

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201138481
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 26, 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 September 26, 2011 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] appeared and testified as Claimant's authorized hearing representative and [REDACTED] also appeared and testified on behalf of Claimant. 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) 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 2/22/11, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 5/17/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 35-36).
4. On 5/27/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/6/11, Claimant requested a hearing disputing the denial of MA benefits.
6. On 7/14/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 57-56) based, in part, on application of Vocational Rule 203.28.
7. As of the date of the administrative hearing, Claimant was a 39 year old female (DOB 7/26/72) with a height of 5'4 " and weight of 150 pounds.
8. Claimant has no relevant history of tobacco, alcohol or substance abuse.
9. Claimant failed to complete high school but obtained a General Equivalency Diploma.
10. Claimant has a private medical coverage and has had coverage for approximately six years.
11. Claimant claimed to be a disabled individual based on impairments related to cognitive functioning.

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 5/2011, 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 though DHS does not often make the program available. 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 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 was employed as a bagger for a grocery store. She stated that she worked approximately 20 hours per week for \$7.40/hour. No information was provided concerning Claimant's monthly gross wages. Based on the best available information, Claimant's monthly income would be calculated by multiplying the hourly wage by hours worker per week by four work weeks; this amount would be \$576. Claimant's employment income falls below the income limit to establish SGA. Accordingly, Claimant is not performing SGA and the 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.

A psychological evaluation (Exhibits 1-3) dated 9/23/10 from a licensed psychologist was presented. It was noted that Claimant had been a patient, on and off, for 20 years "under a label of mildly cognitively impaired". It was noted that Claimant always lived at home with her parents with the exception of a brief stay living in a group home. Depression and mood were noted as reoccurring problems for Claimant. Claimant was found to have symptoms of Asperger's Syndrome in terms of a lack of social judgment and repetition of verbal responses. The evaluator indicated that Claimant struggles with math concepts and finances. Claimant was noted as tending to be gullible and potentially easy to exploit. It was the evaluator's opinion that Claimant could not live independently.

Claimant was tested on the Wechsler Adult Intelligence Scale III (WAIS3). The WAIS3 is an IQ test which measures verbal and performance IQ. The verbal IQ tests seven categories including: information, similarities, arithmetic, digit scan, information, comprehension and letter/number sequencing. Performance IQ tests five categories including: picture completion, digit symbol-coding, block design, matrix reasoning and symbol search.

Claimant was found to have a full scale IQ of 63. Claimant's score placed her in the bottom percentile and in the mildly retarded range. Claimant's verbal IQ was 67 while her performance IQ was 64. Claimant scored below average in every single verbal and performance subcategory.

Claimant was also evaluated on a Wide-Range Achievement Test 4 (WRAT4). The test measures a person's reading, spelling and math computation ability. Claimant was able to read words at a sixth grade level but comprehension occurred only at a third grade

level. It was noted Claimant was a strong speller which was noted as typical for persons with Asperger's Syndrome.

A physical examination report (Exhibits 10-17) dated 4/22/11 was presented. The examination was performed by a DHS assigned examiner. The examination revealed no physical problems whatsoever with Claimant. An impression of a "grossly normal physical examination" was provided. Claimant agreed that she had no physical impairments that would limit her ability to perform employment.

A psychological examination (Exhibits 18-21) dated 4/22/11 was performed by a DHS assigned examiner. Claimant's history of low mental functioning and mild depression was noted. Claimant advised the examiner that she has crying episodes if she is not taking Prozac. It was noted that she lacked other depression symptoms such as sleep problems, appetite disturbances or hallucinations. The examiner noted Claimant was cooperative but had limited speech and did not have much insight. Claimant was able to repeat 6/6 numbers forward and backward. Claimant also was capable of remembering three objects after three minutes. Claimant was unable to perform serial 7s or to multiply 6x5. A diagnosis of learning disability and Depression (NOS) was provided on Axis I. On Axis II, Claimant was diagnosed as borderline intellectual functioning. Axis III was "none" while Axis IV noted problems at work and social issues. Claimant's prognosis was guarded.

Claimant was assigned a global assessment functioning level of 47. 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. A score within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

Various documents were provided by Claimant's mental health treating facility (see Exhibits 22-33). The documents revealed little insight into Claimant's situation and were basically a paper trail of the facility's assistance with Claimant's application for Medicaid.

Claimant's Assistance Application (Exhibits 36-54) was submitted. The application was not notable.

Claimant testified that she is able to perform physical activities such as standing, walking, lifting, squatting, bending and grasping without any limitations. Based on the presented evidence, there is no reason to believe that Claimant suffers any physical impairments.

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Claimant testified that she assists with several household chores such as vacuuming. Claimant is capable of driving and can drive by herself.

There is no history of hospitalizations due to mental functioning. Claimant stated she sees a physician every 6-12 months for medication review and sees a therapist on and off, and has done so for 20 years.

There is ample basis to find a severe impairment based on Claimant's cognitive ability. The most persuasive evidence was Claimant's scoring on the WAIS3 and notes from her treating psychologist. Though Claimant has no impairment in completing physical basic work activities, Claimant would have difficulty in completing any non-physical activities. Claimant has an established history of lacking judgment as demonstrated by her cognitive ability test scores and lifelong dependence in her living environment. Claimant's comprehension and IQ is similarly limited.

The evidence also established that Claimant's impairments fulfill the 12 month durational requirement for a severe impairment. Claimant has been treated for a low functioning cognitive ability for over 20 years with no reason to expect the problems to subside. Based on the presented evidence, it is found that Claimant suffers a severe impairment based on low cognitive functioning.

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

Mental impairments are described under listing 12.00. There is evidence to consider two possible mental impairments, one for mental retardation and one for depression. The mental retardation listing reads:

12.05 Mental retardation: Mental retardation refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

- B. A valid verbal, performance, or full scale IQ of 59 or less;
OR
- C. A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;
OR
- D. A valid verbal, performance, or full scale IQ of 60 through 70, 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.

It is known that Claimant's full scale IQ was 63. The score eliminates Parts A and B as possibilities for Claimant to meet the listed impairment. The score allows Claimant to possibly meet Parts C or D if other criteria are established.

Claimant's score of 63 places her very close to the IQ score of 59 which would automatically establish disability. Though a close proximity to 59 is insufficient, by itself, to establish disability, it should lower the requirement of having to establish other mental impairments which impose additional and significant work-related limitations of function.

Another consideration is that the evidence tends to support good faith efforts by Claimant in providing testimony, performing tests and attempting to work despite her limitations. All documents indicated cooperation by Claimant during examinations. Claimant's scoring on some tests was strong (e.g. repeating numbers forward and backward) which tends to show that Claimant was not trying to tank a test solely for the purpose of receiving a lower score.

Claimant's psychologist noted obstacles in Claimant's social function. There was no evidence that Claimant had any history of socially unacceptable behavior. There was no evidence of a criminal history of assault or other inappropriate behavior. Claimant was considered "gullible" and easy to exploit. These conditions make Claimant exceptionally vulnerable and are appropriately considered marked restrictions to social functioning.

Claimant was also poor with money and testified that she experienced occasions of giving too much money when paying for items. Claimant is relatively self-sufficient but only in the context of a highly supportive living environment. Claimant indicated that she is uncomfortable with cooking because she burned herself when she attempted to do so in the past. Claimant has never lived outside of a structured and supportive living environment. Though Claimant may perform several daily activities (e.g. grooming and housework) without problem, she suffers in other activities such as shopping and cooking. It is found Claimant has marked restrictions in performing daily activities. It is

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found Claimant meets the listed impairment for mental retardation and that Claimant is a disabled individual. Accordingly, it is found that DHS erred in finding that Claimant was not a disabled individual and in denying Claimant's application for that basis.

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 for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 2/22/11;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA benefits, to schedule a review for MA benefits for one year from the date of this administrative decision.

The actions taken by DHS are REVERSED.



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

Date Signed: October 11, 2011

Date Mailed: October 11, 2011

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.

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- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

