

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-26910
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 2, 2014
County: Monroe

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 2, 2014, from Monroe, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Manager.

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 6-7).

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 204.00.
7. As of the date of the administrative hearing, Claimant was a 50-year-old male with a height of 5'4" and weight of 143 pounds.
8. Claimant has an ongoing history of alcohol and marijuana abuse.
9. Claimant's highest education year completed was the 8th grade.
10. As of the date of the administrative hearing, Claimant had an unspecified type of medical coverage.
11. Claimant alleged disability based on impairments and issues including leg pain, incontinence, liver problems, and 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).

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. "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. It should be noted that Exhibits 450-457 were removed because they involved hospital records for a different client.

Various hospital documents (Exhibits 491-516; 551-577) from encounters dated [REDACTED] and [REDACTED] 1 were presented. It was noted that Claimant was treated various times for GI bleed, secondary to alcohol abuse. Diagnoses of acute alcohol-induced pancreatitis were noted. Chest and abdomen radiology were noted as negative.

One page of a Medical Examination Report (Exhibit 490; 55) was presented. The report was undated but was presumably completed by a treating physician. Presumably, the report was completed around 2011 because it was submitted surrounded by 2011 hospital records. Diagnoses of alcohol abuse, liver disease, recent pancreatitis, depression, melena, and dental decay were noted.

Hospital documents (Exhibits 461-482; 520-541) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of weakness, nausea, and vomiting. It was noted that Claimant has a history of liver disease and that he continues to drink alcohol and use marijuana. An impression of GI bleeding was noted.

Hospital documents (Exhibits 16-80) from an admission dated [REDACTED] were presented. It was noted that Claimant complained of bloody vomit. Noted problems included possible cirrhosis of the liver, hiatal hernia, and severe gastritis. It was noted that a blood transfusion was performed due to anemia, likely caused by alcoholic gastritis. The first listed admitting diagnosis was alcohol abuse. It was noted that Claimant's alcohol level was 196 at admission. A diagnosis of EtOH related liver disease was noted. It was noted that Claimant received medications and fluids and that his condition improved. A discharge date of [REDACTED] 3 was noted.

Hospital documents (Exhibits 81-123) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of bloody emesis, ongoing for 2 days. It was noted that Claimant received fluids and he felt better. An alcohol amount of 7-9 drinks was noted; it was also noted that Claimant was drinking "a lot of alcohol". A diagnosis of GI bleeding was noted. A history of GI bleeds, secondary to EtOH abuse was noted. A primary assessment of acute hematemesis was noted. Acute anemia was noted; it was noted that a blood transfusion was performed. A small hiatal hernia was noted. A discharge date of [REDACTED] was noted. It was noted that Claimant was advised to stop drinking completely.

Hospital documents (Exhibits 124-427) from an admission dated [REDACTED]. It was noted that Claimant presented with complaints of hematemesis. It was noted that Claimant last drank on the morning of admission. Noted admission diagnoses included acute pancreatitis, alcohol abuse, Barrett esophagus, and GI bleeding, secondary to alcohol

abuse. Acute anemia requiring transfusion was noted. Assessments of GI bleed, anemia, acute pancreatitis and EtOH withdrawal were also noted. A poor prognosis was noted; presumably due to Claimant's continued alcohol use. On [REDACTED], it was noted that Claimant was intubated due to alcohol withdrawal symptoms. On [REDACTED] it was noted that Claimant had an EtOH level of 28. On [REDACTED] it was noted that Claimant tolerated physical therapy well and that Claimant could ambulate 200 feet without an assistance device. On [REDACTED] it was noted that Claimant had a seizure. A PT assessment of progressing towards goals was noted. It was noted that Claimant could perform activities of daily living independently. An impression of a normal chest was noted following an x-ray. An impression of no acute cardiopulmonary process was noted. On [REDACTED] it was noted that Claimant left against medical advice.

A psychiatric examination report (Exhibits 578-582) dated [REDACTED] was presented. It was noted that Claimant reported depression symptoms including crying spells, poor appetite, and isolation. It was noted that Claimant reported an alcohol problem. A principal diagnosis of major depressive disorder was noted. A guarded prognosis was noted. The examining psychiatrist opined that Claimant could understand, retain, and follow simple directions. It was noted that Claimant should be restricted to work involving brief and superficial encounters with persons.

A physical examination report (Exhibits 583-589) dated [REDACTED] was presented. It was noted that Claimant had no restrictions in range of motion. It was noted that Claimant could perform all 23 listed activities without restriction; listed activities included: sitting, standing, pulling, and carrying. A physical examination specifically noted an absence of hernia. Claimant's strength was noted as full. Diagnoses included alcoholism, cirrhosis, learning disability, and depression.

Claimant alleged disability based on leg pain, depression and walking restrictions. Claimant's restrictions must be evaluated in light of Claimant's undisputed alcoholism.

Social Security Rule 82-60 states that an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled. SSA states that when drug or alcohol use is a medically determinable impairment, it must be determined whether the claimant would continue to be disabled if he or she stopped using drugs or alcohol; that is, SSA will determine whether DAA is "*material*" to the finding that the claimant is disabled. 20 CFR 404.1535 and 416.935.

Claimants have the burden of proof to establish disability. SSR 13-2p. When drug and/or alcohol abuse (DAA) is applicable, SSA applies the steps of the sequential evaluation a second time to determine whether the claimant would be disabled if he or she were not using drugs or alcohol. *Id.* It is a longstanding SSA policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. *Id.* Noted considerations made by SSA concerning drug materiality include the following:

- Does the claimant have DAA?
- Is the claimant disabled considering all impairments, including DAA?
- Is DAA the only impairment?
- Is the other impairment disabling by itself while the claimant is dependent upon or abusing drugs and/or alcohol?
- Does the DAA cause or affect the claimant's medically determinable impairments?
- Would the other impairments improve to the point of non-disability in the absence of DAA

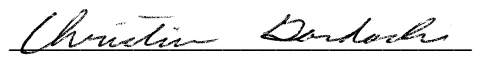
Despite Claimant's multiple health problems, Claimant conceded that he still drinks alcohol and smokes marijuana daily. Claimant testified that he knows that alcohol consumption is bad for his health; Claimant testified that he tries to drink less than he used to drink. For example, Claimant stated that he only drank half of a beer before the administrative hearing.

Any physical and/or psychological restriction alleged by Claimant appears directly related to his continued alcoholism. Three hospitalizations from 2013 each noted that Claimant drank alcohol before admission. Claimant testified that he was admitted to a hospital in [REDACTED]; Claimant conceded that he drank alcohol before his most recent admission. As of the date of hearing, Claimant's only obstacle appears to be alcoholism.

Presented records were suggestive that Claimant may have done some permanent damage (e.g. a diagnosis of liver disease), but there is insufficient evidence that Claimant would be impaired if he ceased drinking. Based on the presented evidence, it is found that Claimant does not have a severe impairment and that Claimant is not disabled. Accordingly, DHS properly denied Claimant's MA benefit 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 [REDACTED], including retroactive MA benefits from [REDACTED], 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: 6/24/2014

Date Mailed: 6/24/2014

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

SCB/hw

cc:

