

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

IN THE MATTER OF:



Reg. No.: 14-015936
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 14, 2015
County: Wayne (17)

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 January 14, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], specialist.

ISSUE

The issue is whether DHS properly denied Claimant's Medical Assistance (MA) eligibility 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 11/2013
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 8-9).
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 former authorized hearing representative requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], an administrative hearing was held.
7. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 30 days to allow Claimant and DHS to submit verification of a Social Security Administration appeal of a denied Supplemental Security Income application; DHS was also given 30 days to submit an updated medical packet.
9. On [REDACTED], DHS submitted additional documents (Exhibits 2-1 – 2-2).
10. As of the date of the administrative hearing, Claimant was a 43 year old male.
11. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
12. Claimant's highest education year completed was the 12th grade.
13. Claimant has a history of skilled employment, with no known transferrable job skills.
14. Claimant alleged disability based on restrictions related to broken vertebrae, diabetes mellitus, and neck pain.

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 former authorized hearing representative (AHR) noted special arrangements in order to participate in the hearing; specifically, a 3-way telephone hearing was requested. Claimant's former 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.* 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.

SGA means a person does the following: performs significant duties, 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 SGA. *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 2.

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 F2d 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 exhibits.

The exhibit submission process was eventful. DHS initially presented a packet (Exhibits 2-111). During the hearing, DHS stated that some of the documents should not have been included. DHS requested an opportunity to submit an updated hearing packet following the hearing. DHS stated the hearing packet would be marked 1-98. Instead, DHS submitted multiple packets numbered 1-48. The original DHS hearing packet was admitted as evidence because it was the packet presented with the most medical records.

Hospital documents (Exhibits 41-94) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with back pain after falling off of a short ladder; Claimant testified that he hurt his back after falling in his shower. Claimant's blood sugar at admission was noted to be low. It was noted that an MRI demonstrated T3, T4, and T6 compression fractures. It was noted that radiculopathy, paresthesias, paresis, and bowel/bladder issues were absent. A CT of Claimant's head was noted to demonstrate soft tissue swelling. A CT of Claimant's cervical spine was noted to demonstrate mild cervical spondylosis. A CT of Claimant's lumbar was noted to demonstrate degenerative spondylosis and right nephrolithiasis at L4-L5 and L5-S1. Claimant's muscle strength was noted to be intact. It was noted that Claimant's stay was complicated by kidney failure and constipation. A recommendation of inpatient rehab was noted. Noted discharge diagnoses included rhabdomyolysis, acute vertebrae fractures, uncontrolled DM, and acute on chronic kidney disease. A discharge date of [REDACTED] was noted.

An internal medicine examination report (Exhibits 32-40) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. It was noted that Claimant reported that he was an insulin dependent diabetic with blood sugar ranging from 40-300. It was noted that Claimant reported ongoing middle back pain since slipping and falling in his shower in 11/2013; Claimant attributed the fall to low blood sugar. It was noted that Claimant broke three vertebrae and was hospitalized for 14 days after falling. Notable observations of Claimant included the following: no cane or walker, slow tandem walk, slow heel walk, no neurological abnormalities, no respiratory abnormalities. Restricted hip forward flexion and lumbar flexion were noted. The examining physician stated that Claimant needs long-term management for back pain. It

was noted that Claimant was able to perform sitting, standing, bending, carrying, squatting, climbing stair, and other activities, but with pain.

Spirometry test results (Exhibit A57) dated [REDACTED] were presented. It was noted that Claimant's FVC1 was 75% of predicted value. Claimant's best FEV1 was noted as 80% of predicted. An interpretation of probable restriction was noted.

Physician office visit documents (Exhibits A1-A8) from 6/2014 were presented. It was noted that Claimant presented for DM treatment across three appointments. It was noted that Claimant had severe hypoglycemia unawareness; as an example, it was noted that Claimant's blood sugar level was 19 and that Claimant "was not able to feel this at all". It was noted that Claimant was interested in obtaining an insulin pump. Diminished sensations were noted in physical examination findings. Various DM medications were noted as prescribed. Assessments of DM-1, hypoglycemia, hyperlipidemia, HTN, hypothyroidism, Vitamin D deficiency, and B12 deficiency were noted.

Physician office visit documents (Exhibits A8-A11) dated [REDACTED] were presented. It was noted that Claimant presented for DM treatment. It was noted that Claimant was positive for neuropathy. Instructions to decrease saturated fat intake and to exercise regularly were noted.

Physician office visit documents (Exhibits A13-A15) dated [REDACTED] were presented. It was noted that Claimant recently obtained an insulin pump.

Physician office visit documents (Exhibits A17-A19) dated [REDACTED] were presented. It was noted that Claimant's DM numbers were "just a little high". It was noted that there had been no significant hypoglycemia. Motor strength, gait, and sensory were each noted as normal. An assessment of chronic fatigue was noted.

Physician office visit documents (Exhibits A44-A47) dated [REDACTED] were presented. It was noted that Claimant reported little interest or pleasure in activities. It was noted that Claimant complained of an unspecified weight gain. It was noted that Claimant was not following any particular diet and that Claimant rarely exercises.

Physician office visit documents (Exhibits A41-A43) dated [REDACTED] were presented. It was noted that Claimant was prescribed Flexeril for back pain. Continued depression symptoms were noted as reported.

Medical records verified that Claimant utilizes an insulin pump. Claimant conceded that insulin pump does not restrict him.

Claimant testified that recurring convulsions during sleep caused him to fall out of bed numerous times. Claimant testified that he believes his bed falls slowed his recovery from vertebrae fractures.

Claimant testified that he sees a pain management doctor. Claimant testified that he last saw the physician in 12/2014. Claimant testified that he takes Norco, Flexeril, and Neurontin for pain. Claimant testified he recently restarted physical therapy. Claimant stated he had physical therapy in 3/2014, for 8 weeks; Claimant stated his therapy "went okay". Claimant states his neck continues to be very stiff and painful.

Medical records verified that Claimant suffered a significant back injury. Abnormalities to Claimant's cervical spine, thoracic spine, and lumbar spine were verified. It was verified by a consultative examiner that Claimant requires long-term pain management. It was also verified that Claimant requires relatively strong pain killers and muscle relaxant medication to function. The presented evidence was sufficient to presume significant restrictions to Claimant's abilities to lift and ambulate.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, it is found that Claimant established having a severe impairment and the disability analysis may proceed to Step 3.

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.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for chronic pulmonary insufficiency (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

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 worked from 2001-2013 as an electrician. Claimant testified that he can perform some electrician duties, but is unable to perform all of the bending, twisting, and lifting required of past employment.

Claimant testified that he also worked as an assembler. Claimant testified that his work involved installing bumpers, engines, and tires onto motor vehicles. Claimant testimony implied that he cannot perform the heavy lifting required of his past employment.

Claimant's testimony that he is unable to perform past employment was credible and consistent with presented evidence. It is found that Claimant cannot perform past employment and the analysis may proceed to the final step of the disability analysis.

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 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 Claimant restrictions were not presented. Restrictions can be inferred based on presented documents.

Claimant testified that he has difficulty turning, standing for long periods, and lifting arms. Claimant testified that he has no doctor imposed lifting restrictions and that he uses his common sense in deciding what to lift. Claimant's testimony was not significantly indicative of an inability to perform sedentary employment.

Presented records suggested that Claimant has difficulty monitoring his blood sugars. As an example, it was verified that Claimant had extremely low blood sugar when he saw his primary care physician in 8/2014 and that he did not show symptoms. Claimant testified that he feels normal before black-outs. Though Claimant's unawareness to diabetic symptoms is odd, the evidence suggested that regular blood sugar testing would be sufficient for Claimant to fend off dangerous blood sugar levels. Claimant stated that he checks blood sugar 6-8 times per day. It is presumed that most sedentary job employers would allow Claimant breaks so that he may test his blood sugar levels.

Claimant stated that he can walk "a few blocks" before back pain prevents further walking. Claimant testified a 10-15 minute break is necessary before further walking can be done. Claimant testified that standing is more bothersome than walking. Claimant estimated that he could sit "a couple hours"; Claimant estimated that he needs to stand around for 10-15 minutes before he could sit for another two hours. Claimant testified that he is most comfortable sitting in his recliner, in a laying position. Claimant testified that physician has not imposed a lifting/carrying restriction other than using his common sense. Claimant's testimony was fairly consistent with an ability to perform sedentary employment.

Presented documentation verified that Claimant broke his back and has ongoing pain. Prescriptions of Flexeril and Norco were verified. Though Claimant's pain is no doubt uncomfortable, as of 9/2014, Claimant's gait, motor strength and neurology were all noted as normal. Restrictions in hip and lumbar motions were noted, though these restrictions would not prevent Claimant's performance of sedentary employment. Also problematic was an absence of radiology following hospitalization for a broken back. Without follow-up spinal radiology, it is difficult to determine Claimant's progress (or lack of it) since breaking multiple vertebrae.

Spirometry testing verified that Claimant has some breathing restrictions. The restrictions were not so severe as to restrict Claimant's ability to perform sedentary employment.

It is found that Claimant is capable of performing sedentary employment. Based on Claimant's exertional work level (sedentary), age (younger individual aged 18-44), education (high school), employment history (skilled with no known transferable skills), Medical-Vocational Rule 201.28 is found to apply. This rule dictates a finding that

Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of 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 11/2013, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/18/2015**

Date Mailed: **2/18/2015**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

