

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-33754
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 31, 2014
County: Macomb (36)

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 31, 2014, from Sterling Heights, 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], Hearings Facilitator.

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.
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.

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 an unspecified date, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant's AHR of the denial.
6. On [REDACTED] Claimant's AHR requested a hearing disputing the denial of MA benefits.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant was not disabled for a period of 12 months.
8. On [REDACTED], an administrative hearing was held.
9. During the hearing, the record was extended 30 days to allow Claimant to submit a treatment letter from Claimant's physician; an Interim Order Extending the Record was subsequently mailed.
10. On [REDACTED], Claimant submitted additional documents (Exhibits B1-B19).
11. As of the date of the administrative hearing, Claimant was a 34 year old male with a height of 6'3" and weight of 260 pounds.
12. Claimant's highest education year completed was the 12th grade.
13. As of the date of the administrative hearing, Claimant had a private health insurance as of 5/2014.
14. Claimant alleged disability based on symptoms related to necrotizing pancreatitis.

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. The only dispute concerned Claimant's eligibility for Medicaid 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 testified that he operates a hot tub repair company. Claimant testified that he was unable to manage his company for several months due to health problems. Claimant testified that he started up again in 4/2014. Claimant estimated that he has netted approximately \$2000-\$3000 in 2014, including approximately \$850 in 6/2014. Claimant's testimony was consistent with finding that he has not earned SGA since applying for MA benefits. Claimant's testimony was credible and unrefuted. 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 exhibit admission procedures during the hearing were poor. An approximate 200 pages of unspecified DHS documents were admitted as exhibits by Claimant's AHR and DHS; the documents were not numbered until after the hearing. The specific number of admitted exhibit pages should have been addressed during the hearing.

To make matters worse, a voluminous amount of Claimant's medical history documentation was ignored during the hearing. It is presumed that DHS wanted the additional documents admitted as exhibits when considering the documents were sent as part of the hearing packet. It is also presumed that Claimant's AHR wished the inclusion of documents when considering that they make-up significant portions of Claimant's medical history. The documents were admitted as exhibits (specifically, Exhibits 1-124, 3-1 – 3-80, and 4-1 – 4-240) despite neither DHS nor Claimant's AHR receiving an opportunity to express any objections.

Hospital documents (Exhibits 110-124; 2-1 – 2-200; 4-1 – 4-211) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of severe abdominal pain. A history of EtOH abuse was noted. It was noted that Claimant experienced respiratory failure requiring use of a ventilator. Temporary dialysis was performed. A CT guided drainage of a pseudocyst was performed on [REDACTED]. It was noted that Claimant developed C. diff and sepsis during hospitalization. A discharge diagnosis of severe acute pancreatitis was noted. A discharge date of [REDACTED] was noted.

Physician Progress Notes (Exhibit B7-B9) dated [REDACTED] were presented. It was noted that Claimant was doing better though ongoing abdominal pain was reported. Claimant reported that abdominal pain was alleviated with taking Motrin several times per day. It was noted that Claimant would try to reduce Motrin intake.

A CT report (B16-B17) of Claimant's abdomen/pelvis dated [REDACTED] was presented. An impression of necrotizing pancreatitis with an enlarging fluid collection surrounding the pancreatic body was noted.

A CT report (B14-B15) of Claimant's abdomen/pelvis dated [REDACTED] was presented. An impression of continued mild interval decreased pseudocyst size was noted. Mild pancreatic atrophy was noted.

Hospital documents (Exhibits 3-1 3-80; B10-B13) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of severe abdominal pain. It was noted that Claimant reported ongoing abdominal pain, particularly at night. A recent incident of vomiting after eating was noted. It was noted that Claimant was active and working full days. Radiology was performed and demonstrated a staph infection resulting in infected pancreatic necrosis. Claimant also experienced acute kidney failure, noted as likely caused by vancomycin toxicity; the problem was noted as improving and that dialysis was not necessary. It was noted that Claimant underwent pancreatic pseudocyst necrosectomy, debridement, and drainage. It was noted that Claimant also underwent left ureteral stent placement; the stent was removed before discharge. Pancreatic stent placement was noted. A plan to continue JP drainage was noted though other documents noted that JP drains were removed on [REDACTED] (see Exhibit A1). A discharge diagnosis of infected pancreatic pseudocyst was noted. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 17-94; A1-A78) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of ongoing abdominal pain. Claimant reported the pain as 4/10 after taking Dilaudid, 10/10 without medication. Abdomen radiology noted abnormal collection of fluid on the tail of Claimant's pancreas. An assessment of severe EtOH necrotizing pancreatitis was noted. An impression of bilateral grade 1 L5 spondylosis was also noted. CT guided fluid removal was performed on [REDACTED]. On [REDACTED], Claimant reported feeling fine before experiencing sudden abdominal pain and short-breathing. An EKG was performed and normal results were found. Claimant's abdominal pain improved and Claimant was discharged on [REDACTED].

Claimant testified new drains were implanted in a recent hospitalization. Claimant also testified that his drain was recently torn out. Claimant testified that he expects to return to the hospital after the fluid rebuilds around his pancreas.

Claimant testified that he has not consumed alcohol since 8/2013. Claimant's testimony was consistent with presented documents (see Exhibit 23). Thus, alcohol abuse is not material to a disability evaluation.

Claimant was diagnosed with necrotizing pancreatitis. Necrotizing pancreatitis is known to be a life-threatening condition which can cause organ shut-down.

Claimant testified that he has recurring abdominal pain. Claimant's also testified that his abdominal pain increases with lifting/carrying. Claimant's multiple hospital admissions and physician treatment documents were highly consistent with Claimant's testimony. It is found that Claimant has a severe impairment since 8/2013 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.

SSA does not have a listing for necrotizing pancreatitis. Involuntary weight loss is a typical symptom of pancreatitis. Listing 5.08 states that disability is established if the following is established:

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.

Despite a complicated medical history, there was no evidence that Claimant experienced any notable weight loss. Claimant's hearing weight was 260 pounds. Claimant testified that his height is 6'3". Claimant's calculated BMI is 32.5, well above listing standards.

A listing for lung cancer (Listing 13.14) was considered based on a previous diagnosis listed in Claimant's medical history. The listing was rejected due to a failure to establish malignant cells since the date of MA application.

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 testified that he owns a hot tub repair business. Claimant credibly testified that he has not netted SGA income since 8/2013 due to the extra costs of hiring an employee to perform the lifting that Claimant can no longer perform. The analysis should only consider Claimant's ability to perform employment amounting to SGA. There is insufficient evidence that Claimant is capable of earning SGA income while combatting pancreatitis. There is evidence that Claimant earned SGA before 8/2013. The analysis will consider Claimant's job duties during the period before 8/2013.

Claimant credibly testified that his employment previously required him to lift hot tubs and motors which weighed upwards of 60 pounds. Claimant testified that he could theoretically lift 60 pounds, but it would cause excruciating pain.

Claimant's testimony was credible and consistent with the presented evidence. It is found that Claimant cannot perform past relevant employment amounting to SGA and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are

additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Physician statements of specific restrictions were not presented. Restrictions can be inferred from presented testimony and medical history.

Claimant testified that he has 1-2 bad days per week. Claimant also testified that he takes 4-5 Norco tablets per day. Claimant's testimony was suggestive of an inability to sustain even sedentary employment.

Claimant also testified that he is capable of performing all daily activities which include shopping, cleaning, laundry, and driving. Claimant testified that he can walk up to 1-2 miles and 40 pounds of lifting before abdominal pain occurs. This portion of Claimant's testimony was consistent with an ability to perform sedentary employment.

Claimant's most compelling testimony was that he was committed to undergoing surgery which would remove half of his pancreas. Claimant testified that the surgery was highly dangerous and that there was a 45% probability of death. Additional time was given to obtain statements from Claimant's treating physician explaining the severity of Claimant's condition. Submitted documentation did not confirm Claimant's testimony.

Claimant's history of hospitalizations from 8/2013- 7/2014 was eventful. Claimant testified that a fourth admission occurred in 3/2014 though this was not readily apparent from presented records. Claimant suffered respiratory failure and was on dialysis for the first hospitalization which covered 27 days. A 21 day hospitalization complicated by staph infection and kidney failure occurred just a few months later. A 7 day hospitalization a few months later was complicated by back pain.

For the period of 8/2013-7/2014, it is difficult to imagine how Claimant could have sustained employment amounting to SGA. It is found that Claimant is disabled for the period of 8/2013-7/2014.

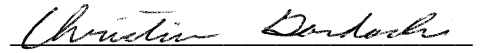
There is evidence suggesting that Claimant is capable of maintaining employment if his symptoms improve. For example, Claimant reported that he was working full-time until a hospitalization in 1/2014. Claimant's testimony suggested that an upcoming surgery may dramatically improve Claimant's symptoms. It is also possible that Claimant relatively recent access to health insurance will improve his prognosis. Thus, it is highly possible that Claimant may not be disabled in the near future.

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];
- (2) evaluate Claimant's eligibility for 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 benefits.

The actions taken by DHS are **REVERSED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 11/3/2014

Date Mailed: 11/3/2014

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:

