

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

IN THE MATTER OF:



Reg. No.: 14-016669
Issue No.: 2009, 3000, 4009
Case No.: [REDACTED]
Hearing Date: February 04, 2015
County: Wayne (18)

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 February 4, 2015, from Detroit, Michigan. Participants included the above-named Claimant. 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) and State Disability Assistance (SDA) 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 SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On [REDACTED], DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On an unspecified date, DHS approved Claimant for Healthy Michigan Plan benefits, effective 9/2014.

6. On [REDACTED], Claimant requested a hearing for the following reasons: to dispute the denial of SDA benefits, to request an increase in Food Assistance Program (FAP) benefits, and to receive help with subsidized housing.
7. Claimant testified that he did not wish to proceed with a hearing concerning FAP eligibility.
8. As of the date of the administrative hearing, Claimant was a 37 year old male.
9. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
10. Claimant's highest education year completed was the 12th grade.
11. Claimant has a history of semi-skilled employment, with no transferrable job skills.
12. Claimant alleged disability based on radiating cervical 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 noted special arrangements in order to participate in the hearing. Claimant testified it is painful to sit or stand for prolonged period. Claimant requested that he be allowed to stand for portions of the hearing. Claimant's request was granted and the hearing was conducted accordingly.

Claimant requested a hearing, in part, to request Section 8 housing. Section 8 is not a DHS-administered program. Claimant's hearing request will be dismissed concerning this issue.

It was not disputed that DHS issued Healthy Michigan Plan (HMP) benefits to Claimant. Claimant's hearing request did not specify an MA eligibility dispute however one was interpreted from the complaint about copayments.

DHS policy does not offer any insight into whether HMP coverage requires higher copayments than Medicaid coverage. It is known that DHS policy distinguishes between disabled and non-disabled persons for purposes of MA eligibility (see BEM 260 and BEM 815); these policy chapters describe a disability analysis which must be undertaken when a disability is claimed.

DHS conceded that Claimant did not undergo a disability analysis for purposes of Medicaid. It is known that DHS evaluated Claimant for SDA eligibility and found that Claimant was not disabled. A finding of non-disability for purposes of Medicaid benefits can be extracted from a finding of non-disability for SDA eligibility. Thus, it is unnecessary to order DHS to consider Claimant's allegation of disability for purposes of Medicaid. An analysis may proceed to consider whether Claimant is disabled for purposes of Medicaid.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

Claimant credibly denied performing any employment since the date of his MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented evidence.

Various work-injury reporting documents (Exhibits 43-47) were presented. It was noted that on [REDACTED] Claimant felt a sharp and shooting pain in his neck after trying to pick up hoses.

An MRI report of Claimant's lumbar (Exhibit 50) dated [REDACTED] was presented. An impression of a moderately sized focal disc bulge causing mild thecal sac effacement at L5-S1 was noted.

An MRI report of Claimant's cervical spine (Exhibits 41-42; 48-49) dated [REDACTED] was presented. Slight disc desiccation was noted at C2-C3. Bilateral spurring and an osteophyte complex mildly indenting the ventral thecal sac was noted at C3-C4; bilateral neural foraminal stenosis was also noted at C3-C4. Minimal endplate spondylosis and slight disc desiccation was noted at C5-C6; mild spinal stenosis was also noted at C5-C6. An impression of multilevel degenerative spondylosis was noted. Cervical lordosis straightening was noted.

A physician prescription (Exhibit 52) dated [REDACTED] was presented. It was noted that Claimant was to indefinitely be off of work due to a work-related injury.

A Disability Certificate from a treating physician (Exhibit 51) dated [REDACTED] was presented. The certificate stated that Claimant was disabled beginning [REDACTED]. It was noted that Claimant was restricted from the following: lifting/carrying more than 10 pounds, bending, stooping, and pulling. It was noted that Claimant would need attendant care for 24 hours per week from [REDACTED] through [REDACTED].

Physician office visit documents (Exhibits 14-18) dated [REDACTED] were presented. It was noted that Claimant reported neck and lumbar pain, ongoing for one year. It was noted that Claimant reported his neck pain is constant and shoots through his arms, hands, and upper back. A complaint of anxiety was also noted. It was noted that Claimant brought an MRI report which verified multi-level degeneration in cervical and lumbar spine. Norco, Flexeril, Neurontin, and Xanax were noted as prescribed. Treatment for hypertension was also noted.

Physician office visit documents (Exhibits 19-22) dated [REDACTED] were presented. It was noted that Claimant reported ongoing back pain (pain level 8/10). Physical examination findings were all noted to be normal. Assessments of cervicalgia, lumbago, HTN, and anxiety were noted. Neurontin and Xanax dosages were increased.

Physician office visit documents (Exhibits 23-27) dated [REDACTED] were presented. It was noted that Claimant reported persistent back pain, relieved by nothing. It was noted that continued narcotic medication was not recommended. Increased dosages in celexa and Lisinopril were noted.

Physician office visit documents (Exhibits 28-32) dated [REDACTED] were presented. It was noted that Claimant complained of continuing back pain. It was noted that reported pain was worse with exertion and relieved by pain medications. Various medications were continued.

Physician office visit documents (Exhibits 33-36) dated [REDACTED] were presented. It was noted that Claimant reported continuing severe back pain. It was noted that pain was relieved by laying down, massages, and lidocaine patches. Various medications were continued.

Physician office visit documents (Exhibits 37-40) dated [REDACTED] were presented. It was noted that Claimant complained of persistent back pain, relieved by pain meds. An appointment with a pain management physician on [REDACTED] was noted.

A pain center physician post-procedure instructions (Exhibit A2) dated [REDACTED] was presented. It was noted that Claimant underwent an unspecified injection, with a repeat injection to follow in 2-4 weeks. A 10 pound lifting restriction was noted.

A pain center physician post-procedure instructions (Exhibit A3) dated [REDACTED] was presented. It was noted that Claimant underwent an unspecified injection, with a repeat injection to follow in 2-4 weeks. A 10 pound lifting restriction was noted.

Claimant testified that he is restricted in walking, standing, sitting, and lifting due to cervical and lumbar spine abnormalities. Claimant's testimony was consistent with cervical and lumbar radiology, treatment history, and a physician statement of restrictions. It is found that Claimant has a severe impairment and the 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.

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 used to work cleaning up environmental accidents, such as oil spills, by operating a high-powered water gun. Claimant testified that he injured his neck by performing his past employment. Claimant testified that he no longer has the bending, lifting, or standing abilities to perform his past employment. Claimant's testimony was consistent with presented evidence. It is found that Claimant cannot perform past employment and the analysis may proceed to the final step.

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 nonexertional 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 nonexertional 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 restrictions were provided. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

A physician letter (Exhibit A1) dated [REDACTED] was presented. It was noted that Claimant had the following work restrictions: lifting of less than 10 pounds, no bending, no stooping, no pulling, and no prolonged standing or sitting.

Claimant's claim of disability was imperfect. Claimant alleged lumbar pain that essentially prevents the performance of any level of employment. The only lumbar radiology presented was 7 years old; generally, radiology from 7 years prior is not insightful into Claimant's current conditions. Radiology only verified a moderately sized focal disc bulge causing mild thecal sac effacement; an absence of nerve root impingement or severe stenosis is generally not indicative of disabling conditions. These factors supported a finding that Claimant can perform sedentary employment.

Claimant's cervical spine MRI report was most recent and more compelling. The MRI report verified abnormalities at 3 different vertebrae discs. Also notable was the straightening of Claimant's neck (i.e. lordosis). Unnatural spine straightening is generally indicative of fairly serious problems which can reasonably be expected to cause radiating arm and hand pain.

Claimant's treatment history was also compelling. Claimant was treated with narcotic medication; this is generally indicative of high pain levels. Claimant's physician's consistently restricted Claimant's lifting to under 10 pounds; such a restriction is consistent with an inability to perform any employment. Most notably, Claimant was restricted from prolonged standing and sitting. An inability to stand or sit for long periods is highly indicative of disability. It is found that Claimant is not capable of any type of employment and is therefore a disabled individual.

Based on Claimant's treatment history, a degree of medical improvement appears reasonably possible. Though a full recovery from Claimant's work injury is unlikely, in the future, Claimant may heal sufficiently to perform the requirements of sedentary employment.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
Id.

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments prevent the performance of any employment. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that Claimant withdrew his hearing request concerning FAP eligibility. Claimant failed to establish any jurisdiction for a DHS hearing concerning Section 8 housing. Claimant's hearing request is **PARTIALLY DISMISSED**.

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 and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA 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 Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/26/2015**

Date Mailed: **2/26/2015**

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:

