

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-4348
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 20, 2014
County: Wayne (55)

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, a telephone hearing was held on, from Detroit, Michigan. Participants included [REDACTED] as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [REDACTED] Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Claimant died.
2. On [REDACTED], Claimant's authorized representative (also Claimant's AHR) applied for MA benefits (see Exhibits 10-14), including retroactive MA benefits from [REDACTED] (Exhibits 46-47; 143).
3. Claimant's only basis for MA benefits was as a disabled individual.

4. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 15-16).
5. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant 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 application of Medical-Vocational Rule 204.00 and/or the materiality of substance abuse.
8. At the date of death, Claimant was a 51 year old male with a height of 5'5" and weight of 165 pounds.
9. Claimant has a relevant history of substance abuse.
10. Claimant's highest education year completed was the 11th grade.
11. Claimant alleged disability based on various hospital encounters.

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, a telephone 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

Claimant died on [REDACTED]. Thus, Claimant was a disabled individual for [REDACTED]. Claimant may not be considered for Medicaid eligibility from [REDACTED] 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 including retroactive MA months. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Generally, the best evidence of a lack of SGA is a client's testimony. Generally, when a client fails to testify concerning a lack of SGA, a client cannot overcome step one of the disability analysis. Claimant cannot present any SGA testimony because of death. Applying the general rule to clients that passed away would create an outcome that a dead client cannot be found disabled (other than the month of death); such an outcome would be unjust. For purposes of this decision, it will be presumed that Claimant did not perform SGA from [REDACTED] through [REDACTED], and 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.

A Progress Note (Exhibits 39-40) dated [REDACTED] from a medical center was presented. The document was handwritten and very difficult to read. Some assessments were not legible. An assessment of a spinal gunshot wound was noted.

A radiography report (Exhibit 44) dated [REDACTED] was presented. It was noted that x-rays were taken in response to left knee pain complaints. It was noted that four views were taken and a negative examination was noted.

A radiography report (Exhibit 45) dated [REDACTED] was presented. It was noted that views were taken of Claimant’s lumbosacral area. In comparison to an x-ray dated [REDACTED] an impression of no change was noted. A bullet fragment at L2 was found. A minimal anterior spur was noted at L2-L3.

A Progress Note (Exhibits 37-38) dated [REDACTED] from a medical center was presented. It was noted that Claimant appeared for a follow-up to a hospital visit. The document was handwritten and some assessments were not legible. One of the assessments was a gunshot wound.

A Progress Note (Exhibits 34-35) dated [REDACTED] from a medical center was presented. A cyst on Claimant’s right hand was noted.

Hospital documents (Exhibits 25-33) from an admission date of [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain and shortness of breath following a fall. It was noted that Claimant was intoxicated upon admission. A stress test was noted as unremarkable. Discharge diagnoses included atypical chest pain, chronic obstructive pulmonary disease, left hip contusion and chronic alcoholism. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 61-142) were presented. The documents appeared to involve multiple hospital admissions between [REDACTED] and [REDACTED] but each admission date was not apparent. It was noted that Claimant appeared three times to the hospital in [REDACTED] and “several times” in 2/2013 (see Exhibit 97). It was noted that Claimant was found unresponsive and foaming at the mouth at a liquor store on [REDACTED]. It was noted that Claimant smelled of alcohol. It was noted that Claimant became conscious in the emergency room and complained of a headache, 10/10 in severity. It was noted that a

CT of Claimant's head showed no acute intracranial abnormality. It was noted that Claimant went into withdrawal during hospitalization. It was noted that Claimant had elevated liver enzymes, likely secondary to substance abuse. It was noted that an ultrasound showed questionable chronic cholecystitis. Diagnoses of acute alcohol intoxication and alcohol abuse were noted. It was noted that serial imaging of Claimant's abdomen occurred on [REDACTED] (Exhibits 139-140) in response to Claimant complaints of abdominal pain; unobstructed cystic and common bile ducts were noted. On [REDACTED] it was noted that Claimant presented with an alcohol level of 261 and that he was feeling very sad about the loss of his daughter; it was also noted that Claimant's history was "not very accurate". On [REDACTED] it was noted that Claimant drank daily including binge usage more than once per week.

On [REDACTED], a mental status examination was performed on Claimant (see Exhibits 97-98). An Axis I diagnosis of chronic alcohol abuse, possibly polysubstance abuse, was noted. Claimant's global assessment functioning level was noted to be 35-40.

A death certificate (Exhibit 3) was presented. The death certificate verified that Claimant died on [REDACTED]. It was noted that Claimant was struck by a motor vehicle. It was noted that Claimant died from "multiple injuries".

Hospital records verified that Claimant had various physical problems. Diagnoses of chronic liver disease, back pain, epigastric pain and an old gunshot wound were all verified. Hospital records also verified that on [REDACTED], Claimant's mobility Braden noted no limitations (see Exhibit 69); no mobility limitations is consistent with finding that Claimant did not have a severe impairment; however, a diagnosis of chronic liver disease would probably cause Claimant to have chronic pain. Chronic pain could be a severe impairment, particularly when combined with Claimant's low psychological functioning level. It is found that Claimant established having a severe impairment.

For purposes of this decision, it will be presumed that Claimant's impairment arose to a level of disability. The materiality of Claimant's alcohol and substance abuse must be factored.

SSA provides guidance on disability findings that may be impacted by substance abuse. Social Security Rule 82-60 states:

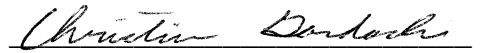
Where the definition of disability is met in a title XVI claim, and there is evidence of drug addiction or alcoholism, a determination must also be made as to whether the drug addiction or alcoholism was a factor material to the finding of disability for purposes of applying the treatment and representative payee provisions. In making this decision the key issue is whether the individual would continue to meet the definition of disability even if drug and/or alcohol use were to stop. If he or she would still meet the definition, drug addiction or alcoholism is not material to the finding of disability and the treatment and representative payee provisions do not apply. The drug addiction and alcoholism requirements are imposed only

where (1) the individual's impairment(s) is found disabling and drug addiction and/or alcoholism is a contributing factor material to the determination of disability, and (2) the same impairment(s) would no longer be found disabling if the individual's drug addiction or alcoholism were eliminated, as, for example, through rehabilitation treatment.

Claimant had several hospital encounters. Every encounter involved alcohol and/or substance abuse. The abuse almost certainly caused Claimant psychological dysfunction, as evidenced by Claimant's only psychological diagnosis being alcohol abuse. It is plausible that Claimant's abuse was immaterial to his liver disease, however, there was little evidence to support such speculation. It is found that Claimant's substance abuse is material to a finding of disability. Accordingly, Claimant is not a disabled individual and DHS properly denied Claimant's application for MA benefits.

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: 3/14/2014

Date Mailed: 3/14/2014

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:

