

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

IN THE MATTER OF:



Reg. No. 201123378
Issue No. 2009 4031
Case No. [REDACTED]
Hearing Date: May 4, 2011
Macomb County DHS (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on May 4, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), Timothy Franco, Specialist, appeared and testified.

ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits on the basis 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 10/26/10, Claimant applied for SDA and MA benefits including retroactive MA benefits for 7/2010-9/2010.
2. Claimant's only basis for MA and SDA benefit eligibility was to be certified as a disabled individual.
3. On 1/12/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 3-4) and DHS subsequently denied Claimant's application for MA and SDA benefits.

4. On 2/17/11, Claimant requested a hearing (Exhibit 1) disputing the denial of SDA and MA benefits.
5. On 3/29/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 24-25).
6. As of the date of the administrative hearing, Claimant was a 46 year old woman (DOB [REDACTED]) with a height of 5'2" and weight of 215 pounds.
7. Claimant stated that she quit smoking 20 years ago and has no history of drug usage.
8. Claimant has a history of alcoholism and last drank alcohol in 2/2008.
9. Claimant is a high school graduate with some college credits.
10. Claimant claimed to be a disabled individual based on an impairment of cirrhosis and advanced liver damage.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 1/2011, the estimated month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

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 at 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.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories. It was not disputed that Claimant's only potential category for Medicaid would be as a disabled individual.

Disability is established if one of the following circumstances applies:

- Claimant is dead (disability established 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.
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances). BEM 260 at 1-2.

It was not disputed that none 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.

Generally, state agencies such as DHS must use the same definition of 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 at 8.

Substantial gainful activity means a person does ALL of the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 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 substantial gainful activity. *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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.927.

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 a step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the sequential five step disability process is to consider a person's current work activity. 20 CFR 416.920 (a)(4)(i). If a person is performing SGA, then the person must be found not disabled. In the present case, it was not disputed that Claimant was not performing SGA at the time of the application or at the time of the administrative hearing. Accordingly, the disability analysis may proceed to step two.

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

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

Generally, federal courts have imposed a mere 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 (CA 6, 1988); *Pickering v. Chater*, 951 F. Supp. 418, 424 (S.D.N.Y. 1996), *citing Dixon v. Shalala*, 54 F.3d 1019, 1030 (2d Cir. 1995). 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 where the medical evidence establishes only 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).

In the present case, Claimant alleged that she is disabled based on various physical disabilities including: cirrhosis/advanced liver damage, hernia (etiology unknown) and weakness in her hands. The undersigned will examine the physical consequences caused Claimant's physical impairments.

Claimant was diagnosed with cirrhosis. Claimant has a lengthy history of alcohol abuse but she stated that she stopped drinking in 2/2008 (see Exhibit 5). There is no evidence to indicate that Claimant is currently abusing alcohol. Thus, the undersigned can evaluate Claimant's impairment of cirrhosis without having to factor physical effects from Claimant's ongoing alcohol consumption.

A [REDACTED] examination report (Exhibits 5 and 6) diagnosed Claimant with cirrhosis, an abdominal mass and left hydrothorax, likely stemming from the cirrhosis. The cirrhosis diagnosis was also made following a [REDACTED] examination (see Exhibits 28-33).

Generally, the medical documentation was absent in explaining how the impairments affected Claimant's ability to perform basic work activities. The only physical activity problem specifically referenced in the [REDACTED] examination report was "Hand grips on both sides were weak:"

Claimant also testified about how the cirrhosis has impaired her daily life. Claimant stated that her bathroom trips have increased dramatically and she suffers from fatigue and a significant weight gain.

Though the evidence was generally lacking in how Claimant's ability to perform basic work activities was lacking, some showing was made to suggest that cirrhosis was a serious impairment. Claimant's weakness to her hands and fatigue would affect many of the basic work activities listed above to meet the de minimus standard required for step two. It is found that Claimant's cirrhosis is a serious impairment; thus, the disability analysis may proceed to step three.

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 an impairment is unlisted, then the analysis proceeds to the next step.

Claimant alleged several issues though the most significant was Claimant's liver function. SSA impairment policy states the following concerning how liver disease is evaluated:

General. Chronic liver disease is characterized by liver cell necrosis, inflammation, or scarring (fibrosis or cirrhosis), due to any cause, that persists for more than 6 months. Chronic liver disease may result in portal hypertension, cholestasis (suppression of bile flow), extrahepatic manifestations, or liver cancer. (We evaluate liver cancer under 13.19.) Significant loss of liver function may be manifested by hemorrhage from varices or portal hypertensive gastropathy, ascites (accumulation of fluid in the abdominal cavity), hydrothorax (ascitic fluid in the chest cavity), or encephalopathy. There can also be progressive deterioration of laboratory findings that are indicative of liver dysfunction. Liver transplantation is the only definitive cure for end stage liver disease (ESLD).

