

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-6008
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 27, 2014
County: Wayne (49)

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 February 27, 2014, from Detroit, Michigan. Participants included the above-named Claimant, [REDACTED] and [REDACTED] of [REDACTED] appeared as Claimant's authorized hearing representatives (AHR). 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.
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 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 202.20.
7. As of the date of the administrative hearing, Claimant was a 31-year-old male with a height of 5'10" and weight of 220 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant obtained a Bachelor of Science in marketing.
10. As of the date of the administrative hearing, Claimant had no access to health insurance.
11. Claimant alleged disability based on impairments and issues including depression, lower back pain, cervical spine pain, left shoulder pain and headaches.

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. The 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

Claimant denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; 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 background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant testified that his vehicle was rear-ended on [REDACTED] and that he suffered multiple injuries as a result. Claimant testified that his injuries included the following: cervical pain, lumbar pain, knee pain, left shoulder pain and chronic headaches. Claimant testified that his quality of life has drastically diminished since the accident. Claimant also testified that he suffers depression since the vehicle accident.

A radiography report (Exhibit 11, 35, 38) of Claimant's lumbar was presented. The report was dated [REDACTED]. It was noted that disc herniation caused slight impression of the underlying thecal sac at L4-L5. At L5-S1, it was noted that disc herniation impressed upon the thecal sac and underlying nerve roots. The herniations were described as "small to moderate-based".

A radiography report (Exhibits 12-13, 36-37, 39-40) of Claimant's cervical spine was presented. The report was dated [REDACTED]. Very mild spondylotic changes were noted at C3-C4, C4-C5 and C5-C6. An impression of small disc protrusion was noted at C4-C5. It was noted that no significant stenosis was present.

Claimant's rehabilitation care physician completed numerous Disability Certificates (Exhibits 15, 19, 25, 30, 33 and 34). The date of the certificates ranged from [REDACTED] through [REDACTED]. It was consistently noted that Claimant was disabled for an approximate 30-day period and that he required assistance with daily activities. Several prescriptions for physical therapy (Exhibits 20, 21, 23, 27, 29, 31) were also provided to Claimant.

A letter (Exhibit 41) from Claimant's rehabilitation physician dated [REDACTED] was presented. Claimant's physician stated that Claimant had need for attendant care for 10 hours per day- seven days per week.

Claimant's physical therapy treatment records (Exhibits 42-227) were presented. The records ranged in date from 1 [REDACTED]. The records verified regular attendance at physical therapy by Claimant, typically 1-2 times per week. The records were consistent with previously summarized records. The records also consistently noted that Claimant had "good" response to therapy.

DHS presented a rehabilitation clinic physician letter (Exhibit 14) dated [REDACTED]. Claimant's physician noted that Claimant was diagnosed with the following: cervical, dorsal and lumbar myositis, left sciatica, left knee derangement, gait disturbance, lumbar radiculopathy, headaches, vertigo, loss of balance and insomnia.

A Medical Examination Report (Exhibits 8-10) dated [REDACTED] from Claimant's treating physician was presented. The physician noted an approximate eight-month history of treating Claimant. Noted diagnoses were cervical and lumbar herniated discs. Gait disturbance was noted. It was noted that Claimant uses a left knee brace and had decreased straight leg raising. Lower extremity weakness was noted. Decreased range of motion was also noted in Claimant's cervical spine. It was noted that Claimant had poor focus and concentration relating to a closed head injury. It was also noted that

Claimant suffered vertigo and losses of balance due to a head injury. The physician opined that Claimant was restricted to occasional lifting of less than 10 pounds and less than 2 hours of walking in an 8-hour workday. Claimant's physician restricted Claimant to less than 6 hours of sitting in an 8-hour day. It was noted that radiography demonstrated L5 radiculopathy. It was noted that Claimant's condition was stable. It was noted that Claimant cannot meet household needs such as housework, yard work, shopping and dressing.

Claimant testified that he is restricted to 1 block of walking and 30-minute periods of sitting. Claimant testified that he occasionally requires the use of a walking assistance device. Claimant's testimony is consistent with medical records up to [REDACTED]. Claimant's testimony was not verified with medical records from the date of his MA application; nevertheless, conclusions can be drawn about Claimant's current abilities based on previous medical records.

As of [REDACTED], more than 8 months had passed since Claimant's car accident. Despite the passage of time, Claimant's physician found Claimant to be capable of severely restricted sitting, walking and lifting. During the 8-month period, Claimant regularly attended physical therapy sessions. Claimant credibly testified that he stopped attending physical therapy due to a lack of insurance. Claimant testified that head injuries adversely affected his memory, which prevented him from remembering on what date that he ceased therapy attendance. It was not clear when Claimant stopped attending therapy (or whether Claimant had insurance when he did attend), but the evidence suggested that Claimant stopped therapy attendance through no fault of his own.

When factoring Claimant's severe limitations despite several months of therapy and Claimant's lack of therapy since 6/2013, it is probable that since 6/2013, Claimant has multiple impairments to working. This probability is consistent with Claimant's physician's statement that Claimant's condition is stable, as opposed to improving (see Exhibit 9). It is found that Claimant meets the durational requirements for a severe impairment since 6/2013.

As it was found that Claimant established significant impairment to performing basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move 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 alleged multiple problems, which justify consideration of several SSA listings. Claimant failed to present evidence to support a finding that Claimant meets any particular listing. It is found that Claimant failed to establish meeting a SSA listing.

Accordingly, the analysis moves to step four. 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 performed previous employment as a salesman of cleaning products. Claimant testified that his sales job required him to haul various cleaners and equipment to sales meetings. Claimant testified that he is unable to perform the lifting and ambulation required of this past employment.

Claimant testified that he worked as a mover for a rental furniture company. Claimant testified that he is unable to perform the lifting and ambulation required of this past employment.

Claimant testified that he worked for a media company and stocked and drove trucks. Claimant testified that he is unable to perform the lifting and ambulation required of this past employment.

Claimant testified that he worked in marketing for a business. Claimant testified that the job was mostly sedentary but that he cannot muster the requisite concentration required to perform his past employment. Claimant testified that recurring headaches and memory lapses prevent him from performing any type of marketing employment.

Claimant's testimony was consistent with the presented evidence. It is found that Claimant cannot perform past relevant employment amounting to SGA. Accordingly, 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.

As noted in the second step of the analysis, Claimant's physician restricted Claimant to less than two hours of standing per 8-hour shift, less than six hours of sitting per 8-hour shift and occasional lifting of less than 10 pounds. An inability to stand or sit for a combined 8 hours over an 8-hour shift is consistent with an inability to perform any type of employment. This finding is consistent with a physician statement that Claimant requires attendant care.

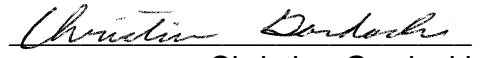
Even if Claimant was deemed physically capable of performing sedentary employment, Claimant has non-exertional obstacles which would likely prevent Claimant from maintaining continuous employment. Claimant credibly testified that he has regular headaches and memory lapses. Claimant's testimony was consistent with diagnoses made by his physician. Between exertional and non-exertional restrictions, Claimant's realistic employment potential is nonexistent. It is found that Claimant is incapable of performing any type of employment, at least for a 12-month period. Accordingly, Claimant is a disabled individual and it is found that DHS improperly 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 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 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: 3/21/2014

Date Mailed: 3/21/2014

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:

