STATE OF MICHIGAN

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

IN THE MATTER OF:

Reg. No. 201144367
Issue No. 2009, 4031
Case No.
Hearing Date: November 7, 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 November 7, 2011 from Detroit, Michigan. The claimant appeared and testified; Nicole Nasierowski testified and appeared as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), , Specialist, and , 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 5/13/11, Claimant applied for SDA and MA benefits (see Exhibits 43-60) including retroactive MA benefits for 4/2011 (see Exhibits 41-42).

2. Claimant's only basis for MA and SDA benefits was as a disabled individual.

3. On 6/9/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibits 1-2).

4. On 6/15/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 39-40) informing Claimant of the denial.

5. On 7/1411, Claimant requested a hearing disputing the denial of SDA and MA benefits.

6. On 8/30/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 118-119) by determining that Claimant does not have an impairment that significantly limits her ability to perform basic work activities.

7. Claimant submitted additional medical documentation at, or immediately following, the administrative hearing.

8. The medical documentation was forwarded to SHRT for reconsideration.

9. On 12/29/11, SHRT again determined that Claimant does not have an impairment that significantly limits her ability to perform basic work activities.

10. As of the date of the administrative hearing, Claimant was a [redacted] year old female [redacted] with a height of 5'3 '' and weight of 94 pounds.

11. Claimant smokes one pack of cigarettes per day and has no known relevant history of alcohol or illegal substance usage.

12. Claimant's highest education year completed was the 12th grade (Claimant obtained equivalency degree).

13. As of the date of the administrative hearing, Claimant received Adult Medical Program (AMP) coverage through DHS.

14. Claimant stated that she is a disabled individual based on impairments of: anxiety, chronic obstructive pulmonary disease (COPD), back pain and problems, neck pain and problems, arm pain and problems and general neurological problems.

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 5/2011, the month of the application which Claimant contends 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. *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 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).

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 F2d 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. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

Hospital documents (Exhibits 8-38) stemming from a 4/14/11 hospital admission were presented. Claimant went to the hospital to complain of right upper extremity weakness. Claimant also reported increasing difficulty using her arm, shoulder and biceps. It was noted that Claimant reported that she had fallen in the prior week and began feeling the pain thereafter.

An MRI showed disc herniation at C4-C5 with abutment of the spinal cord. Examination also revealed C5-C6 degenerative changes with central canal stenosis and neural foraminal narrowing. The MRI also revealed left foraminal narrowing at T7-T8 secondary to an osteophyte, cord abutment and abnormal signal at T10-T11. An MRI found that Claimant was negative for neuropathy.

Upon discharge, the hospital offered a surgical option which Claimant declined in lieu of physical therapy treatment. A hospital letter (Exhibit 74) dated 6/1/11 verified that Claimant attended 8 different physical therapy appointments.

A Mental Status Examination (see Exhibits 62-65) was performed on Claimant on [redacted] by a DHS assigned examiner. Claimant reported working only 10 hours/week due to back pain. Claimant reported she is essentially homeless and stays at various friends' homes or sleeps in her car. Claimant described herself as depressed due the loss of multiple family members over the past years. It is worth noting that the examination occurred prior to Claimant having AMP coverage and prior to the 4/2011 hospital visit.

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.

Claimant's Axis I diagnosis was bereavement/grief disorder and depression secondary to general medical condition. The Axis II diagnosis was none. Claimant's Axis III was herniated disc and back pain. Axis IV noted death of several family members, unstable housing and lack of medical insurance. Claimant's GAF was 45-50. 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)." The examiner stated there was insufficient evidence that Claimant's depression prevented her from doing work related activities. A prognosis was given of fair- to-guarded.

A physical examination (see Exhibits 66-72) was performed on Claimant on [redacted] by a DHS assigned examiner. Claimant reported back pain stemming from a 1998 vehicle accident and fatigue. Claimant reported her back pain as a 5 on "good days" and as a 10 on her bad days. Claimant had a full range of motion in all tested joints. An impression was given that Claimant had cervical and lumbar myositis with no neurological deficit. It was determined that Claimant could work 8 hours per day. The examiner found that Claimant had no restrictions in walking, lifting, hand strength, climbing stairs, pushing or pulling.

Various documents (Exhibits 77-105) from Claimant's psychological treatment provider were presented. Claimant was originally assessed on [redacted] (see Exhibit 77). Claimant reported an identical history as reported to the DHS examiners. A diagnosis was made that Claimant suffered major depressive disorder. A [redacted] Diagnosis measured Claimant's GAF at 45-50. Claimant's GAF remained 45-50 through [redacted].

On [redacted], Claimant was prescribed Abilify (5mg@1/day) and Pristiq (50 mg@1/day). The prescriptions continued at least through [redacted]. On [redacted], Claimant was prescribed Sinequan (50mg@1/day). In response to Claimant's complaints of anxiety, on [redacted], Claimant was prescribed mirtazapine (15mg@1/day).

Various documents (Exhibits 121-131) were presented. The documents ranged in date from 4/2011-8/2011. The origin of the documents was unclear. Many of the documents appeared to note reported pain by Claimant and a decreased range of motion.

A [redacted] physician note stated that Claimant was seen by a physician concerning cervicalgia, lumbar disc herniation with upper and lower extremity radiculopathy, COPD and weight loss. It was noted that COPD and weight loss could have drastic consequences if not addressed.

Claimant was physically examined (see Exhibits 133-139) on [redacted] by a DHS assigned examiner. Claimant reported problems due to herniated disc, major depression, anxiety, cervical radiculopathy, memory loss and right arm paralysis. It was noted that Claimant was considered under-weight. Claimant also reported constant neck pain for which she saw a chiropractor three times per week.

Claimant was noted to be able to get on and off the examination table without assistance. It was noted that Claimant tended to use her non-dominant left arm for any gestures. Straight leg raising was negative Claimant's right grip strength was measured at 0 kg. Claimant had limited range of motion in her right shoulder. An impression was given of right C5 radiculopathy and/or right rotator cuff pathology. Impressions were also given for chronic cervical pain and chronic lumbar pain. It was noted that Claimant could button, write, tie shoes and pick up a coin.

Claimant testified that she was able to walk a few blocks before she would have chest pains. Claimant reported a similar outcome for standing. Claimant is able to drive. Claimant noted no problems cooking. She stated that she sometimes encountered physical pain when vacuuming.

Claimant alleged an impairment of COPD. Though there was some medical support for the diagnosis, there was an absence of evidence to determine its severity. It is known that Claimant is a pack per day smoker. Hospital documents from 4/2011 revealed that Claimant is so addicted that she was caught smoking in a prohibited area and had her cigarettes confiscated. Based on the presented evidence, there is no basis to find that Claimant established a severe impairment based on COPD.

It was not disputed that Claimant had some serious issues with her back and her right arm, right shoulder and right hand. Claimant reported back problems prior to 4/2011 but

a fall appeared to have worsened Claimant's problems. Claimant's reports of pain would be consistent with the various diagnoses of Claimant's back which referenced nerve root compression (foraminal narrowing), bone spurs (osteophytes) and herniation. Claimant's restrictions on her right shoulder and arm usage are also concerning. It would be reasonable to conclude that Claimant's lifting ability would be greatly impacted by a virtual inability to use her dominant arm and hand. It is found that Claimant established a significant impairment to basic work activity performance based on back, arm and hand issues.

The evidence tended to establish that Claimant's back and related problems have or will last for 12 months or longer. Accordingly, it is found that Claimant established suffering from a severe impairment.

As it is found that Claimant established a severe impairment solely based on back related problems, no further inquiry need be made at step two. The disability analysis shall move to step three.

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 any of Claimant's impairments meet the requirements for the respective listing, then the claimant is deemed disabled. If the claimant does not meet the respective listing or the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's primary impairment involved back-related problems. Musculoskeletal issues are covered by Listing 1.00. Back problems are covered by SSA Listing 1.04 which reads:

> **1.04 *Disorders of the spine*** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:
>
> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);
> OR
> B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

> OR
> C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

In the present case, there was medical documentation that Claimant suffers from various spine problems including disc herniation, degenerative changes with central canal stenosis and neural foraminal narrowing. Claimant also has cervical spinal problems, including left foraminal narrowing at T7-T8 secondary to an osteophyte, cord abutment and abnormal signal at T10-T11. These findings were verified through MRI.

The reference to degenerative changes and stenosis tends to establish that the introduction of the above listing was satisfied. Looking at Part A, nerve root compression tends to be verified by the finding that Claimant has foraminal narrowing in her cervical spine. Claimant's ongoing complaints of pain tend to establish a neuro-anatomic distribution of pain. A limited range in motion was verified by the physical examination from 8/11/11 which noted subnormal ranges in motions in the lumbar spine concerning flexion, extension, right lateral flexion and left lateral flexion. The examiner measured similarly subnormal ranges of motion in Claimant's cervical spine. Motor loss was also established by the reduction in Claimant's right arm usage.

Based on the presented evidence, it is found that Claimant established meeting the SSA listing for a spine disorder. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in denying MA benefits to Claimant.

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).

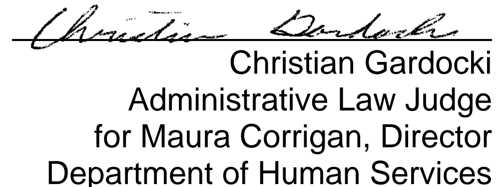
It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant meets the SSA listing for spinal disorders. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly denied Claimant's application for SDA benefits.

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 and SDA benefits. It is ordered that DHS:

(1) reinstate Claimant's MA and SDA benefit application dated 5/13/11 including the request for retroactive MA benefits from 4/2011;
(2) upon reinstatement, evaluate Claimant's eligibility for MA and SDA 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 and/or SDA benefits, to schedule a review of benefits in 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: January 24, 2012

Date Mailed: January 24, 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,
  - 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

CG/hw

cc: