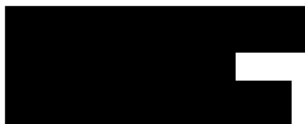


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201134170
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: September 12, 2011
Wayne County DHS (82)

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 September 12, 2011 from Detroit, Michigan. The claimant appeared and testified. [REDACTED] also appeared and testified as Claimant's authorized hearing representative (AHR). On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

The issue is 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 4/6/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 4/22/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual on the basis that Claimant's alleged impairments were not expected to continue for the durational requirements for SDA and MA benefits (see Exhibits 4-5).

4. On 4/27/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 5/4/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 6/4/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 21-22) based in part on application of Vocational-Rule 203.14.
7. As of the date of the administrative hearing, Claimant was a 57 year old female (DOB 7/15/54) with a height of 5'6" and weight of 199 pounds.
8. Claimant has no relevant history of tobacco, alcohol or illegal substance abuse.
9. Claimant's highest level of education completed was high school.
10. Claimant last received medical coverage approximately three years ago.
11. Claimant claimed to be a disabled individual based on impairments of cataracts, various knee problems, depression and post-traumatic stress disorder (PTSD).

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 4/2011, 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 eligibility would be as a disabled individual.

Disability for purposes of MA benefits 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; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

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.* at 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 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

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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, Claimant denied having any employment 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 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).

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation and background information.

Claimant applied for MA and SDA benefits shortly after she was the victim of a sexual assault that occurred in 3/2011. Claimant claims a disability based on injuries and psychological damage she suffered from the assault as well as an exacerbation of pre-existing injuries.

A Medical Needs form dated 4/5/11 (Exhibit 3) was presented. The form was completed and signed by a physician. Notable items included a restriction of three months on performing repetitive hand movements. Claimant was not deemed to need special assistance with transportation or household chores. It was expected that Claimant would need medical appointments two times per month to deal with her injuries. A diagnosis was provided though the handwriting was too illegible to decipher.

A Social Summary (Exhibits 8-9) dated 4/6/11 was submitted. The document was completed by an "eligibility rep". The document notes Claimant went to the hospital following a sexual assault. It was noted Claimant had bruises on her face, arms and upper body. It was also noted that Claimant had stitches on her face and that her face was swollen as injuries from the assault. It was also noted that Claimant had knee pain and used a cane.

A Medical Social Questionnaire (Exhibits 10-12) dated 4/6/11 was presented. The form listed no previous hospitalizations, no treating physician and no current employment by Claimant.

Progress notes from Claimant's hospital visit following the sexual assault were submitted (see Exhibits 13-21). It was noted that Claimant was admitted to the hospital on 3/17/11 with a head laceration which was stapled. Claimant also showed bruises on both hands and had multiple lacerations on her face. Other injuries that were noted

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included a swollen middle finger, parietal area hematoma and small bruising on left thigh.

Notes later that day indicated Claimant was doing well. It was also noted Claimant had a steady gait. Claimant denied any vision problems. Later notes on 3/17/11 indicated Claimant's face swelling had worsened. Claimant's middle finger was given a splint. Claimant's blood pressure was noted as good. Claimant was given morphine to address her pain complaints.

On 3/18/11, Claimant complained about pain to her abdomen and finger. Morphine again was provided to address the pain complaint. Claimant's face swelling was noted as more prevalent; an application of ice was given to address the swelling. Claimant's vitals were noted as stable. Further documentation revealed no notable information. The final note occurred on 3/20/11, presumably the date of discharge.

Claimant testified that she suffers flashbacks of the assault and suffers a lack of sleep as a result. Claimant contended that she has short-term memory loss and is hyper-vigilant as a result. Claimant testified that she is depressed since the incident. She states she takes Motrin (for her pain and Cymbalta (30 mg x1/day) for depression and Abilfy (5 mg @ 1/day) to help her relax.

Claimant states she has a 10 pound lifting limit, though there is no medical document to support the restriction. Claimant states she has a 1-2 block walking limit, has difficulty grasping due to injuries to her middle finger and is limited in bending over and walking up stairs. She also testified that she occasionally uses a cane. Claimant has a treating physician, but presented no documentation from the physician.

Claimant states that she is able to cook and clean. Claimant also stated that she watches her grandkids.

The presented evidence provides little support that Claimant is physically disabled. Claimant alleged several physical injuries though there is an absence of support that these injuries would expect to continue for 12 months. It is found that Claimant does not have a severe physically-based impairment.

The psychological trauma Claimant suffered is a more persuasive factor in establishing whether Claimant suffers from a severe impairment. Unfortunately, no psychological documentation was submitted. However, Claimant's testimony established a basis that a severe impairment occurred. It is not disputed that Claimant suffered a traumatic experience. It is also not disputed that Claimant is taking prescriptions to deal with depression and stress. With Claimant's testimony about her lack of sleep, and anxiety, there was enough evidence to find Claimant's ability to concentrate and maintain focus was impaired.

Though it is not known whether Claimant's psychological problems will, or expect to last 12 months, it would be reasonable to believe that they will. It is found that Claimant established a severe impairment. Accordingly, the analysis may proceed to step three.

Claimant's only established severe impairment involves psychological problems of depression and PTSD. Mental issues are covered by Listing 12.00. PTSD is covered by anxiety disorders. The listing reads:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

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 both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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 maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

Overlooking Part A of the above listing for now, the above listed impairment requires meeting either Part B or C. there is no evidence that Claimant is so impaired to be unable to function outside of her home. Thus, Part C is discarded. This leaves Part B for analysis.

There was an absence of evidence that Claimant suffered repeated decompensation of extended duration. Claimant has not been hospitalized since the assault and there was no evidence of any other type of decompensation. There was also no evidence of any marked restrictions in daily activities or social functioning. It appears Claimant may be suffering marked difficulties in maintaining concentration, however, this, by itself, would be insufficient to meet Part B of the listing. It is found that Claimant failed to establish meeting the listed impairment for anxiety disorders.

A listing for depression (see Listing 12.04) was also considered. For similar reasoning as above, the listing was rejected. It is found that Claimant failed to establish meeting an SSA listed impairment. Accordingly, the analysis may proceed 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 she worked until the day she was assaulted. Claimant stated she worked as a home care worker and day care provider. Claimant stated she is not physically capable of performing her former duties but there is simply an absence of evidence to support this contention. Though Claimant suffered physical injuries, there is no evidence to find that Claimant is physically incapable of performing her past employment. Concerning the psychological trauma which Claimant suffered, Claimant currently takes prescriptions to help her deal with the anxiety from which she suffers.

The trauma that Claimant suffered in 3/2011 can not be understated. That Claimant would be psychologically impacted is a certainty. However, based on the presented evidence, there is simply a deficient amount to find Claimant is unable to return to past employment. Claimant's original application began with complaints of physical problems, not psychological. It is found that Claimant is capable of performing past employment. Accordingly, it is found that Claimant is not disabled and the DHS decision denying the application was proper.

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).

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.

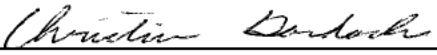
A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- 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 already found Claimant to be not disabled for purposes of MA benefits based on a capability of performing past employment. The analysis and finding equally applies to Claimant's application for SDA benefits with one clarification. The SDA analysis has a 90 day durational requirement. There is some evidence to find that Claimant was incapable of returning to work due to her physical injuries for some period of time. However, that timeframe was less than 90 days. The psychological impairment would have also not prevented Claimant from returning to work within a similar timeframe. It is found that DHS properly denied Claimant's application for SDA benefits on the basis that Claimant is 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 properly denied Claimant's MA and SDA benefit application on the basis that Claimant is not a disabled individual. The actions taken by DHS are AFFIRMED.


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

Date Signed: September 28, 2011

Date Mailed: September 28, 2011

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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