

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201130059
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 28, 2011
Oakland County DHS (02)

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 July 28, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], 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 the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 7/23/10, Claimant applied for MA benefits including retroactive MA benefits from 4/2010-6/2010.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 2/22/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-4).
4. On 2/24/11, DHS denied Claimant's application for MA benefits.
5. On 3/28/11, Claimant requested a hearing disputing the denial of MA benefits.

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6. On 5/9/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 24).
7. As of the date of the administrative hearing, Claimant was a 29 year old female (DOB 6/27/82) with a height of 5'5" and weight of 130 pounds.
8. As of the administrative hearing, Claimant was employed 32 hours/week and made \$11.00/hour.
9. Claimant has no relevant history of tobacco, alcohol or substance abuse.
10. Claimant obtained a Bachelor of Arts with a major in English and a minor in Psychology.
11. Claimant claimed to be a disabled individual based on diabetes and several symptoms from diabetes including neuropathy, foot ulcers, high blood pressure, cataracts and gastroparesis.

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 2/2011, the 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 (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 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).

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. *Id.* at 2.

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 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 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, 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 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 current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, there was no dispute that Claimant worked 32 hours per week and received an hourly wage of \$11.00. Multiplying Claimant's wage by her weekly hours and by four weeks in a month results in a gross monthly income of \$1408. It is found that Claimant's gross employment income exceeds the monthly limit for SGA. Though Claimant's income exceeds the minimum amount considered SGA, there are exceptions which might enable Claimant to pass step one of the analysis.

One exception is an unsuccessful work attempt. If a person attempts employment but cannot continue to do so, a person is not necessarily capable of performing SGA simply because they could do so for a limited time. This exception does not apply as Claimant has and continues to perform employment exceeding SGA income limits.

A comparable exception called a trial work period is similarly not applicable. Again SSA does not want to discourage efforts to become employed and allows claimants a trial period to work in which the period may not be SGA. However, Claimant's current employment seniority exceeds the period to be considered a trial period; accordingly, this exception does not apply.

Exceptions are also made if the employment is somewhat charitable in nature; generally, this is referred to as a subsidy exception. For example, a self-employed parent that pays their child a full-time wage to answer phones for a few hours per week in a sheltered, controlled and low-stress environment for the sake of helping the child with income could be non-SGA because much of the income would be a subsidy disguised as a pay check. However, there was no dispute that Claimant's employment continued because she earned every dollar in her pay.

The most intriguing exception to SGA is an impairment related work expense (IRWE). SSA will reduce medical expenses from gross income if:

- the item(s) or service(s) enables a person to work;
- the item(s) or service(s) is needed because of a physical or mental impairment;

- the claimant pays for the item(s) or service(s) which are not reimbursed by another source such as Medicare, Medicaid, or a private insurance carrier; and
- the cost is "reasonable", that is, it represents the standard charge for the item or service in the community.

This exception may assist Claimant in the future but appears inapplicable to Claimant's present circumstances. As a \$1408/month gross income earner, Claimant would have to establish over \$408 in medical expenses necessary to continue employment. Claimant testified that she had very little income to put forth toward medical expenses. Claimant mentioned approximately \$200 in expenses that could be IRWE, however, that amount would fall short of the \$408 necessary to reduce Claimant's income under the SGA threshold. Should Claimant reapply for MA benefits, it may be helpful to show medical documentation verifying a need for certain medications and expenses and receipts for the expenses. Note that the expenses could go beyond the cost of medications and may include items such as doctor visits or blood tests.

Claimant established herself as a very noble and courageous individual who made every excuse possible to continue working despite her serious medical conditions. Unfortunately, the evidence did not justify a finding that Claimant was incapable of performing SGA as she continues to do so, albeit in exceptionally trying circumstances. It is found that Claimant failed step one of the disability analysis and is not 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 conclusions of law, finds that DHS properly denied MA benefits to Claimant 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: August 2, 2011

Date Mailed: August 2, 2011

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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.

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