

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-30505
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 16, 2014
County: Macomb (20)

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 July 16, 2014, from Warren, Michigan. Participants included the above-named Claimant. [REDACTED], Claimant's mother, 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.

ISSUES

The first issue is whether Claimant is entitled to a hearing for State Disability Assistance (SDA) benefits.

The second 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 1-2).
4. On [REDACTED] DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant and Claimant's authorized representative 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 201.25.
7. On [REDACTED], an administrative hearing was held.
8. During the hearing, both parties waived the right to receive a timely hearing decision.
9. During the hearing, both parties agreed to extend the records by 60 days to allow Claimant to submit treating physician documents, hospital documents and a Medical Examination Report; an Interim Order Extending the Record was subsequently mailed to both parties.
10. On [REDACTED] Claimant submitted additional documents (Exhibits A1-A143; B1-B530).
11. As of the date of the administrative hearing, Claimant was a 24 year old male with a height of 5'9" and weight of 110 pounds.
12. Claimant alleged disability based on impairments and issues including necrotizing pancreatitis and related symptoms.

CONCLUSIONS OF LAW

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).

It was not disputed that Claimant's Request for Hearing did not specify a dispute concerning SDA or cash eligibility. Claimant's AHR testified that the failure was an oversight.

In the present case, an evaluation of MA based on a claim of disability would be functionally identical to an SDA claim. DHS would not have any inconvenience or unjust burden by allowing the hearing request amendment. Nevertheless, a claimant must provide some notice of the dispute. Consideration was given to implying an SDA dispute if the disputed MA application dated [REDACTED] also included a request for SDA benefits.

DHS presented Claimant's application dated [REDACTED]. The application cover page only listed that MA benefits were requested (see Exhibit 305). In response to a question asking what help that Claimant needs, again only MA benefits was checked as a response (see Exhibit 306). It is found that Claimant failed to request a hearing concerning SDA eligibility.

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.*, 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.

Hospital documents (Exhibits 19-25; 239-292) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of severe intractable abdominal pain, nausea, and vomiting, ongoing for one week. It was noted that radiography verified an inflamed pancreas. It was noted that Claimant underwent nasogastric intubation. An assessment of severe acute gallstone pancreatitis was noted. It was noted that Claimant underwent emergency ERCP testing. It was noted that Claimant underwent a sphincterotomy with stent placement. It was noted that Claimant showed improvement before going into acute respiratory failure. It was noted that

Claimant gradually improved to the point of removal of gastric tubing and tolerating a regular diet. A discharge diagnosis of pancreatitis was noted. Claimant's weight at discharge was not apparent but it was noted that Claimant was obese. A discharge date of [REDACTED].

Hospital documents (Exhibits 3-8; 32-238) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, nausea and vomiting. It was noted that Claimant had a pancreatic pseudocyst. It was noted that Claimant underwent drain placement of the pseudocyst before developing rapid breathing and heartbeat; the cause was noted to be sepsis. It was noted that multiple complications occurred during Claimant's stay, including hypotension, a need for intubation, fluid retention, multiple abdominal wounds, and multiple pancreas tissue resections. Discharge instructions noted use of a rolling walker to assist with unsteady gait. A diagnosis of necrotizing pancreatitis was noted. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits A1-A3; B1-B537; C1-C45) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with abdominal pain and displacement of a feeding tube following a slip and fall. It was noted that Claimant was treated for embolization of the splenic artery. It was noted that Claimant underwent pancreatic necrosectomy and abscess drainage. It was noted that Claimant has a history of multiple washouts and drainages of fluid. It was noted that Claimant's necrotizing pancreatitis treatment was complicated by sepsis, fluid retention, and intra-abdominal hemorrhaging. On [REDACTED], Claimant's weight was noted to be 192 pounds. On [REDACTED], Claimant weight was noted to be 173 pounds. Noted active problems at discharge included: severe muscle deconditioning, atelectasis, malnutrition, depression, anemia of acute infection, and necrotizing pancreatitis.

It was noted that Claimant was subsequently admitted into inpatient rehabilitation on [REDACTED] (see Exhibits A1-A143). Noted rehabilitation orders included: lactose free diet, regular weight measurements, 24 hour nursing care, physical and occupational therapy, and assistance with getting out of bed. On [REDACTED], a rehabilitation facility assessment noted that Claimant needed assistance with bowel control. On [REDACTED], it was noted that Claimant could ambulate 150 feet. On [REDACTED], a standing tolerance of 8 minutes, with stand-by assistance, was noted. On [REDACTED], it was noted that Claimant's ability to swallow improved and that a small amount of solids could be tolerated. A discharge date of [REDACTED] was noted.

Claimant testified that he is restricted in standing and lifting restrictions due to weakness and pain. Claimant's testimony was not directly verified but can be reasonably inferred based on Claimant's diagnoses and multiple complications during extended hospital stays. The medical evidence also established that Claimant's walking and manipulating restrictions have lasted since 7/2013, 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 impairment appears to be weight loss due to pancreatitis. Listing 5.08 states that disability is established by the following:

Weight loss due to any digestive disorder despite continuing treatment as prescribed, with BMI of less than 17.50 calculated on at least two evaluations at least 60 days apart within a consecutive 6-month period.

Claimant testified that he tries to gain weight but is simply not able to do so. Claimant testified that eating is complicated by pancreatitis. As an illustrative example, Claimant testified that he often chokes when swallowing spit.

Claimant testified that his height was 5'9" and his weight was 110 pounds. During the hearing, the undersigned verbally wondered if Claimant's weight of 110 pounds was problematically low. If Claimant's testimony is accepted, Claimant's BMI is 16.2. Given Claimant's medical history and BMI, a weight of 110 pounds would indeed be disturbingly low.

It was established that Claimant's weight was 271 pounds on [REDACTED]. On [REDACTED], Claimant body weight was noted to be 153 pounds. Claimant's substantial and involuntary weight loss lends credibility to Claimant's testimony concerning his weight at the time of hearing. A significant problem exists in finding that Claimant meets the above listing.

The record was extended for Claimant's AHR to submit additional documentation, primarily to verify Claimant's status as an under-weight individual. Claimant's AHR presented over 600 pages of records; staggeringly, the records did not verify that Claimant's weight met SSA listing requirements. It would be highly appropriate to find that Claimant failed to present sufficient evidence to meet the weight loss listing. Claimant's extensive medical history merits further consideration.

Though Claimant's weight was not verified to fall below listing standards of 5.08, it was verified that Claimant lost over 100 pounds of weight over several months. It can be reasonably deduced that the weight loss was involuntary, based on Claimant's medical history which noted malnutrition and muscle deconditioning. These considerations suggest that Claimant's testimony that he weighs 110 pounds was credible.

Necrotizing pancreatitis is understood to be an incurable disease which causes severe abdominal pain. Organ infection and failure is understood to be a life-threatening complication of the disease; medical records verified that Claimant had multiple infections causing organ failures. Thus, it can be presumed that Claimant's particular

disease is on the severe side. Severe necrotizing pancreatitis is consistent with severe weight loss.

Claimant credibly testified that he is experiences abdominal pain which cannot be controlled with narcotic pain medication. Claimant's testimony is consistent with presented records which verified multiple prescriptions for narcotic pain medication. This consideration is consistent with weight loss which is below listing standards.

Based on the presented evidence, it is found that Claimant meets Listing 5.08. Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA application.

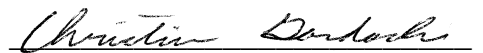
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to request a hearing concerning SDA eligibility. Claimant's verbal request for an administrative resolution of SDA eligibility is **DENIED**.

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: 10/17/2014

Date Mailed: 10/17/2014

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:

