

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-000725
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 25, 2015
County: Oakland (03)

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 Southfield, Michigan. Participants included the above-named Claimant. [REDACTED]

[REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [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 3/2013.
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 4-5).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibits 6-8) informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 2).
6. As of the date of the administrative hearing, Claimant was a 54 year old male.
7. Claimant began employment amounting to substantial gainful activity beginning 3/2014.
8. Claimant alleged disability based on restrictions related to chronic obstructive pulmonary disorder (COPD) and congestive heart failure (CHF).

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.

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.

Claimant testified that he worked since 3/2014. Claimant testified that he has consistently worked 40 hours per week for \$12.50 per hour. Claimant's employment since 3/2014 exceeds presumptive SGA income limits. Claimant's precise starting employment date and first pay date are not known. It will be presumed that Claimant received a full set of pays for 4/2014, the month after he started, but not for 3/2014, his first month of work. Accordingly, Claimant is not disabled for the period of 4/2014 through the date of hearing.

Claimant's wages do not preclude an analysis of disability for the time before 4/2014. The analysis will proceed to the second step for the purpose of evaluating Claimant for disability through the month of 3/2014.

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

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

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

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

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining

whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of presented medical documentation.

Hospital documents (Exhibits 39-161) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of increasing dyspnea, ongoing for 1 week. A history of coronary vascular disease was noted. It was noted that a stent placement in 3/2013 was unsuccessful due to Claimant's allergy to a dye. It was noted that Claimant was a daily alcohol drinker and tobacco smoker. It was noted that Claimant was oxygen dependent. It was noted that Claimant was living out of his car. An echocardiogram report noted that Claimant's ejection fraction (EF) was estimated to be 30%-35%. An admission diagnosis of acute decompensated congestive heart failure was noted. It was noted that Claimant underwent the following cardiac procedures: left heart catheterization, bilateral coronary angiography, and left anterior descending stent placement. It was also noted that Claimant underwent nebulizer treatments for mild COPD exacerbation. Noted discharge diagnoses included diastolic systolic CHF, CAD (post-angioplasty), short runs of ventricular tachycardia, hypokalemia, hypomagnesemia, and nicotine dependence, alcohol dependence. Noted discharge medications included Zocor, Lasix, Lopressor, Plavix, and lisinopril. It was noted that Claimant was discharged to a rehabilitation facility on [REDACTED].

Hospital documents (Exhibits A1-A40) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of bilateral lower extremity edema and dyspnea, ongoing for 3 days. It was noted that Claimant was on home oxygen. Claimant's EF was noted to be 63.4%; a reduction of Lasix was noted. It was noted that Claimant received doxycycline and solumedrol to treat breathing problems. Noted discharge diagnoses included COPD exacerbation and grade 1 diastolic dysfunction. A discharge date of [REDACTED] was noted.

Claimant testified he still uses an oxygen concentrator, even though he maintains full-time employment. He states that he uses it daily, though typically, only in the afternoon. Claimant testified that he strengthens his lungs by blowing up balloons.

Claimant testified that he felt great after receiving a heart stent in 6/2013. Claimant testified that his health somewhat deteriorated since 6/2013. Claimant testified that he was initially able to walk ½ a mile after stent placement. Claimant estimated that he can currently walk about ¼ mile.

Though Claimant's health improved, ongoing diagnoses of COPD and diastolic heart dysfunction were verified. Claimant's testimony that he requires supplemental oxygen was credible. The evidence was sufficient to justify an inference that Claimant had ambulation and lifting restrictions over the period of 3/2013-3/2014.

It is found that Claimant established significant impairment to basic work activities for a period from 3/2013-3/2014. 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 chronic pulmonary insufficiency (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing with results meeting listing requirements.

A listing for chronic heart failure (Listing 4.02) was considered based on Claimant's low ejection fraction. The listing was rejected because of the absence of evidence of the following: inability to perform an exercise test, three or more episodes of acute congestive heart failure or a conclusion that an exercise test poses a significant risk to Claimant's health.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant testified that his past employment consisted solely of sales jobs. Claimant testified that he spent portions of his time on the telephone, though some field work was also required. Claimant estimated that the time spent performing his past employment was evenly split between standing/ambulating and sitting. Claimant testified that his employment did not require lifting anything heavier than his briefcase.

During the hearing, Claimant was asked if he could perform any of his past jobs. Claimant responded that he was unable to perform past employment because he could

not get in and out of a vehicle. Claimant's answer was curious because Claimant also testified that he would like to reacquire his driver's license so he could shop for food and go to church to be saved. When Claimant was asked why he would need a vehicle if he could not get in or out of it, Claimant had no clarifying response. Claimant's testimony was indicative of an ongoing ability to perform past employment.

As it happened, Claimant found employment. Claimant credibly testified that his current employment is less taxing than previous employment because his current job requires no field work. It was not learned how Claimant traveled to and from his current work, but Claimant's ability to maintain employment for over a year is suggestive that Claimant is able to perform the traveling of his previous employment.

Claimant testimony admitted significant improvement in his health since undergoing stent placement in 6/2013. It also appears that Claimant's health improved through halting alcohol and tobacco abuse (both of which Claimant denied as current problems).

Presented evidence was fairly compelling that Claimant was unable to past employment for the period of 3/2013-6/2013. It could reasonably be found that Claimant was also unable to work for 7/2013, based on Claimant's apparently temporary residency in a rehabilitation facility. For the period of 8/2013-3/2014, the evidence tended to support a finding that Claimant is capable of performing past employment.

It is appreciated that Claimant has obstacles to maintaining employment. It is highly appreciated that Clamant has admirably fought through obstacles to obtain and sustain employment. Despite the appreciation, presented evidence supports a finding that Claimant failed to establish an inability to perform past employment for a period of 12 months or longer. Accordingly, it is found that Claimant is not a disabled individual and that DHS properly denied 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 properly denied Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from 3/2013, based on a determination that Claimant is not disabled.

The actions taken by DHS are **AFFIRMED**.



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

Date Signed: **3/5/2015**

Date Mailed: **3/5/2015**

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:

