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

IN THE MATTER OF:

IN THE MATTER OF.

Reg. No. 201129019 Issue No. 2009

Case No.

Hearing Date: June 30, 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 J une 30, 2011 from Detroit, Michigan. T he Claimant appeared and testified. On behalf of Department of H uman Services (DHS), Specialist, appeared and testified.

# ISSUE

Whether DHS properly denied Claimant's application for Medical Assistance (MA) benefits on the basis that Claimant is not a disabled individual.

# FINDINGS OF FACT

The Administrative Law Judge, based on t he competent, material, and substantial evidence on the whole record, finds as material fact:

- On 12/20/10, Claimant applied for SDA and MA benefits including retroactive MA benefits from 9/2010-11/2010.
- 2. Claimant's only basis for MA benefits was as a disabled individual.
- 3. On 3/4/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2)
- 4. On 3/14/11, DHS denied Claimant's application for MA benefits.
- 5. On 4/5/11, Claimant requested a hearing disputing the denial of MA benefits.

- 6. On 5/6/11, the State Hearing Review T eam (SHRT) determined that Claimant was not a disabled individual (see Exhibits 61-62).
- 7. As of the date of the administrative hearing, Claimant was a weight of 250 pounds.
- 8. As of the date of the hearing, Claimant smokes approx imately 10 cigarettes per day, occasionally uses alcohol and marijuana.
- 9. Claimant has a history of crack cocaine abuse and is currently enrolled in a rehabilitation program with New Passages.
- 10. Claimant's highest education year completed was 12<sup>th</sup> grade.
- 11. Claimant claimed to be a disabled individual based on physical impairments of: enlarged heart, arthritis, chronic obstructive pulmonary disease (COPD) and a herniated disc.
- 12. Claimant also claimed to be a disabled individual based on a mental impairment of depression.

# **CONCLUSIONS OF LAW**

The Medical Assistance (MA) program is estab lished by Title XIX of the Social Sec urity Act and is implement ed by Title 42 of the C ode of F ederal Regulations (CFR). DHS (formerly known as the Fa mily Independence Agenc y) admin isters 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 3/2011, the month of the DHS decision which Claimant is dis puting. Current DHS m anuals may be found online at the following URL: <a href="http://www.mfia.state.mi.us/olmweb/ex/html/">http://www.mfia.state.mi.us/olmweb/ex/html/</a>.

MA provides medical assistance to indi viduals and families who meet fi nancial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essentia I health car e services are made available to those who other wise would not have financial resources to purchase them.

The Medic aid program is comprised of se veral 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, caretake r relatives of dependent children, persons under age 21 and pregnant, or re cently 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-r elated categories. It was no t 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 (see BEM 260 at 1-2):

- 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 Surv ivors and Disability Insurance (RSDI) on the basis of being disabled
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

It was not disputed that none of the abov e circ umstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical r eview process which determines whether Claimant is a dis abled individual. *Id.* at 2.

Generally, state agencies such as DHS m ust use the same de finition of disab ility as found in the federal r egulations. 42 CF R 435.540(a). Disabil ity is federally defined as the inability to do any substant ial 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 nearly identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does 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 us ed to do a j ob or run a bus iness. *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, clinic al/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or m edical as sessment 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). Similarly, conclus ory statem ents by a phys ician or mental healt healt healt healt an individual is disabled or blind, absent supporting medical evidence, are 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 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 t han a certain monthly amount is ordinarily considered to be engaging in SGA. The m onthly amount depends on whether a person is statutorily blind or not. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any em ployment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

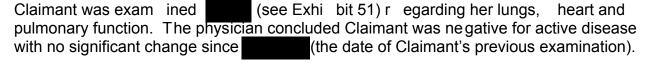
The second step in the disabi lity evaluation is to determine whether a severe medically determinable physic all or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is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

The impair ments must significantly limit a person's basic work activities. 20 CF R 416.920 (a)(5)(c). "B asic work activities" refers to the abi lities 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 s upervision, co-workers and us ual work situat ions; 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 impair ment. Grogan v. Barnhart, 399 F.3d 1257, 1263 (10 th Cir. 2005); Hinkle v. Apfel, 132 F.3d 1349, 1352 (10 th Cir. 1997). Higgs v Bowen, 880 F2d 860, 862 (6 th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of impairment only when the medical ev idence 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 (1<sup>st</sup> 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 (1 st Cir. 1986).

In determining whether Claimant's impairments amount to a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by reviewing Claimant's medical documentation.



Claimant was examined (see Exhibit 52) concerning her hip an d knee. The physician concluded Claimant's hip and knee were negative for arthritis and dislocation.

Claimant's hand and right knee we re examined (see Exhibit 53) concerning her left hand and right knee. The examining physician found no i rregularities in Claimant's knee and "minimal degenerative changes" in the hand.

On Claimant was examined for COPD, herniat ed disc, arthritis, and depression (see Exhibits 15-31). Conc erning the her niated disc, Claimant's range of motion was normal in most joints with the f ollowing noted exceptions: limited range of 50 degrees in forward flexion of sip (100 degrees is normal), 70 degree limit on lumbar spine flexion (90 degrees is normal). The examining physician concluded Claimant had the ability to perform all 23 liste d abilities including bending, pulling, pickin g up a c oin and stairs.

On a form completed on concluded that Claim ant had signs of depression. The examining physician concluded Claimant had a global assessment function (GAF) score of 45. The Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV) describes GAF as a scale used by clinicians to subjectively rate the social, occupational, and psychological

functioning of adults . Claimant was assessed a GAF score of 45 which is representative of "Serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairm ent in social, occ upational, or school functioning (e.g., no friends, unable to keep a job).

Claimant's examining physician also found to be markedly limit ed in 3 of 20 capacitie s to perform a work-related ability (see Exhi bits 41-42). Claimant was found markedly limited in the abilities to: understand and reme mber detailed instructions, carry out instructions and to maintain concentration for extended period. Claimant was found somewhere between moderately and markedly limited in the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.

On a form completed on Claimant suffered from the following: obesity, COPD, degener ative joint disease (DJD), neuropathy, chronic constipation, hypertension and enlar ged heart. The clinical impression was that Claimant's condition was deteriorating though no evidence was submitted with the document to support any of the above findings.

Or Claimant, Claimant was given a psychologic al examination by the physician treating Claimant's depression (see Exhi bits 63-67). The examiner diagnosed Claimant as suffering from depression and gave Claimant a GAF score of 48. An identical GAF was given to Claimant from a examination (see Exhibits 68-75).

Overall, the undersigned is not inclined to find that Claima in that any severe physical impairments on the ability to perform basic work activities. Though Claimant mentioned a slew of physical impairments (enlarged heart, COPD, herniated disc, arthritis and others), there is no medical ev idence to support any physical limitations. Some of the potential impairments were ref erenced by physicians in the rec ords, however, there is no medical evidence t ying any of the allege d impairments to any limits on Claimant's abilities. When Claimant was asked about va rious physical activities (e.g. walking, standing, sitting, lifting...), Cla imant testified that she had some limit on every single activity. The undersigned is not inclined to accept Claim ant's testimony without any medical support for the testimony. The only medical records supporting some limit on medical finding that Claim Claimant's abilities was a ant's lef t hand ha d minimal degenerative changes and that Claimant had some limits in her range of motion. These limits are insufficient to find that Claimant suffered from a severe impairment. It is found that Claimant does not have a physically based severe impairment.

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There is a fair amount of medical evidence supporting a severe impairment based on depression. Claimant's marked limitatio ns on her ability to follow an d carry out instructions and GAF scores of 45 and 48 are strong evidence that Claimant would have problems in carrying out basic work activities. It is found that Claimant's depression qualifies as a sever e impairment to meet step two of the disability analysis. Accordingly, the analysis may move to step three.

The third step of the s equential 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 or the claimant fails to meet the requirements of the listing, then the analysis proceeds to the next step. Claimant only establishe d a sever e impairment based on depression.

Depression is properly characterized as an affective disorder under Listing 12.04. Affective disorders are characterized by a disturbance of mood, accompanie d by a full or partial manic or depressi ve syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied. The listing for affective disorder requires:

A. Medically documented persist ence, either continuous or intermittent, of one of the following:

- 1. Depressive syndrome characterized by at least four of the following:
  - a. Anhedonia or pervasive loss of interest in almost all activities; or
  - b. Appetite disturbance with change in weight; or
  - c. Sleep disturbance; or
  - d. Psychomotor agitation or retardation; or
  - e. Decreased energy; or
  - f. Feelings of guilt or worthlessness; or
  - g. Difficulty concentrating or thinking; or
  - h. Thoughts of suicide; or
  - I. Hallucinations, delusions, or paranoid thinking; or

## OR

- 2. Manic syndrome characterized by at least three of the following:
  - a. Hyperactivity; or
  - b. Pressure of speech; or
  - c. Flight of ideas; or
  - d. Inflated self-esteem; or
  - e. Decreased need for sleep; or

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- f. Easy distractibility; or
- g. Involvement in activ ities t hat have a high pr obability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking;

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of bot h manic and depressive syndromes (and currently characterized by either or both syndromes);

**AND** 

- b. Resulting in at least two of the following:
  - 1. Marked restriction of activities of daily living; or
  - 2. Marked difficulties in maintaining social functioning; or
  - 3. Marked difficulties in maintain ing concentration, persistence, or pace; or
  - 4. Repeated episodes of decompensation, each of extended duration;

OR

- c. Medically documented history of a charmonic affective disorder of at least 2 years' duration that has caused more than a minimal limit ation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
  - Repeated episodes of decompensation, each of extended duration; or
  - 2. A residual diseas e process t hat has resulted in s uch marginal adjustment that even a minimal increase in mental demands or change in the env ironment would be predict ed to cause the individual to decompensate; or
  - 3. Current history of 1 or more ye ars' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Claimant does not meet the listing requirements for depression. Claimant may meet the requirements for Part A but the medica I evidence shows she did not meet the requirements for Part B. The medical evidence showed marked difficulties in the area of concent ration only (See Exhibit 62), but not in any other areas. There was no evidence that Claimant met any of the criteria for Part C. It is found that Claimant failed to meet the listing requirements for depression. Accordingly, the disability analysis moves to step four.

The fourth step in analyzing a dis ability 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 ac tivity and t hat last ed long enough for the indi vidual to learn the position. 20 CF R 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 econom y is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related sympt oms, such as pain, which h 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.

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are c lassified as sedentary, light, medium, hea vy, and very heavy. 2 0 CFR 416.967. The definitions for each are listed below.

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 weigh t 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 dex terity 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 individua capable of performing medium work is also capable of light and sedentary work. *Id.* 

Heavy work involves lifting no m ore than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An indiv idual 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 capab le 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 ar e considered nonexertional. 20 CFR 41 6.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficult y maintaining attention or conc entration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work setti ngs (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or po stural functions of some work such as reaching, handling , stooping, climbin crawling, or crouchin g. 20 CF g, R 416.969a(c)(1)(i)-(vi) If the impairment(s) a nd related symptoms, such as pain, only affect the ability to perform the non-exertional aspec ts of work-related activities, the rules in Appendix 2 do not direc t factual conc lusions of disabled or not dis abled. 20 CFR 416.969a(c)(2) The deter mination 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.

The only impairment Claimant established as severe was an impairment based on depression. There was no evidence of any physical limits placed on Claimant due to her depression. The under signed will examine whether the depression caused sufficient non-exertional obstacles for Claimant to perform her past employment.

Claimant's employment history (see Exhi bit 11) included employment with an unspecified machine s hop and as a self-employ ed house c leaner. As previously mentioned, Claimant had marked limitations in the ability: to understand and remember detailed instructions, to ca rry out instructions and to maintain concentration for extended period. Though t hese limitations would certainly hamper Claimant's abilities in most forms of employment, it would not preclude Claimant from performing employment involv ing repetitive simple tasks. Claimant's previous employment seemed to deal with precisely doing such functions.

Also, as previous ly stated, Claimant wa s found somewhere between moderately and markedly limited in the ability to complete a normal workday a nd worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. Though Claimant may have difficulties in these abilities, the undersigned is not inclined to find that the limitations amount to Claimant being incapable of performing her past employment. There is no evidence that Claimant's depression is any wors e than when Claimant worked previously. It is found that Claimant is capable of

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performing past employment and that Claimant is not a disabled individual. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits.

# **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusion sof law, finds that DHS properly denied MA benefits to Claim ant on the basis of a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.

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

Date Signed: July 18, 2011

Date Mailed: July 18, 2011

<u>NOTICE:</u> 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 Hear ings 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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