

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-24228
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 30, 2014
County: Oakland (04)

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 June 30, 2014, from Pontiac, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. 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 8/2013.
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 9-10).

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 (see Exhibit 7).
6. On [REDACTED] SHRT determined that Claimant was not a disabled individual, in part, based on a Disability Determination Explanation which determined that Claimant could perform past relevant employment.
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. During the hearing, the record was extended 30 days to allow Claimant to submit additional physician treatment documents; an Interim Order Extending the Record was subsequently mailed to Claimant.
11. Additional treatment documents were not received.
12. As of the date of the administrative hearing, Claimant was a 60 year old male with a height of 5'9" and weight of 230 pounds.
13. Claimant's highest education year completed was the 8th grade.
14. As of the date of the administrative hearing, Claimant had health insurance through a hospital, ongoing for 2 ½ years.
15. Claimant alleged disability based on impairments and issues including degenerative arthritis of his hip and stomach hernia.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.*, p. 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

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.*, 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 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. "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 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.

Lab results (Exhibits 66-69) dated [REDACTED] were presented. The lab results were unaccompanied by physician analysis.

Hospital documents (Exhibits 47-65) from an encounter dated [REDACTED] were presented. It was noted that Claimant underwent an abdomen CT scan. An impression of enlarged prostate with no evidence of metastases was noted.

Hospital documents (Exhibits 21-46) from an admission dated [REDACTED] were presented. It was noted that Claimant was diagnosed with prostate cancer (Gleason Score 7; PSA less than 10). It was noted that Claimant was admitted for an elective radical prostatectomy. A Gleason score of 7 with PSA less than 10 is understood to refer to a small cancer that has not spread; this is consistent with a statement that there was no metastasis (see Exhibit 33). It was noted that Claimant had difficulty with intubation due to vocal cord lesions. It was noted that Claimant became hemodynamically stable; a guarded prognosis was noted. Discharge instructions noted a 10 pound lifting restriction. A discharge date of [REDACTED] was noted.

An internal medicine examination report dated [REDACTED] was presented. The report was completed by a consultative physician. It was noted that Claimant complained of headaches, frequent heartburn, urinary incontinence, nocturia, and urination frequency. It was noted that Claimant had not previously reported the problem to his physician. It was noted that Claimant also reported left groin pain. It was noted that Claimant had a

steady and unassisted gait. It was noted that Claimant had normal ranges of motion in all tested areas except for cervical spine rotation. It was noted that Claimant had 5/5 strength in all extremities. An impression of groin pain, secondary to surgery was noted; Claimant was advised to follow-up with a physician. An impression of abdominal pain at Claimant's surgery incision was noted.

Claimant testified that he was diagnosed with prostate cancer in 3/2013. Claimant testified that his prostate was surgically removed in 8/2013. The evidence tended to establish that Claimant has no prostate cancer complications since his prostate was removed in 8/2013. Claimant did not establish a severe impairment related to prostate cancer due to not having an impairment ongoing for 12 months.

Claimant also testified that he developed a painful hernia since his surgery. A consultative examiner in 12/2013 specifically noted that there was no evidence of hernia. Claimant failed to establish any impairment related to hernia.

Claimant testified that since surgery, he has to urinate approximately 2 times every hour. Claimant also testified that he has ongoing hip pain from arthritis. A consulting physician acknowledged the probability of pain.

Based on a de minimus standard, it is found that Claimant established a degree of impairment due to frequent urination and hip pain. Claimant's restrictions were established to have begun in 8/2013, 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.

Claimant's most prominent illness was prostate cancer. The SSA listing for prostate cancer requires the following to establish disability:

3.24 Prostate gland- carcinoma.

A. Progressive or recurrent despite initial hormonal intervention.

OR

B. With visceral metastases (metastases to internal organs).

The presented evidence did not suggest recurrent cancer or visceral metastases. 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.

Claimant's employment history was reported on a Medical-Social Questionnaire (Exhibit 14-16) dated 8/22/13. It was listed that Claimant has a history of employment as a chef. Claimant testified that he also performed past employment as a painter.

Claimant testified that he cannot stand for long periods. Claimant testified that he requires use of a cane. Claimant testified that he urinates approximately twice per hour. Claimant estimated that he has to urinate a total of 30 times per day. Claimant's testimony implied that he would be unable to perform any employment to his urination frequency.

Claimant's testimony was wholly unverified. A consultative examiner noted that Claimant had a steady and unassisted gait, while noting that Claimant had no restrictions. It is found that Claimant failed to verify standing restrictions that would prevent the performance of past employment.

As noted in step 2, a consultative physician acknowledged the probability that Claimant has a degree of hip pain due to arthritis. Without radiology or treatment, it cannot be presumed that hip pain prevents Claimant from performing his past work as a painter.

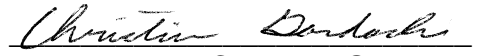
Claimant's testimony concerning urination frequency was sufficiently credible. What is troubling is that Claimant failed to seek medical treatment for the problem. It is reasonably possible that urination frequency could be resolved if medical treatment was sought. Thus, it is not found to be a long-term impairment to Claimant performing past relevant employment.

Based on the presented evidence, it is found that Claimant can perform past relevant employment. Accordingly, Claimant is not a disabled individual and it is found that DHS properly denied 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 properly denied Claimant's MA benefit application dated 9/20/13,

including retroactive MA benefits from 8/2013, 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: 9/4/2014

Date Mailed: 9/4/2014

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:

