

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

IN THE MATTER OF:



Reg. No. 201140299
Issue No. 2009 4031
Case No. [REDACTED]
Hearing Date: October 10, 2011
Oakland County DHS (04)

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 October 10, 2011 from Detroit, Michigan. The above named claimant appeared and testified; [REDACTED] also testified and appeared on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Manager, appeared and testified.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 4/29/11, Claimant applied for SDA and MA benefits including a need for retroactive MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 5/24/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibits 1-2).
4. On 6/2/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/10/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 8/1/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits B44-B45), in part, by application of Medical-Vocational Rule 202.17.
7. On 10/10/11, an administrative hearing was held and Claimant presented new medical evidence.
8. On 12/9/11, SHRT evaluated the new medical evidence and determined that Claimant was not disabled, in part, using Medical-Vocational Rule 201.20 as a guide.
9. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female [REDACTED] with a height of 5'6 ½ " and weight of 190 pounds.
10. Claimant smokes approximately 2-3 cigarettes per day and participated in a substance abuse program in 2001.
11. Claimant's highest level of education completed was the 9th grade.
12. As of the date of the hearing, Claimant has an unspecified health coverage that assists with prescription cost.
13. Claimant received Medicaid coverage as of 5/2011.
14. Claimant stated that she is a disabled individual based on impairments of: neck pain, pinched nerve in arms, kidney pain due to a split rib, glaucoma, asthma, chronic obstructive pulmonary disease (COPD), degenerative disc disease (DDD) headaches, anemia and depression.

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 controlling DHS regulations are those that were in effect as of 4/2011, the month of the application which Claimant contended was wrongly denied. 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 always offer the program to applicants. 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. (see *Id.* at 2).

Eligibility for MA based on disability or blindness does not exist once SSAs determination is final. BEM 260 at 3. SSA's determination that disability or blindness does not exist for SSI is final for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA; or
- The client failed to file an appeal at any step within SSA's 60 day limit, and
- The client is not claiming:

- A totally different disabling condition than the condition SSA based its determination on, or
- An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

In the present case, it was not disputed that Claimant was denied SSA benefits at the administrative hearing level based on an unfavorable SSA decision dated 1/20/10. It was also not disputed that Claimant subsequently reapplied for SSA benefits and is awaiting an administrative hearing. It is less clear whether Claimant is asserting a different basis for disability or some deterioration in her condition which would render the previous SSA decision obsolete.

In determining whether Claimant is disabled, hundreds of medical documents were presented. These documents will first be considered in determining the current status of Claimant's condition. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibit numbers.

It should also be noted that the exhibits were divided into three parts. The first part (Exhibits 1-175) were documents submitted to support the MA benefit application. The second part (Exhibits B1-B45) appear to have been submitted concerning a 2010 decision whether Claimant was medically capable of work participation. The third part (Exhibits C1-C10) consists of medical documentation submitted on or after the administrative hearing.

A DHS specialist completed a Social Summary (Exhibits 3-4) dated [REDACTED]. The form listed Claimant impairments as fibromyalgia, cervical radiculopathy, depression and glaucoma. It was noted that Claimant appeared to be in distress due to loss of MA benefits and was very emotional.

A Medical Social Questionnaire (Exhibits 5-7) dated [REDACTED] was presented. The form is intended to be completed by clients for general information about their claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant indicated that her use of hands, mental state and too much pain prevented her from finding work. Claimant did not list any previous hospitalizations. Claimant noted that she took several medications and, on occasion, required a breathing machine.

Claimant completed an Activities of Daily Living (Exhibits 9-13) dated [REDACTED], a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble with sleeping. Claimant noted needing help to get out of bed when her knees locked-up. Claimant stated that she drops make-up when applying it and hates to drive because she does not know when

she will get a kink in her neck. Claimant noted that she does small loads of laundry when needed and sometimes cannot breathe when going up stairs. Claimant noted she sometimes is in pain and stays in her room and tells people to "go away" when they knock.

A physical examination report (Exhibit 16) dated [REDACTED] was provided. This was a follow-up appointment after a 2/8/11 examination (see Exhibits 17-18) when Claimant reported increased neck pain which radiated to the hands and shooting pains in her face and skin. An impression was given that Claimant suffers migraine headaches, neck pain secondary to cervical strain and bilateral C7 radiculopathy, low back pain secondary to DDD and radiculopathy, right carpal tunnel syndrome and chronic insomnia. Several recommendations were provided including: continued use of Soma (350 mg) three times per day to address muscle spasms, discontinuing Ambien, continuing Topamax (25 mg) twice per day for insomnia, continuing Percoset, avoiding heavy lifting of more than 10 pounds, avoiding excessive bending, twisting, pushing and pulling and continuing strength exercises.

A physical examination report (Exhibits 19-20) dated [REDACTED] was provided. Claimant reported intermittent migraine headaches, neck pain and shoulder pain. Claimant indicated dropping items more frequently. An MRI revealed normal brain function. An MRI of the cervical spine was also performed. The physician provided an impression of symptoms consistent with carpal tunnel syndrome in the right, bilateral C7 radiculopathy, shoulder pain secondary to tendonitis or arthritis and low back pain secondary to DDD and radiculopathy.

Medical documents from a 10/2009 (Exhibits 22-30) hospital stay were presented. Claimant went to the hospital concerning neck pain. A cervical spine examination was negative for effusion, subluxation, dislocation or misalignment.

Claimant completed an unknown questionnaire (Exhibits 31-36) describing a history of seizures. The form was completed by Claimant's daughter on [REDACTED]. It was noted that Claimant last had a seizure on [REDACTED].

Various office visit reports (Exhibits 37-44, 47-48) ranging in date from 10/09-10/10 were presented. Most of the office visits began with Claimant's complaints of neck pain and headaches. Various treating physician impressions included: right carpal tunnel syndrome, neck pain secondary to cervical strain and bilateral C7 radiculopathy, migraine headaches, right shoulder pain secondary to arthritis or tendinitis.

On 10/9/09, Claimant reported that she was told she had neck fractures in two places; this was not supported by the x-rays of the cervical spine. An MRI was performed on Claimant's brain which was also negative (See Exhibit 50). An MRI of the cervical spine

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(See Exhibit 49) on 2/8/10 was consistent with uncovertebral joint hypertrophy at C5-C6 and C6-C7 with no significant stenosis.

Documents (Exhibits 92-99) were provided concerning physical therapy to address Claimant's neck pain. A document dated [REDACTED] indicated that Claimant had six scheduled appointments; she cancelled one and was a no-show for three. It was noted that Claimant was a poor candidate for therapy due to her attendance.

Claimant was given a psychological examination (See Exhibits 100-106) on [REDACTED] by a DHS assigned examiner. Claimant complained of a fear of large crowds and anxiety.

The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM4). Axis I represents the acute symptoms that need treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale.

The examiner gave an Axis I diagnosis of depression secondary to medical condition; improved with medication. Axis II noted personality disorder not otherwise specified. Axis III noted arthritis, carpal-tunnel, migraines, DDD and a history of broken neck. Axis IV noted unemployment, history of involvement with abusive men and an adult child with mental illness. Claimant was given a GAF of 50. A GAF 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)." A fair to guarded prognosis was given.

A physical examination (See Exhibits 105-114) on [REDACTED] was performed by a DHS assigned examiner. Claimant complained of seizures, arthritis, bilateral carpal tunnel syndrome, pinched nerves, chronic neck pain, asthma, high blood pressure, depression, anxiety attacks, broken neck bones, cirrhosis, multiple sclerosis and possible uterine cancer. Seizure disorder was noted but it was also noted that Claimant had not been hospitalized for the condition. Claimant reported having a seizure in 2010 though a document completed on [REDACTED] noted no seizures since 2004. Claimant had a 70% range of motion in squatting and bending. It was noted that Claimant moved on and off the examination table in a slow manner though she did not require any walking devices. A medical source statement was given that Claimant may have difficulty with repetitive bending, lifting, pushing and pulling.

Various Internal Medicine Encounters (Exhibits 115-150) and other medical documentation (Exhibits 151-175) were presented. The forms are dated from 2009-

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2010 and contain brief impressions and medical treatment plans from various encounters between Claimant and her doctor. The documents were not notable other than being consistent with other information.

A Medical Examination Report (Exhibits B8-B10) dated [REDACTED] was completed by a physician. A diagnosis of neck pain radiating to both arms, low back pain, migraines, thumb pain, shoulder pain and carpal tunnel was provided. Claimant's condition was noted as stable. It was noted that Claimant can meet household needs.

Claimant was limited to occasionally lifting/carrying 10 pounds or less. The form noted Claimant could frequently lift/carry 20 pounds or more but this was presumably intended to mean "never". Claimant was limited to standing or walking at least two hours in an 8 hour workday and less than 6 hours in an 8 hour workday. Claimant was limited from never performing all listed repetitive actions including: simple grasping, reaching, pushing/pulling, fine manipulating and operating foot/leg controls. Claimant had no mental limitations.

An MRT Assessment for JET Participation Project (Exhibit B18) dated [REDACTED] by an unknown medical consultant was less restrictive on Claimant's activities. Claimant was deemed capable of frequently lifting/carrying 10 pounds or less and occasionally capable of 20 pound lifting and carrying. All other restrictions were the same as the Medical Examination Report dated [REDACTED].

A Medical Examination Report dated [REDACTED] (Exhibits B41-B43) noted that Claimant was not capable of any lifting or carrying and indicated that Claimant was not capable of standing or walking even two hours of an 8 hour workday. These restrictions were not persuasive based on the subsequent medical conclusions that Claimant is not so restricted.

Claimant's vision was examined. Medical documents (Exhibits C3-C8) dated [REDACTED] concerning the examination were presented. Claimant's vision was measured as 20/20 without correction. Claimant was noted as having a narrow angle of viewing in each eye. A diagnosis of narrow angle glaucoma was provided.

Of all of the documents presented, the most controlling is an unfavorable SSA decision (Exhibits 69-88) dated [REDACTED] was presented. It was noted that Claimant previously received SSI benefits for ten years until she accepted employment to take care of her daughter. It was noted that Claimant received \$70,000 in 2005 and 2006 for the employment. The insurance company stopped paying for the care in 2/2007 after finding that the daughter was no longer eligible. This was the same month of Claimant's SSA application.

The SSA trier of fact determined that Claimant established severe impairments of depression, shoulder impingement syndrome and left ulnar entrapment and neuropathy. The ALJ from SSA found that Claimant was limited to light work and was not disabled after applying the applicable medical-vocational rules.

The only evidence concerning Claimant's depression was a psychological examination report dated [REDACTED]. Though the examiner found that Claimant had depression, nothing in the report would alter any findings made by the ALJ from SSA.

Claimant's neck pain and carpal-tunnel syndrome were also considered by the SSA benefit ALJ. None of these conditions were found to have notably worsened or changed since the date of the SSA decision. Claimant still gets regular treatment for her neck pain but nothing indicated a notable deterioration in Claimant's condition. The SSA did not appear to note a diagnosis of uncovertebral joint hypertrophy at C5-C6 and C6-C7 with no significant stenosis but this diagnosis would not have likely altered the SSA decision. Claimant's limitations and restrictions have not changed since the date of the SSA decision. Claimant was deemed capable of occasional lifting and carrying of 10 pounds and the ability to stand or walk for 6 hours in an eight hour workday, both are consistent with light work restrictions.

Based on the presented evidence, it is found that the SSA benefit decision dated [REDACTED] is controlling and that Claimant is not disabled by application of Medical-vocation guideline 202.18, the same rule cited by the SSA benefit ALJ. Accordingly, DHS properly denied Claimant's application for MA benefits.

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

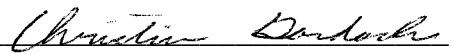
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- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It has already been found that Claimant is not disabled for purposes of MA benefits based on an application of Medical-Vocational Rule 202.18. The analysis and finding equally applies to Claimant's application for SDA benefits. 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 MA and SDA benefits to Claimant based on 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: January 5, 2012

Date Mailed: January 5, 2012

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.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,

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- 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:

