

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

IN THE MATTER OF:



Reg. No.: 2014-2
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 27, 2014
County: Wayne (31)

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 27, 2014, from Detroit, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's stepfather testified on behalf of Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's 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 [REDACTED].
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 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 application of Medical-Vocational Rule 202.20.
7. On [REDACTED] 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 [REDACTED] an Interim Order Extending the Record was mailed to DHS ordering the scheduling and payment of an I.Q. test for Claimant, with the test results to be returned to MAHS within 30 days.
11. On [REDACTED], DHS submitted Claimant's I.Q. test results (Exhibits 1-1 – 1-2).
12. 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 90 days from the date of hearing.
13. On [REDACTED], SHRT denied Claimant's claim of disability, in part, by determining that Claimant can perform simple and light work.
14. On [REDACTED], MAHS received the updated hearing packet and SHRT decision (Exhibits 2-1 – 2-2).
15. As of the date of the administrative hearing, Claimant was a 32-year-old male with a height of 5'9 ½ " and weight of 260-270 pounds.
16. Claimant has a history of alcohol abuse.
17. Claimant's highest education year completed was the 12th grade which he completed while attending special education classes.
18. As of the date of the administrative hearing, Claimant had no medical coverage.

19. Claimant alleged disability based on impairments and issues including heart restrictions and cognitive difficulties.

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

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 a summary of the relevant submitted medical documentation.

A Consultation (Exhibits 35-36) dated [REDACTED] from a hospital physician was presented. It was noted that Claimant's ejection fraction was 30% (35% in 5/2012), assumed to be from alcoholic cardiomyopathy. Evidence of pulmonary edema was noted. It was noted that Claimant reported dyspnea with moderate exertion. It was noted that Claimant drank at least a pint of alcohol, 2-3 times per week, since Claimant turned 17 years of age. An abnormal chest was noted. It was noted that Claimant had non-ischemic cardiomyopathy, or possibly an atypical infection. Radiological follow-up in the future was noted.

Hospital documents (Exhibits 33-34; 66-70) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with uncontrolled HTN and dyspnea. It was noted that Claimant was not compliant with medications because he could not afford them. It was noted that Claimant was treated with several medications. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 14-17) dated [REDACTED] were presented. It was noted that Claimant underwent a right heart catheterization. Noted conclusions included the

following: moderately elevated central venous pressure (CVP), mildly elevated pulmonary pressures, and normal systemic pressure. A recommendation of aggressive risk factor modification was noted.

An Office Note (Exhibits 37-40) dated [REDACTED] from a hospital physician was presented. It was noted that Claimant was off of alcohol and medication compliant. Chronic systolic heart failure and uncontrolled HTN were noted.

Hospital physician documents Note (Exhibits 46; 52-53; 71) dated [REDACTED] was presented. It was noted that an ICD system was implanted into Claimant.

Hospital physician documents (Exhibits 10-13; 50) dated [REDACTED] from a treating physician was presented. Claimant's current problems were noted to be chronic systolic heart failure (noted to presumably be alcoholic) and alcohol abuse (in remission). It was noted that Claimant used an implantable cardiac defibrillator. It was noted that Claimant denied any cardiac-disease symptoms. A Class II New York Heart Classification was noted. A Class C ACC/AHA was noted. Claimant's ejection fraction was noted to be 30-35%. It was noted that medication compliance was strongly recommended. Various medications were noted as prescribed (see Exhibit 50).

A document (Exhibit 51) dated [REDACTED] was presented. Normal function of Claimant's ICD was noted.

A 2D Echo report (Exhibits 20-22) dated [REDACTED] was presented. Claimant's ejection fraction was noted to be in the range of 40-45%; it was noted to be mildly decreased.

A Medical Examination Report (Exhibits 7-9) dated [REDACTED] was presented. The report was completed by a physician with an approximate 6-month history of treating Claimant. Claimant's physician noted that Claimant was diagnosed with chronic systolic heart failure. Claimant's physician restricted Claimant to occasional lifting of 10 pounds, and no lifting of 20 pounds or more. Claimant's physician noted sitting restrictions but the restrictions were not clear because conflicting restrictions were noted. It was noted that Claimant could stand and/or walk about 2 hours in an 8 hour workday. No restrictions were noted concerning repetitive motions of arms and legs.

An I.Q. test result report (Exhibits 1-1 – 1-3) dated [REDACTED] were presented. The report was noted as completed by a licensed psychologist. It was noted that Claimant was tested on the Wechsler Adult Intelligence Scale IV (WAIS IV). It was noted that Claimant's verbal comprehension was 80 and perceptual reasoning was 81, both noted as low-average. Claimant's working memory and processing speed were noted as mildly retarded. Claimant's full scale I.Q. was noted to be 70. A fair prognosis was noted. It was noted that Claimant could not manage his funds due to difficulty with calculations. Diagnoses of phonological disorder and borderline intellectual functioning were noted.

Claimant testified that he has walking restrictions due to shortness of breath. Claimant's testimony was consistent with diagnoses of chronic systolic heart failure and uncontrolled HTN. Restrictions were also verified by Claimant's physician. Cognitive restrictions were also verified by independent testing. Claimant's restrictions were verified to have begun no later than [REDACTED], Claimant's first month of MA requested. Accordingly, it is found that Claimant has a severe impairment and 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.

The most compelling reliable medical evidence submitted involved Claimant's cognitive restrictions. Mental impairments are described under listing 12.00. The most applicable listing involves intellectual restrictions. The applicable listing reads as follows:

12.05 Intellectual disability. Intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale IQ of 59 or less;

OR

C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

Presented evidence tended to establish that Claimant required special education classes in school. This tended to establish that Claimant's cognitive problems began before the age of 22 years.

A DHS examiner determined Claimant's I.Q. was 70. The examiner also determined that Claimant put forth good efforts during the test. Claimant's test results are accepted as reliable.

Presented medical documents established that Claimant has an ICD to regulate his heart function. Claimant's treating cardiologist categorized Claimant as having a Class II heart which is representative of someone comfortable at rest though ordinary physical activity results in fatigue, palpitation, dyspnea or anginal pain. Claimant's cardiac restrictions are found to be an additional significant impairment to cognitive impairments.

Based on the presented evidence, it is found that Claimant meets Listing 12.05 C. Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA application.

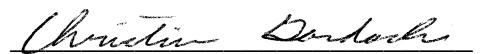
It should be noted that a federal administrative judge has determined that Claimant is not disabled. Claimant testified that he is in the final stage of the appeal process. If Claimant loses his appeal, the SSA decision will be "final" (see BEM 260) and the decision may be binding on DHS.

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: 6/12/2014

Date Mailed: 6/12/2014

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:

