

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-5521
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 19, 2014
County: Oakland (03)

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 19, 2014, from Walled Lake, Michigan. Participants included the above-named Claimant who appeared via telephone. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included, via telephone, [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) 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 9/2012.
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 283-282).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant employment.
7. On [REDACTED] an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A64) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
11. On [REDACTED], an Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit a Medical Examination Report and treating physician records.
12. On [REDACTED], Claimant submitted additional documents (Exhibits B1-B143).
13. On [REDACTED], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record an additional 90 days.
14. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by determining that Claimant did not have a severe impairment.
15. On [REDACTED] the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
16. As of the date of the administrative hearing, Claimant was a 55-year-old male with a height of 5'10" and weight of 180 pounds.
17. Claimant has a relevant history of substance abuse.
18. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
19. As of the date of the administrative hearing, Claimant had no medical health coverage.

20. Claimant alleged disability based on impairments and issues including hip pain and restrictions, diabetes mellitus (DM), impairments related to a stroke, vocal cord damage, pancreatitis, and neuropathy.

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.* 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.* at 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.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 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 substantial gainful activity. *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. The 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

Claimant denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; 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 the background based on testimony and a summary of relevant submitted medical documentation. It should be noted that DHS presented documents in reverse numerical order, thus cited exhibits are cited in the same fashion.

Various medical center documents and treatment documents (Exhibits 149-1) were presented. The documents addressed various medical center treatment from [REDACTED] and prior. The documents are notable only for being consistent with other presented documents. A history of facial and knee reconstruction stemming from a motor vehicle accident was noted.

Medical center documents (Exhibits 209-192; 175-150) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of fatigue, vomiting, and polyuria. A diagnosis of diabetic ketoacidosis (DKA) was noted; an anion gap of 23 was noted. It was noted that medication compliance was likely a factor in causing DKA. Persistent HTN during admission was noted. It was noted that

Claimant reported no neuropathy relief from Gabapentin; a recommendation of amitriptyline was noted to treat neuropathy. It was noted that Claimant was treated with medications and discharged.

Medical center documents (Exhibits 214-210) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of a swollen throat. It was noted that views of Claimant's chest produced an impression of a normal examination. It was noted that views of Claimant's throat produced an impression of a normal examination. A diagnosis of possible pharyngitis was noted.

Medical center documents (Exhibits 232-215) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, dry heaves, and vomiting. It was noted that Claimant reported similar problems in [REDACTED] where he was found to have diabetic ketoacidosis. An impression of no acute cardiopulmonary process was noted following chest x-rays. It was noted that a CT of Claimant's abdomen revealed no acute inflammatory process. It was noted that Claimant responded well to labetalol. Final diagnoses of mild diabetic ketoacidosis and chronic pancreatitis were noted. It was noted that Claimant was discharged with 5 medications and instructions of a diabetic diet.

Medical center documents (Exhibits 295-264; 261-233) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with hip pain following a fall while playing pool, ongoing for one week. It was noted that hip radiology revealed a minimal displaced left femoral neck fracture. It was noted that a pin was inserted to stabilize Claimant's hip. It was noted that Claimant had peripheral neuropathy; chronic numbness distal to knees was noted. It was noted that Claimant reported a history of heavy drinking but now he only had 5 drinks per week; complete abstinence from alcohol was recommended. Generalized leg weakness, for many years was noted. A history of tobacco abuse was noted. It was noted that Claimant was allowed partial weight-bearing on his left side. A discharge date of [REDACTED] was noted. A 2 week follow-up was noted.

A Final Report (Exhibits 263-262) dated [REDACTED] was presented. It was noted that an MRI of Claimant's cervical spine was taken. A left lateral disc bulge with slight foraminal narrowing was noted at C5-C6. Very slight bulges were noted at C3-C4 and C4-C5.

Medical center documents (Exhibits A1-A18) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of intractable vomiting and nausea. It was noted that Claimant received an IV of saline and diabetic medications. It was noted that Claimant's vomiting stopped and he was discharged.

Medical center documents (Exhibits A21-A64; B35-B66) from an encounter dated 10/8/13 were presented. It was noted that Claimant presented with complaints of vomiting with blood. It was noted that Claimant had vocal cord dysfunction which improved with low dose steroids. It was noted that Claimant underwent an esophagogastroduodenoscopy and a diagnosis of a probable Mallory-Weiss tear was

noted. Severe esophagitis was noted. It was noted that Claimant independently performed daily activities. It was noted that Claimant was hyper-intensive and that Claimant's medications were changed.

Medical center documents (Exhibits B7-B34) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, intractable vomiting, and hematemesis. It was noted that IV fluids were administered and that Claimant's condition improved. It was noted that Claimant left against medical advice.

Medical center documents (Exhibits B67-B143) from an encounter dated [REDACTED] were presented. It was noted that Claimant reported complaints of hematemesis. It was noted that Claimant had a history of alcoholism who continued to drink. Final diagnoses of mild chronic gastritis and mild acute esophagitis were noted.

Claimant testified that he is now a compliant diabetic. Claimant testified that he gets free insulin through an unspecified program.

Claimant testified that his neuropathic pain has diminished since taking Lyrica. Claimant testified that his pain used to be 7/10 but is now a manageable 4/10.

Claimant testified that he has walking restrictions due to neuropathy. Claimant testified that he has difficulty grasping and manipulating with his hands due to neuropathy.

Claimant's testimony was consistent with the presented evidence. The medical evidence also established that Claimant's walking and manipulating restrictions have lasted since 9/2012, the first month that Claimant seeks MA benefits. It is found that Claimant has a severe impairment and the analysis may proceed 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 peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee and hip pain. The listing was rejected due to a failure to establish that Claimant is unable to effectively ambulate.

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.

SSA work history documents (Exhibits 305-308) were presented. It was noted that Claimant's only employment from the last 15 years consists of construction contract work. It was noted that Claimant's employment required climbing and lifting of 100 pounds; Claimant's neuropathy would preclude such lifting and climbing. It is found that Claimant cannot perform past relevant employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking

or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Direct evidence of restrictions was not presented. It was established that Claimant was treated multiple times for diabetic noncompliance. The encounters/admissions were severe enough that DKA was diagnosed. Neuropathy in Claimant's legs below his knees was noted by the treating physicians.

Claimant testified that he also has neuropathy in his hands. Claimant testified that he is unable to button his shirt because of neuropathy. Claimant's testimony was consistent with presented records.

The combination of Claimant's neuropathy, hip pain, and past MVA injuries combine to make the performance of light employment to be improbable. The likelihood becomes

more improbable when factoring Claimant's recurring treatment for throat pain and hematemesis. It is found that Claimant cannot perform light employment.

Based on Claimant's exertional work level (sedentary), age (approaching advanced age as of the date of MA application), education (high school), employment history (semi-skilled- not transferrable), Medical-Vocational Rule 201.14 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

It should be noted that Claimant is an admitted pack per day tobacco user. The presented evidence was not persuasive in establishing a connection between Claimant's tobacco use as a cause for impairments.


Claimant also has a history of heavy drinking. Claimant testified that he now only drinks alcohol two times per week. It is probable that Claimant's heavy alcohol use and medication noncompliance caused Claimant's neuropathy. The evidence was not strongly suggestive that Claimant's continued alcohol drinking notably contributes to ongoing restrictions. Thus, alcohol was not deemed material to the disability finding.

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 [REDACTED];
- (2) evaluate Claimant's eligibility for MA 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 MA benefits.

The actions taken by DHS are **REVERSED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 6/13/2014

Date Mailed: 6/13/2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

CG/hw

cc:

