



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: March 7, 2017
MAHS Docket No.: 16-018419
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on [REDACTED], from Detroit, Michigan. Petitioner appeared and was represented by [REDACTED], of [REDACTED]. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager, and [REDACTED], specialist.

ISSUE

The issue is whether MDHHS properly denied Petitioner's Medical Assistance (MA) eligibility for the reason that Petitioner 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], Petitioner applied for MA benefits, including retroactive MA benefits from [REDACTED].
2. Petitioner's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Petitioner was not a disabled individual (see Exhibit 1, pp. 10-16).
4. On an unspecified date, MDHHS denied Petitioner's application for MA benefits and mailed a Notice of Case Action informing Petitioner of the denial.

5. On [REDACTED], Petitioner's AHR requested a hearing disputing the denial of MA benefits.
6. As of the date of State Disability Assistance (SDA) application, Petitioner was a [REDACTED]-year-old male.
7. Petitioner has not earned substantial gainful activity (SGA) since before the first month of benefits sought.
8. Petitioner's highest education year completed was the 12th grade (via general equivalency degree).
9. Petitioner has a history of no employment amounting to SGA in the [REDACTED] years before Petitioner's SDA application.
10. In [REDACTED], Petitioner was limited to no more than sedentary employment based on cardiac, spinal, and knee dysfunction.

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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Prior to a substantive analysis of Petitioner's hearing request, it should be noted that Petitioner's AHR noted special arrangements in order to participate in the hearing; specifically, a 3-way telephone hearing was requested. Petitioner'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 Petitioner'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 Petitioner. Accordingly, Petitioner may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Petitioner is a disabled individual. *Id.*, p. 2.

MDHHS testimony credibly stated that Petitioner began receiving medical coverage beginning [REDACTED]. Petitioner's AHR conceded that a disability finding only needed to establish disability from before [REDACTED]. Thus, the analysis will focus on whether Petitioner was disabled from [REDACTED] through [REDACTED].

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 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. The 2013 monthly income limit considered SGA for non-blind individuals is \$ [REDACTED]. The 2014 monthly income limit considered SGA for non-blind individuals is \$ [REDACTED].

Petitioner testimony denied any employment from [REDACTED] or [REDACTED] amounting to SGA earnings. MDHHS presented no evidence to the contrary. It is found, Petitioner did not earn SGA in [REDACTED] or [REDACTED] and the 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 Petitioners 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 Petitioner's impairments amount to a severe impairment, all other relevant evidence may be considered.

Various cardio treatment records (Exhibit A, pp. 35-39) dated [REDACTED], were presented. An echocardiogram report noted Petitioner's EF was 25-30%. It was noted Petitioner underwent left heart catheterization (see Exhibit A, pp. 37-38). Myocardial infarction was noted to be likely caused by thromboembolic disease of the right artery. A plan of continuing medical treatment and anticoagulation medication was noted. Cardiomegaly with mild CHF was diagnosed following chest radiology.

A cardiologist letter (Exhibit A, p. 33) dated [REDACTED], was presented. It was noted Petitioner was recently hospitalized for atrial fibrillation. It was noted Petitioner was doing well taking Coumadin. A diagnosis of stable acute myocardial infarction was noted. Atrial fibrillation was noted to be well controlled.

A letter from a treating orthopedic physician (Exhibit A, p. 5) dated [REDACTED], was presented. It was noted Petitioner reported knee pain after slipping on a stair in [REDACTED]. Petitioner reported severe swelling. A five-degree loss of knee flexion was noted. X-rays were noted to show mild degenerative changes (see Exhibit A, p. 14, 24). It was noted a steroid injection was performed (see Exhibit A, pp. 22, 25-26).

A right knee MRI report (Exhibit A, pp. 7-9, 15-18) dated [REDACTED], was presented. An impression of a complex tear of medial meniscus was noted. Tricompartmental osteoarthritis with full thickness cartilage loss was noted. A fracture and joint effusion were also noted.

A letter from a treating orthopedic physician (Exhibit A, p. 4) dated [REDACTED], was presented. A recommendation of arthroscopic surgery to remove "loose bodies" and to repair meniscus was noted. It was noted the surgery would not improve osteoarthritis. A total knee arthroplasty was stated to be a possibility if surgery did not resolve knee problems.

A Medical Examination Report (Exhibit A, pp. 2-3) dated [REDACTED], was presented. The form was completed by an orthopedic physician with an approximate [REDACTED]-month history of treating Petitioner. Petitioner's physician listed diagnoses of meniscus tear and osteoarthritis. Physical examination assessments noted swelling, decreased range of motion, and decreased strength. A positive McMurray's test was noted. An impression was given that Petitioner's condition was deteriorating. It was noted that Petitioner can meet household needs. It was noted Petitioner may need a cane. Surgery was needed for repair. Petitioner's physician stated Petitioner had various limitation(s) expected to last 90 days. No sitting, standing, or ambulation

restrictions were noted. In response to a question asking for the stated basis for restrictions, Petitioner's physician did not respond.

A radiological report of Petitioner's chest (Exhibit A, p. 27) dated [REDACTED], was presented. An impression of no acute process was noted. Cardiomegaly was noted.

A CT report of Petitioner's thorax (Exhibit A, pp. 28-29) dated [REDACTED], was presented. Cardiomegaly and minimal compression deformities at T8-T9 were noted. There was no evidence of pulmonary embolism.

Hospital documents (Exhibit 1, pp. 28-38) from an admission dated [REDACTED], were presented. It was noted that Petitioner presented with complaints of progressively worsening dyspnea over the previous three days. Petitioner's heartbeat was measured at 124 beats/minute in the ER. A resting echocardiogram revealed an ejection fraction of 20% (see Exhibit A, pp. 30-32). Petitioner was treated with heparin, Cardizem, Coumadin (though embolism testing was negative), Lopressor, and other medications. A [REDACTED]-year history of smoking a pack of cigarettes per day was noted; Petitioner reported he quit one month earlier. It was noted Petitioner had a history of sleep apnea and atrial fibrillation; noncompliance with CPAP usage was noted. A low-salt diet was recommended. Upon discharge, Petitioner's O2 level was 93%. A follow-up in three days was planned. Discharge medications included Norco, Simvastatin, Altace, Carvedilol, Aldactone, Aspirin, and Coumadin. Home visits with a nurse were planned. A disposition of end-stage cardiomyopathy was noted. A discharge date of [REDACTED], was noted.

Cardiologist documents (Exhibit B, pp. 3-4) dated [REDACTED], were presented. Assessments included atherosclerotic heart disease. Dyspnea and fatigue were noted as improved since last visit.

A thoracic spine MRI report (Exhibit B, p. 1) dated [REDACTED], was presented. An impression of mild compression deformity at T8 was noted. Moderate endplate degenerative changes were noted throughout Petitioner's thoracic spine. A small hiatal hernia was noted.

A lumbar spine MRI report (Exhibit B, p. 2) dated [REDACTED], was presented. Mild foraminal narrowing was noted at L1-L2. A disc bulge and protrusion causing moderate-to-severe facet hypertrophy, moderate foraminal stenosis, and mild spinal canal stenosis at L2-L3 and L3-L4 was noted. Moderate spinal canal stenosis was noted at L4-L5. Moderate-to-severe right neural foraminal stenosis was noted at L5-S1.

Petitioner testified he's been treated for atrial fibrillation since [REDACTED]. Presented records verified cardiac treatment since [REDACTED]. Petitioner testified his function has not improved until he underwent electroshock treatment in [REDACTED]. Petitioner testified his EF

was 23% before shock treatment. Petitioner testified a recently performed EKG still showed Petitioner's heart is missing beats.

Petitioner testified he fell 15 feet while sliding down a structure in [REDACTED] Petitioner testified the fall injured his hip. Petitioner testified he eventually received an "experimental hip."

Petitioner testified he was assaulted in [REDACTED] Petitioner testified he required facial surgeries after the incident.

Petitioner testified he already had back pain, but further injured his back in a [REDACTED] car accident. Petitioner testified his pain is severe enough to require the use of a cane. Petitioner testified he has used a cane for the last [REDACTED] years.

Presented medical records generally verified a medical treatment history spinal and cardiac dysfunction. Impairments affecting walking, standing, lifting/carrying, sitting are supported. The treatment history and related restrictions were sufficiently established to have been active from at least [REDACTED] through Petitioner's date of SDA application. Accordingly, it is found that Petitioner 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 Petitioner'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 Petitioner's impairments are listed and deemed to meet the 12-month requirement, then the Petitioner 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 Petitioner's complaints of knee pain. The listing was rejected due to a failure to establish that Petitioner is unable to ambulate effectively.

A listing for spinal disorders (Listing 1.04) was considered based on Petitioner's lumbar complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root during the relevant period of disability.

A listing for chronic heart failure (Listing 4.02) was considered based on Petitioner's low ejection fraction testing. 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 Petitioner's health.

Cardiac-related listings (Listing 4.00) were considered based on Petitioner's cardiac treatment history. Petitioner failed to meet any cardiac listings.

It is found that Petitioner failed to establish meeting or equaling an SSA listing. Accordingly, the analysis moves to Step 4.

The fourth step in analyzing a disability claim requires an assessment of the Petitioner'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 Petitioner can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past [REDACTED] 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.

Petitioner testified he worked as a caretaker for [REDACTED] months in [REDACTED]. Petitioner testified he earned over \$[REDACTED]/hour. Petitioner's stated earnings were indicative of SGA; however, the employment occurred after the disability period being examined. Thus, the employment will not be factored in the disability analysis.

Petitioner testified he did not hold employment amounting to SGA earnings from [REDACTED] through [REDACTED]. Petitioner testified he has performed many part-time jobs and occasional self-employment, but his earnings did not approach \$[REDACTED]/month. Petitioner's testimony was not rebutted by MDHHS.

Without any past, relevant employment amounting to SGA, it can only be found that Petitioner cannot return to performing such employment. Accordingly, the analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered non-exertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (e.g. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's

circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Petitioner's age, education and employment history, a determination of disability is dependent on Petitioner's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Presented evidence verified cardiac disease causing dangerously low ejection fractions in [REDACTED] and [REDACTED]. Petitioner's EF, by itself, is indicative of cardiac dysfunction that would likely preclude light employment.

Knee dysfunction in [REDACTED] was also verified. Treatment records beyond [REDACTED] were not presented; however, Petitioner's lack of medical coverage would be a reasonable explanation for the lack of treatment. The dysfunction was indicative of an inability of the performance of light employment.

For good measure, recent spinal radiology was highly indicative of dysfunction precluding the performance of light employment. Though spinal dysfunction cannot be certain to have been active during the relevant time of disability, there was no indication that the dysfunction occurred suddenly and recently (e.g. from a car accident). Some degree of ambulation, lifting/carrying, and bending restrictions were likely active in [REDACTED]

It is found Petitioner was restricted to sedentary employment from [REDACTED]. Based on Petitioner's exertional work level (sedentary), age (approaching advanced age at the time of SDA application), education (high school equivalency - no direct entry into skilled work), employment history (none), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Petitioner was disabled. Accordingly, it is found that MDHHS improperly determined Petitioner to be not disabled for purposes of MA benefits.

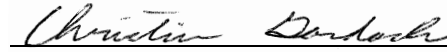
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHHS improperly denied Petitioner's application for MA benefits. It is ordered that MDHHS perform the following actions within 10 days of the date of mailing of this decision:

- (1) reinstate Petitioner's MA benefit application dated [REDACTED], including retroactive MA benefits from [REDACTED];
- (2) evaluate Petitioner's eligibility for benefits subject to the finding that Petitioner is a disabled individual in [REDACTED] and through [REDACTED]; and
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

DHHS

[REDACTED]

Counsel for Petitioner

[REDACTED]

Petitioner

[REDACTED]

[REDACTED]