2. *Examples of chronic liver disease* include, but are not limited to, chronic hepatitis, alcoholic liver disease, non-alcoholic steatohepatitis (NASH), primary biliary cirrhosis (PBC), primary sclerosing cholangitis (PSC), autoimmune hepatitis, hemochromatosis, drug-induced liver disease, Wilson's disease, and serum alpha-1 antitrypsin deficiency. Acute hepatic injury is frequently reversible, as in viral, drug-induced, toxin-induced, alcoholic, and ischemic hepatitis. In the absence of evidence of a chronic impairment, episodes of acute liver disease do not meet 5.05.

Listing 5.05 which covers chronic liver disease is the most applicable listing to Claimant's impairments. This listing would mandate a finding of disability based on liver disease if Claimant's condition meets the following:

A. Hemorrhaging from esophageal, gastric, or ectopic varices or from portal hypertensive gastropathy, demonstrated by endoscopy, x-ray, or other appropriate medically acceptable imaging, resulting in hemodynamic instability as defined in 5.00D5, and requiring hospitalization for transfusion of at least 2 units of blood. Consider under disability for 1 year following the last documented transfusion; thereafter, evaluate the residual impairment(s).

OR

B. Ascites or hydrothorax not attributable to other causes, despite continuing treatment as prescribed, present on at least 2 evaluations at least 60 days apart within a consecutive 6-month period. Each evaluation must be documented by:

1. Paracentesis or thoracentesis; or
2. Appropriate medically acceptable imaging or physical examination and one of the following:
 - a. Serum albumin of 3.0 g/dL or less; or
 - b. International Normalized Ratio (INR) of at least 1.5.

OR

C. Spontaneous bacterial peritonitis with peritoneal fluid containing an absolute neutrophil count of at least 250 cells/mm³

OR

D. Hepatorenal syndrome as described in 5.00D8, with on of the following:

1. Serum creatinine elevation of at least 2 mg/dL; or
2. Oliguria with 24-hour urine output less than 500 mL; or
3. Sodium retention with urine sodium less than 10 mEq per liter.

OR

E. Hepatopulmonary syndrome as described in 5.00D9, with:

1. Arterial oxygenation (PaO₂) on room air of:
 - a. 60 mm Hg or less, at test sites less than 3000 feet above sea level, or
 - b. 55 mm Hg or less, at test sites from 3000 to 6000 feet, or
 - c. 50 mm Hg or less, at test sites above 6000 feet; or
2. Documentation of intrapulmonary arteriovenous shunting by contrast-enhanced echocardiography or macroaggregated albumin lung perfusion scan.

OR

F. Hepatic encephalopathy as described in 5.00D10, with 1 and either 2 or 3:

1. Documentation of abnormal behavior, cognitive dysfunction, changes in mental status, or altered state of consciousness (for example, confusion, delirium, stupor, or coma), present on at least two evaluations at least 60 days apart within a consecutive 6-month period; and
2. History of transjugular intrahepatic portosystemic shunt (TIPS) or any surgical portosystemic shunt; or
3. One of the following occurring on at least two evaluations at least 60 days apart within the same consecutive 6-month period as in F1:
 - a. Asterixis or other fluctuating physical neurological abnormalities; or
 - b. Electroencephalogram (EEG) demonstrating triphasic slow wave activity; or
 - c. Serum albumin of 3.0 g/dL or less; or
 - d. International Normalized Ratio (INR) of 1.5 or greater.

OR

G. End stage liver disease with SSA CLD scores of 22 or greater calculated as described in 5.00D11. Consider under a disability from at least the date of the first score.

There was no evidence that Claimant ever received blood transfusions; thus, A is rejected. Claimant's blood work (See Exhibits 30-34) levels does not support a disability finding for any of the impairments listed from C through F. The undersigned will consider the possibility of Claimant meeting the listed impairment in Section B.

A [REDACTED] date of service showed Claimant's albumin level at 2.7 g/dl (see Exhibit 30). An [REDACTED] date of service revealed Claimant's albumin level increased to 2.8 g/dl (see Exhibit 32). The two medical examinations do not cite ascites or hydrothorax as accompanying problems though both were cited in an examination report dated [REDACTED] (see Exhibit 5). The evidence does not direct any explanation for Claimant's low albumin levels other than her liver damage. Based on the presented evidence, the undersigned is inclined to find that Claimant meets the requirements for Listing 5.05 (B) making Claimant a disabled individual. Accordingly, DHS erred in finding that Claimant was not a disabled individual.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

State Disability Assistance (SDA) provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- Resides in a qualified Special Living Arrangement facility, or
- Is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- Is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

The undersigned has already found Claimant to be disabled for purposes of MA benefits by finding that Claimant has physical impairments expected to last one year or more. This finding makes Claimant automatically eligible for SDA benefits based on the lesser 90 day requirement. It is found that DHS improperly denied Claimant SDA benefits based on the finding that Claimant was not a disabled individual.

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 requesting SDA and MA benefits. It is ordered that DHS:

- reregister Claimant's application dated 10/26/10 for MA (including three months of retroactive MA benefits) and SDA benefits;
- process Claimant's application based on the finding that Claimant is a disabled individual;
- supplement Claimant for any benefits not received as a result of the improper denial;

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 06/13/11

Date Mailed: 06/14/11

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CG/dj

cc:

