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

IN THE MATTER OF:

Reg. No.:	15-006933
Issue No.:	2009
Case No.:	
Hearing Date:	June 22, 2015
County:	Jackson

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 June 22, 2015, from Detroit, Michigan. Participants included the above-named Claimant. testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (DHHS) included supervisor, and , specialist.

ISSUE

The issue is whether DHHS 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 March 27, 2014, Claimant applied for MA benefits, including retroactive MA benefits from December 2013.

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

3. On an unspecified date, the Medical Review Team (MRT) determined that Claimant was not a disabled individual.

4. On April 8, 2015, DHHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant's AHR of the denial.

5. On April 27, 2015, Claimant's AHR requested a hearing disputing the denial of MA benefits.

6. On June 22, 2015, an administrative hearing was held.

7. During the hearing, Claimant and DHHS waived the right to receive a timely hearing decision.

8. During the hearing, the record was extended 30 days to allow Claimant to submit medical records since January 2015 for the following treating sources: University of Michigan Hospital, Claimant's primary care physician, and Claimant's urologist; an Interim Order Extending the Record was subsequently mailed to both parties.

9. On July 28, 2015, Claimant's AHR submitted additional documents.

10. As of the date of the administrative hearing, Claimant was a 47 year old male.

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

12. Claimant alleged disability based on restrictions related to myelopathy.

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 DHHS 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 DHHS 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 last worked in August 2014. A hospital document dated January 30, 2014, stated that Claimant stopped working in August 2014. The document further stated that Claimant returned to work two weeks before becoming hospitalized (see Exhibit 7). Thus, it appears that Claimant may have worked as recently as January 2014.

Claimant's work happened to involve remodeling homes. Presented evidence suggested that Claimant's work was labor-intensive and would have required Claimant to be fairly healthy. Presented medical documents tended to indicate that Claimant was not strong enough to perform his employment for levels amounting to SGA since December 2013.

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 7-16) from an admission dated January 30, 2014, were presented. It was noted that Claimant complained of muscle pain and stiffness in his legs and arms, ongoing for 2 weeks. Claimant reported that he could climb stairs, get out of a chair, and comb his hair, each without any assistance. It was noted that Claimant's CPK levels responded well to IV fluids and that Claimant felt better. It was noted that Claimant was a daily smoker and alcohol drinker. An impression of acute myopathy manifesting in the form of muscle tenderness and stiffness was noted. A possibility of toxic myopathy was noted (based on Claimant's "heavy alcohol intake"). A plan of conservative treatment was noted. A discharge date of February 1, 2014 was noted.

Physician office visit notes (Exhibits 26-29) dated February 28, 2014, were presented. It was noted that Claimant complained of ongoing muscle pain and weakness, particularly in the morning. It was noted that shoulder abductor strength was 4+/5. A diagnosis of an unspecified myopathy was noted.

An Operative Report (Exhibits 24-25) dated March 31, 2014, was presented. It was noted that Claimant was diagnosed with myopathy and elevation in creatinine kinase. It was noted that Claimant underwent a right quadriceps biopsy.

Physician office visit notes (Exhibits 17-22) dated April 21, 2014, were presented. It was noted that Claimant complained of ongoing back and leg pain and weakness. It was noted that rheumatology testing and a muscle biopsy were unremarkable. It was noted that further diagnostic testing, including a brain MRI, would be performed.

A Medical Examination Report (Exhibits 36-37) dated April 28, 2014, was presented. The form was completed by a family medicine physician with an approximate 2 month history of treating Claimant. Claimant's physician listed diagnoses of asymptomatic varicose veins, hypertension, and muscle weakness. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. It was noted that Claimant required functional evaluation testing before physical restrictions could be provided.

Neurologist office visit noted (Exhibits A68-A70) dated June 11, 2014, were presented. It was noted that Clamant reported ongoing weakness. Reduced bilateral leg strength (4+/5) was noted. An assessment of myelopathy v. multiple sclerosis was noted.

An MRI report of Claimant's brain, cervical spine, and thoracic spine was presented. An impression of numerous small foci and signal abnormalities were noted in Claimant's brain. Focal signal abnormality at C4-C5 with spinal stenosis and degenerative changes were noted. Signal abnormalities were also noted throughout T2-T10.

Hospital documents (Exhibits A50-A56) from an encounter dated June 22, 2014, were presented. It was noted that a cervical and thoracic spine MRI was performed. Degenerative changes at C4-C5 and C5-C6 demonstrated at least moderate spinal canal stenosis and moderate-to-severe foraminal narrowing. A disc protrusion was noted at T8-T9. It was noted that a brain MRI demonstrated several small FLAIR hyperintensities.

Rheumatologist office visit notes (Exhibits A9-A10; A20-A26) dated July 11, 2014, were presented. A complaint of muscle weakness since November 2013 was noted. It was noted that Claimant's lab work verified increased enzymes. It was noted that radiology was negative. The rheumatologist indicated being perplexed by Claimant's medical history.

Neurologist office visit notes (Exhibits A71-A72) dated July 23, 2014, were presented. It was noted that Claimant reported improved weakness and balance. It was noted that a sensory exam was unremarkable. Claimant had full muscle strength. Norco was noted as a current medication. It was noted that Claimant had intact tandem gait. "Much better" muscle weakness was noted.

Neurologist office visit notes (Exhibits A73-A74) dated September 9, 2014, were presented. It was noted that Claimant reported improved but ongoing leg pain. A mildly ataxic gait was noted. An assessment of myelopathy was noted.

Rheumatologist office visit notes (Exhibits A10-A12) dated September 12, 2014, was presented. It was noted that Clamant definitely had myelopathy related to cervical stenosis.

Neurologist office visit notes (Exhibits A75-A76) dated September 29, 2014, were presented. It was noted that Claimant had a mildly ataxic gait. An assessment "pointing towards" multiple sclerosis was noted.

Rheumatologist office visit notes (Exhibits A12-A13; A27-A31) dated October 10, 2014, was presented. It was noted that non-surgical methods were not recommended due to the progressive nature of Claimant's symptoms.

Physician office visit notes (Exhibits A1-A8; A17-A19; A44-A49) dated June 17, 2015, were presented. It was noted that Claimant reported ambulation difficulties beginning approximately Thanksgiving of 2013. It was noted that corrective surgery was delayed until Claimant quit smoking- a requirement of Claimant's insurance. It was noted that Claimant quit smoking three months earlier. Physical examination findings included 4+5 strength in left biceps and triceps, positive Hoffman's sign on the left, and 4+/5 strength in left knee extension. A myelopathic gait was noted. It was noted that Claimant was too unstable to perform tandem gait. It was noted that Claimant was scheduled for a posterior cervical laminectomy on July 16, 2015, subject to Claimant having medical insurance.

A rheumatologist letter (Exhibits A66-A67) dated July 10, 2015, was presented. It was noted that Claimant displayed progressive symptoms related to myelopathy and spinal cord impingement.

Claimant seeks a disability determination from December 2013. Medical records referenced Claimant's complaints of weakness beginning November 2013. The references are somewhat indicative that Claimant had a severe impairment as of December 2013.

Treatment documents before January 2014 were not presented. The severity of Claimant's weakness cannot be determined for December 2013 without any medical records from or before December 2013. It is found that Claimant failed to establish disability for December 2013. The analysis will proceed to determine if Claimant was disabled beginning January 2014.

Presented documents verified Claimant was treated since January 2014 for muscle weakness and gait difficulties. Much of 2014 was spent examining Claimant for MS, even diagnosing Claimant with MS in September 2014. Claimant's alcohol and tobacco abuse also appeared to contribute to difficulties in correctly diagnosing Clamant. It should be noted that evidence did not suggest that Claimant's alcohol and tobacco abuse caused Claimant's symptoms. Subsequent radiology and treatment demonstrated that Claimant's symptoms were caused by myelopathy. Myelopathy is understood to be a traumatic spinal cord injury causing weakness and clumsiness.

It was sufficiently verified that myelopathy restricted Claimant's ability to ambulate, stand, and lift/carry for a period of at least 12 months. 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 appears to be back pain. Spinal disorders are covered by Listing 1.04 which reads:

> **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);
> OR
> B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;
> OR
> C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Looking at Part C, the inability to ambulate effectively is a requirement. SSA defines this as follows:

> Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Claimant testified that he is restricted to 30 minutes of standing or ambulation before leg shaking prevents further standing or ambulation. Claimant testified myelopathy restricts his lifting/carrying to 10 pounds or less. Claimant testified that he cannot sit for extended periods because his legs “lock-up”.

Presented records verified that myelopathy and/or spinal stenosis causes Claimant weakness and difficulty with ambulation. Claimant’s symptoms were described by a treating physician as “progressive” and an urgency for surgery was expressed. Moderate canal stenosis was and moderate-to-severe foraminal narrowing was verified by radiology. The evidence was sufficient to infer that Claimant is unable to effectively ambulate.

It is found that Claimant meets the listing for a spinal disorder. Accordingly, Claimant is found to be disabled. Before the analysis is concluded, it must be determined at what point Claimant’s symptoms met listing requirements.

Claimant testified that he has used a cane or walker to ambulate for the six months before the hearing. This is indicative of disability since January 2015, but not necessarily for an earlier month.

Treatment documents noted that Claimant complained of muscle stiffness and pain since January 2014. A hospital admission from January 2014 was verified. Follow-up treatment verified ongoing complaints and loss of muscle strength as far back as February 2014. The evidence was sufficient to establish that Claimant was disabled since January 2014.

DECISION AND ORDER

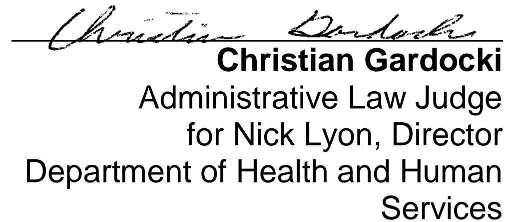
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHHS properly denied retroactive MA benefits to Claimant for the month of December 2013 based on a determination that Claimant was not disabled. The actions taken by DHHS are **PARTIALLY AFFIRMED**.

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

(1) reinstate Claimant’s MA benefit application dated March 27, 2014, including retroactive MA benefits since January 2014;
(2) evaluate Claimant’s eligibility for benefits subject to the finding that Claimant is a disabled individual, effective January 2014;
(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 DHHS are **PARTIALLY REVERSED**.



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

Date Signed: August 4, 2015

Date Mailed: August 4, 2015

GC/tm

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: