that he has many bad days where he is unable to perform any activities. Claimant testified that he has hand dysfunction causing him to drop items. Claimant testified that hot and cold weather worsens his symptoms. Claimant testified that he experiences frequent awakenings due to incontinence. Claimant testified that he has left shoulder spasticity. Not all of Claimant's symptoms were documented in medical records.

Claimant testified that he experiences Lhermitte's sign approximately 3-7 times per week. Lhermitte's sign is understood to be a feeling of an electrical sensation running down from the back of the neck when the head is bent forward. Claimant's testimony sounded credible enough, however, the complaint was not referenced within presented documents. Without any support from a medical provider for the allegation, the allegation will be disregarded.

Claimant testified that he has recently developed problems with incontinence. Again, Claimant's symptom was not documented within any presented records; thus, the symptom of incontinence will not be further considered.

It was well established that Claimant has MS. It was also well documented that Claimant experiences chronic fatigue.

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 proceed to Step 3.

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.

Claimant's most prominent impairment appears to be multiple sclerosis. MS is covered by Listing 11.09 which states that disability is established by the following:

Multiple sclerosis. With:

- A. Disorganization of motor function as described in 11.04B; or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Claimant failed to establish chronic symptoms of motor disorganization dysfunction or blurry vision. Thus, only the subpart concerning chronic fatigue will be considered.

Claimant's primary care physician provided multiple documents suggesting that chronic fatigue renders Claimant to be incapable of employment. Claimant's testimony also strongly supported such a conclusion. Neither Claimant's testimony nor his physician's statements were supported by SSA listing requirements. Evidence of detailed energy/fatigue testing was not presented. It is uncertain, but Claimant's physician's stated restrictions appear to be based solely on Claimant reporting. This consideration is supportive in rejecting restrictions stated by Claimant's physician. Claimant's neurologist also provided statements that were not supportive of disability.

On a Medical Examination Report dated [REDACTED], Claimant's neurologist opined that Claimant was capable of standing and/or walking about 6 hours in an 8 hour workday. A sitting restriction of less than 2 hours per 8 hour workday was noted. Claimant was found capable of performing all of the form's listed repetitive actions. Claimant was limited to occasional lifting of 50 pounds or more. No mental restrictions were noted. Claimant's treating physician painted a much different picture of Claimant's capabilities.

A Residual Functional Capacity Form (Exhibits A1-A6) dated [REDACTED] was presented. The form was completed by Claimant's primary care physician. It was noted that Claimant was seen monthly for MS and anxiety treatment. It was noted that Claimant experienced daily episodes of numbness and tingling of legs, neck pain, and chronic fatigue. It was noted that Claimant gave himself Copaxone injections daily. Claimant's physician noted that Claimant could neither stand/walk nor sit for 6-8 hours, though Claimant could do either for 1-2 hour periods. Stated restrictions were noted to be based on Claimant's burning pain in feet and fatigue. It was noted that MS caused Claimant to need to lie down during the day for the purpose of resting his feet and to recover from fatigue. It was estimated that Claimant was restricted to 1 mile of walking. It was noted that Claimant was found capable of frequently handling of objects. Claimant was found to be restricted to 5-10 pounds of lifting/carrying. Overhead lifting and bending forward were noted as restricted movements. It was noted that Claimant reported 3-4/10 pain in his feet. Claimant's physician noted that Claimant could not perform previous employment due to daily chronic pain.

Generally, when conflicting statements from treating physicians is provided, more weight will be given to a specialist. This general rule of interpretation would favor the statements made by Claimant's neurologist.

Claimant contended that his primary care physician's statements should carry more weight because she treated Claimant more frequently than his neurologist. Claimant testified that he has seen his primary care physician every month over the last year. Claimant testified that he only sees his neurologist for radiology appointments, approximately 3 times in all. Claimant's testimony was consistent with presented documents.

Presented evidence established that Claimant is capable of periods where MS symptoms are minimal and part-time employment can be performed. Presented evidence also established that Claimant reported a host of MS symptoms throughout the months since his diagnosis. The evidence was suggestive that Claimant would be regularly absent due to MS symptoms for any type of employment. The evidence was also suggestive that Claimant may need regular breaks and/or accommodations. It is plausible that some employer would accommodate Claimant's health needs so that Claimant could sustain employment for SGA levels; such a scenario is too uncertain to presume. The reality is that most employers would not be accommodating to the extent that Claimant's health requires.

Based on the presented evidence, it is found that Claimant meets SSA listing 11.09, and is therefore a disabled individual. Accordingly, it is found that DHS erred in denying Claimant's MA application.

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 3/2014;
- (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: **2/24/2015**

Date Mailed: **2/24/2015**

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:

