

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-24776
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 26, 2014
County: Wayne (41)

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 26, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR), via telephone. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

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 7/2013.
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 7-8).

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 reliance on a Disability Determination Explanation (Exhibits 55-69) and application of Medical-Vocational Rule 201.23.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A13) at the hearing.
9. During the hearing, both parties waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
11. During the hearing, both parties agreed to extend the record by 30 days to allow Claimant to submit hospital records since 3/2014; an Interim Order Extending the Record was subsequently mailed to both parties.
12. On [REDACTED], Claimant requested a 30 day extension of the record; an Updated Interim Order Extending the Record was subsequently mailed to both parties reflecting a 30 day record extension.
13. Claimant failed to submit additional documents.
14. 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.
15. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.16 (see Exhibits 2-1 – 2-2).
16. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
17. As of the date of the administrative hearing, Claimant was a 41 year old male with a height of 5'11" and weight of 400 pounds.
18. Claimant has no known material history of alcohol or illegal substance abuse.

19. Claimant's highest education year completed was the 2nd grade.
20. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
21. Claimant alleged disability based on impairments and issues including low cognitive function, knee pain, lower back pain (LBP), gout, and dyspnea.

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.

An Intellectual Assessment / Mental Status examination report (Exhibits 50-54) dated [REDACTED] was presented. The report was completed by a consultative licensed psychologist. It was noted that Claimant was raised in Puerto Rico and attended special education classes through the 2nd grade. Claimant reported illiteracy in English and Spanish. Math skills were described as nonexistent. Notable observations of Claimant

included the following: normal gait, superficially cooperative, spontaneous speech, expressive and receptive language skills, blunted expression, orientation x3, and eurythmic mood. Claimant's social judgment was described as impaired. The examiner opined that Claimant could perform simple and repetitive tasks. The examiner opined that Claimant was unable to manage his funds. An Axis I diagnosis of Adjustment Disorder with Depressed Mood was noted. Claimant's GAF was noted to be 50.

Hospital documents (Exhibits 21-23; 27-30) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with right ankle pain and muscle weakness. It was noted that Claimant was unable to ambulate due to foot pain. Physical examination findings included edema and tenderness; pp+2 was noted in the right ankle. A plan of IV fluids, and pain management was noted. Right ankle x-rays demonstrated soft tissue swelling. A right leg ultrasound demonstrated no deep vein thrombosis. A discharge diagnosis of acute gouty arthritis was noted. Allopurinol was prescribed at discharge. Claimant had no discharge restrictions. A discharge date of [REDACTED] was noted.

Physician office visit documents (Exhibits 24-26) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of right foot pain. It was noted that Claimant tried nothing for the symptoms. A physical examination revealed no abnormalities; normal ranges of motion were noted. A diagnosis of gout was noted. A course of action was not apparent.

An internal medicine examination report (Exhibits 43-49) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. Claimant reported LBP, inability to bend, lift, or walk up stairs. Claimant reported undergoing a left thoracotomy 10 years prior where a section of lung was removed and resected. Other reported medical history included arthroscopic left knee surgery, mini-stroke, and gunshot wound to left arm and back. A physician assessment noted the following: morbid obesity, uncontrolled HTN, left knee tenderness. Restricted lumbar and left knee motions were noted. It was noted that Claimant reported a 2nd grade education and being illiterate. It was noted that Claimant's vision was not tested because Claimant could not read ABCs. The examiner recommended respiratory testing and obesity management. The examiner determined that Claimant was unable to tie shoes, write, or squat and arise. It was noted that Claimant could sit, stand, bend, stoop, push, and pull; each stated ability was without comment. It was noted that Claimant was restricted to 15 pounds of carrying.

Hospital emergency room (Exhibits A1-A2) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of extremity pain, ongoing for 3 days. It was noted that Claimant ran out of pain meds. Bony tenderness was noted in Claimant's right knee; normal range of motion was also noted. Past diagnoses of gout and collapsed lung were noted. It was noted that Claimant was discharged after feeling better following reevaluation.

Hospital emergency room (Exhibits A3-A5) dated [REDACTED] were presented. It was noted that Claimant presented with extremity pain, ongoing for 2 days. A hospital course of action was not apparent.

Hospital emergency room (Exhibits A6-A13) dated [REDACTED] were presented. It was noted that Claimant complained of lower back pain, ongoing for 12-24 hours. A CT report of Claimant's lumbar noted multilevel spondylotic and discogenic changes; moderate bilateral neuroforaminal narrowing was noted at L4-L5.

Presented evidence sufficiently verified that Claimant had cognitive restrictions. It was also verified that Claimant had lifting/carrying restrictions due to back pain. The evidence sufficiently verified that Claimant's restrictions lasted since 7/2013 (the earliest date 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.

The most compelling medical evidence submitted involved Claimant's cognitive restrictions. The SSA listing pertaining to intellectually-based disabilities 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 I.Q. of 59 or less;

OR

C. A valid verbal, performance, or full scale I.Q. 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 I.Q. 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.

Claimant testified that he attended special education classes and only completed the 2nd grade. Claimant's testimony was consistent with information reported to consultative examiners. The testimony sufficiently verified that Claimant's intellectual deficits began before the age of 22.

Claimant's cognitive examination included the Wechsler Adult Intelligence Scale III (WAIS3). The WAIS3 is an I.Q. test which measures verbal and performance I.Q.s. The verbal I.Q. test categories are similarities, arithmetic, digit span, information, comprehension and vocabulary. Claimant was deemed to be significantly impaired in 5 of 6 tested categories. Performance I.Q. tests five categories which include picture completion, digit symbol-coding, block design, matrix reasoning and picture reassignment. Claimant was impaired in each performance category, including significant impairment in 3 of 5 categories. Claimant's verbal I.Q. was 53. Claimant's performance I.Q. was 54. Claimant's full scale I.Q. was 49.

Claimant's full scale I.Q. of 49 places him well below SSA listing requirements. Though the testing was 5 years old, there is no evidence suggesting that Claimant has since increased his intellectual functioning. A recent example of Claimant's cognitive function was that he could not even complete a vision test due to ignorance of the alphabet.

The examining psychologist mildly suggested that Claimant's low test scores may have been the result of lack of effort. The examiner noted that Claimant should have performed picture completion well because it was a nonverbal test. The examiner did not blame the poor performance on sabotage. The examiner opined that Claimant possessed poor visual motor ability which could be a factor in Claimant's illiteracy. The evidence was suggestive that Claimant's low I.Q. scores were the result of poor intellectual functioning, not lack of effort during testing. Accordingly, Claimant's low I.Q. scores are found to be legitimate.

It is found that Claimant is cognitively impaired, as defined by Listing 12.05 (B). Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA application.

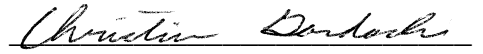
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS 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 7/2013;
- (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: 10/22/2014

Date Mailed: 10/22/2014

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:

