

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201151619
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 11, 2012
County: Wayne DHS (31)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on June 11, 2012 from Detroit, Michigan. Claimant did not appear. Hassan [REDACTED] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) 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 11/30/10, Claimant applied for MA benefits including retroactive MA benefits from 8/2010.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/20/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 7/18/11, DHS denied Claimant's application for MA benefits and mailed a notice informing Claimant of the denial.

5. On 6/24/11, Claimant requested a hearing to dispute the denial of MA benefits.
6. On 5/14/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 130-131), in part, by application of Medical-Vocational Rule 202.20.
7. On 6/11/12, an administrative hearing was held.
8. Claimant failed to appear for the administrative hearing.
9. At the administrative hearing, Claimant presented new medical records (Exhibits C1-C62).
10. The additional medical records were submitted to SHRT for reconsideration of Claimant's disability.
11. On 7/18/12, SHRT again denied Claimant's disability, in part, by application of Medical-Vocational Rule 202.20.

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).

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 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).

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 2011 monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant failed to participate in the administrative hearing. Thus, no first-hand evidence was presented concerning Claimant's earnings.

Claimant's AHR contended that information from Claimant's application for benefits could be used to determine the step one decision. An Assistance Application (Exhibits 29-44) dated 8/16/10 was presented. The application noted that Claimant had no employment income. Even accepting that the information within an application is not hearsay, an application only contains information from one moment in time. If the application was considered evidence of Claimant's lack of employment income, all that could be concluded is that Claimant was not employed on 11/30/10. This conclusion fails to address whether Claimant performed SGA prior to, or after, the date of 11/30/10. Knowing Claimant was not employed on a single date is insufficient evidence for a full step one analysis.

Claimant's AHR also contended that a first step analysis can be based on information from the DHS database. A Consolidated Inquiry (CI) (Exhibit 51) dated 6/11/12 was presented. The testifying DHS specialist stated that the report shows a person's employment information for a one year period from the date of the CI. The specialist also testified that the CI only includes information from tax reporting employers. Thus, a CI could not address under-the table employment or self-employment. Due to the shortcomings of the CI, it cannot be concluded with any certainty whether Claimant was or was not employed during the application process.

A claimant seeking disability should be expected to testify concerning SGA. For the above cited reasons, DHS reports are insufficient evidence to establish that a Claimant was not performing SGA. It is found that Claimant failed to establish that she is not performing SGA. Accordingly, Claimant is found to be not disabled and that DHS properly denied Claimant's application for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 11/30/10 including retroactive MA benefits from 8/2010. The actions taken by DHS are AFFIRMED.



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

Date Signed: July 30, 2012

Date Mailed: July 30, 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:

