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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-16326
Issue No.: 2009 4009
Case No.: [redacted]
Hearing Date: April 16, 2014
County: Wayne (55)

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 April 16, 2014, from Detroit, Michigan. Participants included the above-named Claimant, via telephone. [redacted], Claimant's mother, testified and appeared, via telephone, as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [redacted], Specialist, and [redacted], Hearings Coordinator.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 9/10/13, Claimant applied for SDA and MA benefits, including retroactive MA benefits from 8/2013.

2. Claimant's only basis for MA and SDA benefits was as a disabled individual.

3. On 11/5/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).

4. On 11/12/14, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 336-338) informing Claimant of the denial.

5. On 12/4/13, Claimant requested a hearing disputing the denial of MA and SDA benefits.

6. On 2/6/14, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.

7. On 4/16/14, an administrative hearing was held.

8. During the hearing, Claimant waived the right to receive a timely hearing decision.

9. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.

10. On 4/22/14, an Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit MRI reports and treating physician records.

11. Claimant failed to submit additional documents.

12. As of the date of the administrative hearing, Claimant was a [redacted]-year-old male with a height of 6'1'' and weight of 170 pounds.

13. Claimant has no known relevant history of alcohol or illegal substance abuse.

14. Claimant's highest education year completed was the 12th grade.

15. As of the date of the administrative hearing, Claimant had no health insurance.

16. Claimant alleged disability based on impairments including hip and abdominal pain.

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 CRF 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 2013 monthly income limit considered SGA for non-blind individuals is $1,040.

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 F2d 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 relevant submitted medical documentation.

Claimant testified that he was in motor vehicle accidents in 2/2013, 8/2013, and 9/2013. Claimant also testified that he was shot in the buttocks in 2013. Claimant alleged chronic injuries related to the multiple accidents and gunshot wound.

Hospital documents (Exhibits 16-22; 32-39; 46-48; 51-318) from an admission dated 8/26/13 were presented. It was noted that Claimant presented with a gunshot wound to the buttocks. It was noted that Claimant suffered a Grade III colon injury, Grade II rectum injury, Grade III injury to the distal ileum, and an ungraded left hypogastric artery injury. On 8/26/13, a Glasgow coma scale score of 3 was noted. It was noted that Claimant was emergently brought to the operating room. Segmental resections of the ileal and sigmoidal were noted as performed. It was noted that a sigmoid colostomy and ligation of the hypogastric artery were performed. It was noted 3 days later, Claimant underwent colostomy surgery; it was noted that surgery also closed Claimant's abdominal wound. A diagnosis of anemia, due to blood loss, was noted. On 8/31/13, it was noted that Claimant was unwilling to get up and walk around so as to encourage deep breathing and bowel function. On 8/28/13, it was noted that Claimant requires minimum assistance with daily activities; ambulation was noted as not assessable. On 9/1/13, it was noted that Claimant was more cooperative and felt better. On 9/2/13, it was noted that Claimant's pain was under control. On 9/4/13, it was noted that Claimant was feeling better and walking around on his own. It was noted that Claimant had

limited funds and residence options after discharge. Discharge medications of acetaminophen and docusate were noted. Colostomy care instructions were provided. It was noted that Claimant was transferred to a nursing home for ongoing medical care. A lifting restriction of 20 pounds was noted. Claimant's status was noted as improving. It was noted that Claimant was taught wound care and ostomy care.

Hospital documents (Exhibits 23-25; 29-31; 49; 322-323) dated 9/16/13 were presented. It was noted that Claimant presented for a wound check. The wound check was noted as normal.

Presented records established that Claimant suffered serious injuries on 8/26/13. The presented documents did not compellingly verify ongoing restrictions for Claimant.

A Disability Certificate (Exhibit 319) was provided. The certificate was unsigned but is presumed to have been signed by a treating physician. It was noted that Claimant was unable to work from 8/15/13-10/16/13. It was noted that Claimant had unspecified housework restrictions. Noted diagnoses included right hip strain, right shoulder strain, and cervical strain. He disability certificate sufficiently verified that Claimant was disabled for a period of 2 months.

No records were presented following 10/16/13. This is suggestive in finding that Claimant's condition improved. Records from 9/2013 were also suggestive in finding that Claimant's condition improved.

Hospital documents (Exhibits 26-28; 40-45; 50; 324-326) dated 9/18/13 were presented. It was noted that Claimant presented following a car accident in which he was rear-ended. It was noted that Claimant reported mild back pain. It was noted that Claimant was concerned about extra discharge from his gunshot wound. It was noted that Claimant's wound was checked and that "it looks well". It was noted that Claimant was discharged home.

Claimant failed to verify that his impairments persisted even though Claimant received additional time to submit updated medical documents. A finding that Claimant failed to establish the durational requirements for disability is a tempting outcome for this decision.

Claimant testified that he has significant walking and lifting restrictions. Claimant also credibly testified that he still employs a colostomy bag. Based on Claimant's serious injuries, it is reasonable to presume that some restrictions linger despite the passage of several months and a lack of medical evidence. It is found that Claimant established significant impairments that are expected to last 12 months or longer. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed

and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of hip pain. The listing was rejected due to a lack of objective medical evidence establishing ongoing pain for Claimant.

It is found that Claimant failed to establish meeting an 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 has no history of performing SGA. Without any history of SGA, it can only be found that Claimant cannot return to SGA 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, is 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 non-exertional. 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.

One restriction was noted in the presented records. Following Claimant's hospitalization a 20 pound lifting restriction was noted. A 20 pound lifting restriction is consistent with an ability to perform sedentary employment. This is particularly true when factoring that Claimant's lifting abilities have likely improved since hospital discharge.

Claimant testified that he uses a cane to ambulate. Claimant testified that he can only walk 1-2 blocks before pain prevents him from walking further. Though Claimant was given some deference at step 2 (based on a de minimus standard), no such deference will be given at step 5. The presented medical evidence does not support that Claimant's walking restrictions are as severe as Claimant alleges It also must be factored that Claimant's condition will improve as of 8/2014, the 12th month following Claimant's gunshot wounds. Based on the presented evidence, it is found that Claimant can perform sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual), education (high school equivalency), employment history (none), Medical-Vocational Rule 201.27 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.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id*. To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

The notable difference between MA and SDA is that Claimant need only establish a 3 month period of disability for SDA eligibility. Consideration will be given to whether Claimant was disabled for a 3 month period.

Claimant presented a Disability Certificate which verified that his physician deemed Claimant to be disabled for 2 months. Evidence suggesting a longer disability was not presented. It is found that Claimant was disabled for the period of 8/15/13-10/16/13, but not disabled for 10/17/13 forward based on application of Medical-Vocational Rule 201.27. Accordingly, Claimant failed to meet the disability durational requirements for SDA eligibility and that DHS properly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA and SDA benefit application dated 9/10/13 based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.

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

Date Signed: July 3, 2014

Date Mailed: July 3, 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/cl

cc: [redacted]