

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

IN THE MATTER OF:

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Reg. No.: 2014-35003
REHD/RECON
(2013-62214)
Issue No.: 2009, 4009
Case No.: ██████████
Hearing Date: December 18, 2013
County: Baraga

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

RECONSIDERATION DECISION

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM) BAM 600 provides that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs at issue, and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter is before the undersigned Administrative Law Judge pursuant to a timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the presiding ALJ at the conclusion of a hearing conducted on December 18, 2013, and mailed to both parties on March 21, 2014, in the above-captioned matter. This matter having been reviewed, an Order Granting Reconsideration was generated on May 14, 2014.

ISSUE

The issue is whether the presiding Administrative Law Judge properly affirmed a Department of Human Services (DHS) denial of Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) eligibility for the reason that Claimant is not disabled.

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 April 3, 2013, Claimant applied for MA benefits, and SDA benefits alleging disability.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On June 24, 2013, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits p. 6-7), in part, by determining that Claimant was capable of performing other work, and as regards SDA that Claimant's impairment were not expected to last more than 90 days.
4. On July 30, 2013, DHS denied Claimant's application for MA benefits and mailed a notice (Exhibits p. 2-3) informing Claimant of the denial.
5. On August 5, 2013, Claimant requested a timely hearing disputing the denial of MA and SDA benefits.
6. The State Hearing Review Team issued a Decision on October 4, 2013 and March 13, 2014, both Decisions denied Claimant's application
7. As of the date of the administrative hearing, Claimant was a 52 year old male with a birth date of [REDACTED]
8. Claimant completed high school.
9. Claimant alleged disability based on impairments and issues including atrial fibrillation, transient ischemic attack, diabetes mellitus, chronic severe low back pain and neck pain with neck fusion, hypertension and a pneumothorax.
10. The medical evidence contains a mental status examination but Claimant's alleged mental impairments were not addressed during the hearing.
11. The Claimant's impairments have lasted or are intended to last for 12 months duration or more.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

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.

The presiding ALJ found that Claimant had not worked since 2011. Accordingly, the presiding ALJ held that Claimant was not engaged in SGA and not disqualified from a finding of disability at step 1. The ALJ's findings and holdings were consistent with presented evidence. Accordingly, the 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.

In the Hearing Decision, the presiding Administrative Law Judge found that there is insufficient objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical or mental impairment. Claimant has reports of pain in multiple areas of his body; however, there are no corresponding clinical findings that support the reports of symptoms and limitations made by Claimant. There are no laboratory or x-ray findings listed in the file. In short, Claimant has restricted himself from tasks associated with occupational functioning based upon his reports of pain (symptoms) rather than medical findings. The Administrative Law Judge finds that the medical record is insufficient to establish that Claimant has a severely restrictive impairment. Further, the Administrative Law Judge stated the evidence of record does not establish that Claimant is unable to work for a period exceeding 90 days, concluding that Claimant does not meet the disability criteria for SDA. There is no medical finding that Claimant has any muscle atrophy, trauma, abnormality or injury that is consistent with a deteriorating condition. The presiding ALJ cited no evidence to support the finding.

In a Request for Rehearing/Reconsideration, Claimant's AHR contended that the presiding ALJ erred in finding that Claimant did not have a severe impairment and that the Claimant's AHR noted that the ALJ either ignored evidence or did not view it. The Claimant's AHR asserts that there is objective clinical medical evidence in the record that Claimant suffers a severely restrictive physical impairment in the nature of degenerative disc trauma in his back. The Claimant's AHR further asserts that images

of the MRI taken of Claimant's spine and two MRI reports are sufficient clinical evidence to establish a deteriorating condition and support Claimant's testimony regarding pain.

To determine whether Claimant has a severe impairment, all evidence should be considered. The analysis will begin with a summary of presented medical documentation.

Claimant alleged disability based on impairments and issues including atrial fibrillation, transient ischemic attack, diabetes mellitus, chronic severe low back pain and neck pain with neck fusion, hypertension and a pneumothorax.

The medical evidence contains a mental status examination, but Claimant's alleged mental impairments were not addressed during the hearing.

Medical evidence contained in the case record presented diagnoses of and/or treatment for the following as regards Claimant's chronic lumbar pain. These included two MRI's, the results of which follow. A Medical Examination Report completed on May 23, 2013, by Claimant's treating PA, found in relevant part that the Claimant's low back pain was deteriorating, finding positive straight leg raising to 30 degrees, both sides, a forward flexion limitation of 40 degrees, and fully limited the Claimant. The treating PA imposed limitations, finding Claimant could stand and or/walk less than 2 hours in an 8-hour workday and sit less than 6 hours in an 8-hour workday.

The MRI results are as follows.

The Claimant had a 5 view MRI of the lumbar spine on May 24, 2013. The Findings were: Grade 1 retrolisthesis of L4 on L5 and anterior listhesis of L5 on S1, with what appears to be 1% spondylolysis with bilateral pars defects. There are degenerative disk changes at L5-S1 with disk space narrowing, vacuum disk phenomenon, and discogenic endplate sclerosis with endplate spurring. There is L5 spina bifida occulta. The pedicles, transverse processes and SI joints are intact. The oblique views show no evidence of jumped or perched facets.

The Impression was: There is L5 spondylolysis with bilateral L5 pars defects. There is a resulting grade 1 retrolisthesis of L4 on L5, and anterior listhesis of L5 on S1 and marked degenerative disk changes at L5, with disk space narrowing and discogenic endplate sclerosis and endplate spurring. There is also prominent facet hypertrophy.

A second MRI was completed on May 31, 2013.

The Findings were: There is L5 spondylolysis with bilateral L5 pars defect. There is an associated grade 2 anterior listhesis of L5 on S1 and a grade 1 retrolisthesis of L4 on 5. Lumbar spine alignment is otherwise maintained with normal marrow signal throughout. The cord has a normal signal with the conus location at L1.

At L1-2, disk is well maintained with no degenerative disk or facet changes and no central canal or neuroforaminal encroachment.

At L2-3, there is minimal broad based anterior disk bulging with mild anterior spondylotic endplate spurring. There is no posterior disk bulging or facet hypertrophy and no central canal or neuroforaminal encroachment.

At L3-4, there is minimal broad based anterior disk bulging and anterior spondylotic endplate spurring. There is no posterior disk bulging or facet hypertrophy and no central canal or neuroforaminal encroachment.

At 4-5, there is decreased disk signal compatible with desiccation. The disk height is well maintained. There is no disk bulging or facet hypertrophy. There is no central canal or neuroforaminal encroachment.

At L5-S1, there are bilateral pars defect with a grade 2 anterior listhesis of L5 on S1. There is complete loss of the L5-S1 disk space with discogenic endplate sclerosis and mild endplate spurring. There is also prominent facet hypertrophy. **These degenerative disk and facet changes cause mild central canal stenosis bilaterally, but severe bilateral neuroforaminal stenosis with up/down impingement of the exiting L5 nerve roots bilaterally.** (Emphasis supplied).

The paraspinous soft tissues are normal in appearance and symmetric. The S1 joints are intact.

The Impression was: There is L5 spondylolysis with bilateral L5 Pars defects and grade 2 anterior listhesis of L5 on S1. This produces severe bilateral neuroforaminal stenosis with up/down impingement on the exiting L5 nerve roots.

These results clearly establish that Claimant has met the severity requirement of Step 2, in that the MRI findings demonstrate significant impairment to basic work activities for a period longer than 12 months. Accordingly, it is found that Claimant has established having a severe impairment and the disability analysis may progress 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.

The ALJ found that Claimant was denied at Step 2 and did not consider or mention the MRI dated May 31, 2013, and thus no Listings were examined even though the evidence was contained in the case record confirming that objective medical testing MRI data existed.

A listing for spinal disorders (Listing 1.04) must be considered based upon the clinical and testing provided.

Listing 1.04 requires:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

- A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

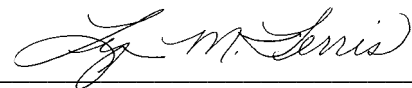
Based upon the MRI evidence provided and the clinical findings based on a medical exam of the Claimant's treating PA, it is determined that the Claimant has met the requirements of Listing 1.04 A, and thus is found disabled at Step 3 with no further analysis required. As the Claimant has been found disabled MA-P, he is also determined to be disabled for the State Disability Assistance program as well.

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 and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated April 3, 2013, including retroactive MA benefits, if any;
- (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 otherwise eligible for future benefits.

The actions taken by DHS and the Hearing Decision (Reg. No. 2013-62214) are respectively **REVERSED AND VACATED**.



Lynn M. Ferris
Administrative Law Judge
For Nick Lyon, Interim Director
Department of Human Services

Date Signed: February 4, 2015

Date Mailed: February 4, 2015

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

LMF/tm

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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