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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-016664
Issue No.: 2009
Case No.: [redacted]
Hearing Date: February 25, 2015
County: Wayne (35)

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 25, 2015, from Redford, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted], hearings facilitator.

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 an unspecified date before 1/2011, Claimant applied for SSI benefits.

2. In 1/2011, the Social Security Administration (SSA) denied Claimant's SSI application for the reason that Claimant was disabled.

3. Claimant failed to appeal the SSA denial.

4. On [redacted], Claimant applied for MA benefits, including retroactive MA benefits from 12/2010.

5. Claimant's only basis for MA benefits was as a disabled individual.

6. On [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).

7. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 46-48) informing Claimant of the denial.

8. On [redacted], Claimant's AHR requested a hearing disputing the denial of MA benefits.

9. During the hearing, the record was extended 14 days to allow Claimant to submit the following documentation concerning a 1/2011 SSA application: date of application, date of denial, type of application (SSI or RSDI), and reason for denial.

10. Additional documentation was not returned.

11. As of the date of the administrative hearing, Claimant was a 48 year old male.

12. Claimant has not earned substantial gainful activity since before the first month of benefits sought.

13. Claimant alleged disability based on restrictions related to diagnoses of lupus, lower back pain, chronic migraine headaches, kidney dysfunction, high blood pressure, and arthritis.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person

must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id*. Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id*. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Eligibility for MA based on disability or blindness does not exist once SSA's determination is final. *Id.,* p. 3. SSA's determination that disability or blindness does not exist for SSI is final for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA; or
- The client failed to file an appeal at any step within SSA's 60 day limit, and
- The client is not claiming:
    - A totally different disabling condition than the condition SSA based its determination on, or
    - An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

  BEM 260 (7/2013)*,* p 3.

Claimant testified that he applied for SSI benefits. Claimant was not confident about stating what date he applied for SSI benefits. Claimant testified that he was denied SSI benefits in 1/2011.

There are occasions when a claimant's testimony is inaccurate, particularly concerning dates. Thus, there is some hesitancy in relying on Claimant's testimony as the basis of his SSA application history. SSA documentation is a reliable source for application and denial dates. Claimant was given additional time after the hearing to present documentation from SSA. Claimant failed to provide any additional documents. As Claimant's testimony was the best source of information for SSA history, it will be accepted as accurate.

Eligibility for MA based on disability or blindness does not exist once SSA's determination is final. BEM 260 (7/2013), p. 3. SSA's determination that disability or blindness does not exist for SSI is final for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA; or
- The client failed to file an appeal at any step within SSA's 60 day limit, and
- The client is not claiming:
    - A totally different disabling condition than the condition SSA based its determination on, or
    - An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

  BEM 260 (1/2010)*,* pp 2-3.

Claimant testimony conceded that he applied for SSI benefits, was denied in 1/2011 for not being disabled, and that he did not appeal the denial. For the issue of disability, Claimant's denial of SSI benefits from 1/2011 is binding. Accordingly, it is found that DHS properly denied Claimant's MA eligibility for 12/2010 and 1/2011. The analysis will proceed to determine if Claimant was disabled since 2/2011.

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 CRF 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 2010 monthly income limit considered SGA for non-blind individuals is $1,000.

Claimant testified that he worked part-time from 2012-2014 as a ground driller supervisor. Claimant testified that he averaged working 20 hours per month and was paid $10 per hour. 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 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 presented medical documentation.

Hospital documents (Exhibits 12-45) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of a skin rash, ongoing for 1 year. Claimant reported the rash sometimes covers his entire face and his upper back. Other reported symptoms included nose bleeds, fever, chills, darker urine color, gingival bleeding when brushing teeth, and rectal bleeding. A history of chronic back pain for which Claimant takes Motrin was noted. A history of heavy alcohol abuse (20 beers per day) from 5 years earlier was noted; it was noted that Claimant now drinks 10 beers per week. It was noted that Claimant was a ½ pack per day smoker. It was noted that Claimant had a bone marrow biopsy. Noted principal discharge diagnoses included newly diagnosed systemic lupus erythematosus and autoimmune thrombocytopenia. Secondary diagnoses included acute renal failure, enlarged prostate, and chronic back pain. A discharge date of [redacted] was noted. Various discharge medications were noted as prescribed.

Physician office visit notes (Exhibits A5-A8) dated [redacted] were presented. It was noted that Claimant reported ongoing fatigue and body pain (8/10) (arms, legs, and back) affecting his mobility and sleep. Physical examination findings were all noted to be normal. Assessments of lupus, kidney disease, HTN, and hypothyroidism were noted. Noted medications included levothyroxine, Norvasc, and Ultram.

Physician office visit notes (Exhibits A9-A12) dated [redacted] were presented. It was noted that Claimant reported a worsening of body pain (10/10). Complaints of muscle pain, back pain, and fatigue were noted. Physical examination findings were all noted to be normal. It was noted that the physical examination failed to demonstrate disc disease. Claimant was advised to perform back and shoulder exercises.

Physician office visit notes (Exhibits 64-66) dated [redacted] were presented. A continuing complaint of back pain was noted. It was noted that Claimant received lupus treatment from 2010-2012 before stopping treatment because of a reported lack of progress in resolving body pain. A recommendation to stop caffeine and marijuana was noted.

Physician office visit notes (Exhibits A13-AA16) dated [redacted] were presented. It was noted that Claimant reported continuing sharp back pain, relieved by nothing. A history

of lupus was noted as a possible complicating factor. A referral to rehabilitation was noted.

Nephrologist office visit notes (Exhibits A50-A52) dated [redacted] were presented. An assessment of mild chronic kidney disease (stage 2) was noted.

Nephrologist office visit notes (Exhibits A47-A49) dated [redacted] were presented. An assessment of mild chronic kidney disease (stage 2) was noted. Prescribed medications included the following: Tramadol, amlodipine, Levothyroxine, aspirin, Lisinopril, and Prednisone.

A lumbar MRI report (Exhibits 3-4) dated [redacted] was presented. A mild L3-L4 disc protrusion causing mild spinal canal stenosis was noted. A mild disc protrusion causing mild bilateral foraminal stenosis was noted.

Handwritten physician office visit notes (Exhibit 63) dated [redacted] were presented. A continuing complaint of back pain was noted.

A physician letter (Exhibit A42) dated [redacted] was presented. It was noted that a recent MRI was unremarkable and that physical therapy was not helpful in reducing Claimant's reported pain. A recommendation of Claimant performing core strengthening exercises was noted.

Physician office visit notes (Exhibits A17-22) dated [redacted] were presented. It was noted that Claimant reported ongoing back pain, worse when bending, climbing stairs, ambulation, changing positions, performing ADLs, and other movements. It was noted that physical therapy did not lessen pain. It was noted that an MRI did not reveal significant findings. Ultram was noted as continued. An upcoming hernia surgery was noted.

Hospital documents (Exhibits A70-A79) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of constipation, abdominal pain, and urinary retention following a recent hernia surgery. Treatment was not apparent though it was noted that Claimant was able to urinate while in hospital. A discharge date of 8/26/14 was noted.

Nephrologist office visit notes (Exhibits A44-A46; A55-A59) dated [redacted] were presented. An assessment of chronic kidney disease (late stage 2/early stage 3) was noted. Various blood work results were noted to be normal. Medication treatment was noted.

Physician office visit notes (Exhibits A22-A25) dated [redacted] were presented. It was noted that Claimant reported continuing back pain, with no relieving factors. Physical examination findings were all noted to be normal. A continuing assessment of chronic kidney disease (late stage 2/early stage 3) was noted.

Physician office visit notes (Exhibits A26-A30) dated [redacted] were presented. It was noted that Claimant reported continuing back pain, with no relieving factors. A complaint of nocturia was also noted. Physical examination findings were all noted to be normal. A referral to a urologist was noted.

Physician office visit notes (Exhibits A31-A35) dated [redacted] were presented. It was noted that Claimant reported constant left hand numbness, dizziness, and vertigo. An assessment noted reported tingling may be caused by SLE (presumed to be systemic lupus erythematosu). A referral to a rheumatologist for lupus treatment was noted.

A Medical Examination Report (Exhibits A53-A54) dated [redacted] was presented. The form was completed by a nephrologist with an approximate 7 month history of treating Claimant. Claimant's physician listed diagnoses of chronic kidney disease (stage 3), HTN, hyperlipidemia, and lupus. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. Physical and mental restrictions were not noted.

A Medical Examination Report (Exhibits A1-A2) dated [redacted] was presented. The form was completed by a family medicine physician with an approximate 6 month history of treating Claimant. Claimant's physician listed diagnoses of lupus, arthritis, decreased mobility, and back pain. Claimant's baseline pain was noted to be 8/10. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs. Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and/or walking over an eight-hour workday. Claimant's physician opined that Claimant was restricted from performing repetitive bilateral fine manipulation and left hand grasping. Claimant's physician restricted Claimant to lifting/carrying of under 10 pounds, never 10 pounds or more. The basis of restrictions included a lumbar MRI and facet joint arthritis.

Presented radiology and treatment history verified a relatively small degree of lumbar abnormalities. Brain radiology was normal. The testing was not highly indicative of a severe impairment.

A diagnosis for lupus was verified. Lupus is understood to be an incurable disease that causes a body's immune system to attack healthy tissue. Lupus is also understood to dramatically increase a person's pain level.

Claimant testified that his normal back pain level is 8/10. Claimant testified that he has a migraine headache ongoing for 4 ½ weeks. Claimant testified that he has experienced regular headaches over the last 10 years. Claimant also testified that he is restricted in sitting, standing, ambulation, and lifting due to pain associated with lupus. Claimant's testimony was consistent with Claimant's presented medical history.

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 joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of body pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

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 renal dysfunction (Listing 6.02) was considered based on a diagnosis of kidney disease. The listing was rejected due to the absence of evidence verifying any of the following: dialysis, kidney transplant, persistent creatinine levels, or persistent anorexia.

Claimant's most prominent impairment appears to be lupus. Lupus is covered by Listing 14.02 which reads as follows:

> ***14.02 Systemic lupus erythematosus.*** As described in 14.00D1. With:
> **A.** Involvement of two or more organs/body systems, with:
> 1. One of the organs/body systems involved to at least a moderate level of severity; and
> 2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).
> OR
> **B.** Repeated manifestations of SLE, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:
> 1. Limitation of activities of daily living.
> 2. Limitation in maintaining social functioning.
> 3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

Claimant testified that he is restricted to 15-20 minutes of sitting before needing to walk around. Claimant testified that he is restricted to 5 minutes of walking due to lumbar and foot pain. Claimant testified that he can only stand 5 minutes because of feet numbness. Claimant testified that he is greatly restricted in left arm movement because

of numbness, ongoing for 3 months. Claimant testified that he regularly suffers dry mouth, fatigue, and nausea, presumably due to lupus and medication side effects. Claimant's testimony was generally consistent with Claimant's documented medical history. Claimant's testimony was also indicative of meeting the above listing requirements.

By itself, Claimant's reported back pain appears to be highly exaggerated based on radiology which verified only mild-to-moderate abnormalities. Claimant's testimony appears much more credible when factoring his diagnosis of lupus and provided physician restrictions. When factoring Claimant's reported headaches, fatigue, lack of insurance from before 4/2014, progressive kidney disease, and left arm numbness, Claimant sufficiently meets listing requirements for lupus.

It is found that Claimant meets the listing for 14.02 and is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA application. Based on the earlier finding that Claimant's SSI's application denial from 1/2011 is binding, Claimant is found to be disabled beginning 2/2011.

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 eligibility for the months of 12/2010 and 1/2011 due to Claimant's binding denial of SSI benefits. The actions taken by DHS are **PARTIALLY AFFIRMED**.

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 benefits subject to the finding that Claimant is a disabled individual, **effective 2/2011**;
(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 **PARTIALLY REVERSED**.

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

Date Signed: **4/3/2015**

Date Mailed: **4/3/2015**

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: [redacted]