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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-019492
Issue No.: 2009
Case No.: [redacted]
Hearing Date: March 23, 2015
County: Wayne (82)

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 March 23, 2015, from Detroit, 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] manager, and [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 3/2014.

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

3. On [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

4. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice informing Claimant of the denial.

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

6. As of the date of the administrative hearing, Claimant was a 56 year old male.

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

8. Claimant alleged disability based on chronic kidney disease.

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, a 3-way telephone 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.

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

Claimant testified that he decided to retire at 43 years of age after he worked 25 years as a machinist. Claimant testified that he has not worked since 2002. Claimant testified that he has not attempted to find employment since 2002. Claimant testified that he has since enjoyed his freedom and performed yard work and worked on his house.

Claimant testified that he received some unspecified amount of inheritance and lived off of his savings for the last 13 years. Claimant also testified that he has a $775 monthly mortgage. Claimant testified that friends and family have assisted him with paying his monthly mortgage since 2013.

It is relatively unusual for a person to retire at age of 43 years of age due to non-disability reasons. If Claimant was wealthy enough to retire, he severely overestimated his wealth because he stated that he ran out of savings around the time applied for MA benefits. Claimant conceded that his money did not go to medical expenses, he just ran out of savings at that time.

It is plausible that Claimant received some inheritance which allowed Claimant to not work for some period of time. It is suspicious that Claimant would have so severely miscalculated his financial ability to retire. If Claimant had so seriously miscalculated, it would be expected that Claimant would pursue other employment; Claimant denied pursuing any jobs since 2002. Medical records did note that Claimant made some money by "flipping cars" (see Exhibit A136).

Claimant's testimony concerning his finances was rather dubious. Claimant's testimony was also not rebutted by DHS. It cannot be found that Claimant is or was recently employed solely because Claimant provided an improbable employment history. Claimant's dubious testimony may affect any credibility findings concerning 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 the second step.

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 67-77) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of worsening leg edema over the previous 2-3 months. An impression of congestive heart failure was noted.

Hospital documents (Exhibits 90-98) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of bilateral edema, ongoing for 3 months. A history of alcohol abuse was noted. An impression of congestive heart failure was noted.

Kidney disease specialist office visit notes (Exhibits A42-A43; A47-A48) dated [redacted] were presented. It was noted that Claimant reported leg edema, ongoing for 4 months. A plan of a kidney biopsy was noted.

Kidney disease specialist office visit notes (Exhibits A40-A41; A49-A50) dated [redacted] were presented. It was noted that Claimant was watching his sodium, though it was also noted that he ate hot dogs 8 times per week. Occasional fatigue with exertion was noted. An assessment of nephrotic range proteinuria was noted.

Hospital documents (Exhibits 4-9) from an encounter dated [redacted] were presented. It was noted that Claimant presented after passing out. A CT of Claimant's head was noted to be unremarkable. A chest x-ray was noted to show no acute process. Bilateral edema was noted. A diagnosis was not apparent.

Hospital documents (Exhibits 10-46; 78-79; 86-90; A21-A22) from an admission dated [redacted] were presented. It was noted that Claimant presented after a bout of dizziness followed by loss of consciousness. A low probability of pulmonary embolus was noted. Various kidney testing and blood work was performed. A worsening of renal failure based on increased creatinine and proteinuria was noted. Noted discharge diagnoses included acute renal failure and nephrotic syndrome. A pathology report noted a diagnosis of amyloidosis. A discharge date of [redacted] was noted.

Hospital treated documents (Exhibits 47-66) dated [redacted] were presented. It was noted that Claimant presented for evaluation of amyloidosis. Leg edema and reported fatigue was noted. It was noted that a bone biopsy was performed. A diagnosis of amyloidosis was noted following bone marrow biopsy.

Kidney disease specialist office visit notes (Exhibits A51-A52) dated [redacted] were presented. It was noted that Claimant presented for follow-up after recent bone marrow and kidney biopsies. It was noted that Claimant was susceptible to leg blood clots. A restriction of long travel was noted. A plan to closely monitor Claimant's kidneys was noted.

Various hospital documents (Exhibits A136-A153) from 5/2014 were presented. A recent diagnosis of renal amyloidosis was noted.

Hospital documents (Exhibits A156-A257; A270-A273) from an admission dated [redacted] were presented. It was noted that Claimant presented for a bone marrow transplant. A discharge date of [redacted] was noted.

Kidney disease specialist office visit notes (Exhibits A53-A54) dated [redacted] were presented. It was noted that Claimant presented 6 days following a bone marrow transplant. It was noted that Claimant's creatinine recently increased from baseline; the increase was noted to be indicative of permanent kidney damage. An assessment of kidney disease (stage 3) was noted.

Kidney disease specialist office visit notes (Exhibits A55-A56) dated [redacted] were presented. It was noted that Claimant lost 20 pounds since his last visit (presumably since [redacted]). A recommendation to increase salt intake was noted.

Hospital documents (Exhibits A68-A100) from an admission dated [redacted] were presented. It was noted that Claimant presented after his physician recommended hospital treatment following creatinine level testing at 2.9. Reported improvement in chronic leg edema was noted. It was noted that Claimant underwent a kidney biopsy and various lab testing. Noted discharge diagnoses included acute renal failure and amyloidosis were noted. A discharge date of [redacted] was noted.

A surgical pathology report (Exhibits A8-A9; A19-A20) dated [redacted] was presented. A biopsy of Claimant's kidney was noted to demonstrate amyloidosis and moderate tubular atrophy.

Kidney disease specialist office visit notes (Exhibits A57-A58) dated [redacted] were presented. An improvement in swelling was noted. A gradual increase in Claimant's creatinine baseline was noted.

Kidney disease specialist office visit notes (Exhibits A10-A11; A62-A63) dated [redacted] were presented. It was noted that Claimant reported improvement in previously reported cold symptoms. An improvement in a creatinine reduction from 3.04 to 2.78 was noted.

Kidney disease specialist office visit notes (Exhibits A59-A60) dated [redacted] were presented. A recent 15 pound weight gain coinciding with taking fludrocortisone was noted. An increase in Claimant's creatinine level (3.54) was noted.

Kidney disease specialist office visit notes (Exhibits A64-A65) dated [redacted] were presented. A recent prescription for Ramipril was noted. It was noted that Claimant's creatinine increased, but the rate of increase slowed compared to previous increases.

Physician office visit notes (Exhibits A6-A7) dated [redacted] were presented. It was noted that Claimant presented for follow-up treatment. An ongoing diagnosis of chronic kidney disease (stage 4) was noted. A plan to follow-up in 4 weeks and continue protein-to-creatinine ratio was noted.

Office visit notes (Exhibits A1-A2) dated [redacted] from a treating physician were presented. It was noted that Claimant had stage 4 chronic kidney disease "with a need for permanent access for future hemodialysis."

Hospital documents (Exhibits A101-A115) from an encounter dated [redacted] were presented. A diagnosis of end-stage renal disease was noted. It was noted that Claimant underwent a procedure creating an AV fistula so Claimant could undergo hemodialysis.

Hospital documents (Exhibits A116-A135) from an encounter dated [redacted] were presented. Various lab testing was noted as performed.

Kidney disease specialist office visit notes (Exhibits A66-A67) dated [redacted] were presented. A diagnosis of kidney disease (stage 4) was noted. Claimant's creatinine levels were noted to be stable at 3.4-3.6.

Presented medical records verified a gradual worsening of Claimant's kidney function since 3/2014. An ongoing diagnosis of amyloidosis was verified. Amyloidosis is understood to be a rare and untreatable disease that causes a build-up of an abnormal protein in bone marrow and organs. It is life-threatening and can cause organ failure to

a sufferer's kidneys, liver, spleen, and other organs. Medical records established that Claimant's kidney function was adversely impacted by amyloidosis.

Claimant's kidney disease progressed from stage 3 to stage 4 since 3/2014. Claimant's kidney treatments progressed from taking various medications to undergoing hemodialysis. Claimant's diagnoses and treatment would impact Claimant's ability to ambulate, lift, stand, and maintain focus.

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.

Claimant's most prominent impairment is kidney disease. Kidney diseases are listed under Listings 6.00. Claimant's most relevant listing appears to be kidney disease complications (Listing 6.09) which establishes disability by the following:

> **6.09** ***Complications of chronic kidney disease*** (see 6.00C8) requiring at least three hospitalizations within a consecutive 12-month period and occurring at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

Medical records verified Claimant was hospitalized for kidney related treatments on the following dates: [redacted]. Claimant's treatments were 30 days apart and within a 12 month period. Though a 48 hour treatment from 3/2014 was not verified, medical records established that 3/2014 was the first month amyloidosis impacted Claimant's abilities.

It is found that Claimant meets listing 6.09. Accordingly, Claimant is a disabled individual and it is found that DHS erred in denying Claimant's MA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

(1) reinstate Claimant's MA benefit application dated [redacted], including retroactive MA benefits from 3/2014;
(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: **4/1/2015**

Date Mailed: **4/1/2015**

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]