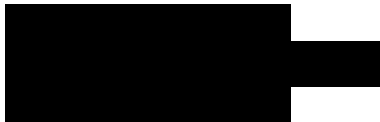


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No. 201124976
Issue No. 2009
Case No. [REDACTED]
Hearing Date: April 27, 2011
Wayne County DHS (35)

ADMINISTRATIVE LAW JUDGE: [REDACTED]

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 April 27, 2011. The claimant appeared and testified; Johnny Anderson appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), Shanita Crawford, Specialist, appeared and testified.

ISSUE

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 11/16/10, Claimant applied for SDA and MA benefits including unspecified retroactive MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 3/3/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibit 1) and DHS subsequently denied Claimant's application for MA and SDA benefits (see Exhibits 3).
4. On 3/14/11, Claimant requested a hearing (Exhibit 2) concerning the denial of SDA and MA benefits.

5. On 4/11/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 206-207).
6. As of the date of the administrative hearing, Claimant was a [REDACTED] year old woman ([REDACTED]) with a height of 5'2" and weight of 160 pounds.
7. Claimant's highest year of education completed was 12th grade.
8. Claimant had no relevant history with smoking, alcohol or illegal drugs.
9. Claimant claimed to be a disabled individual based on the following impairments: hypertension, carpal tunnel syndrome, rheumatoid arthritis and deteriorating kneecap bones.
10. Claimant was also diagnosed with hepatitis C in 3/2011.

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 the 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 would be as a disabled individual.

Disability is established if one of the following circumstances applies:

- 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
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances). BEM 260 at 1-2.

It was not disputed that none 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.

Generally, state agencies such as DHS must use the same definition of 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 nearly identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does ALL of 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, is 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). If a person's current work activity meets the definition of SGA, then the person must be found not disabled. 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 any current employment, it can only be concluded 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 includes:

- 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).

Claimant made several claims of disability, most notably for rheumatoid arthritis. The rheumatoid arthritis was diagnosed by [REDACTED] (see Exhibits 11-18). The diagnosis was referenced in Claimant's medical history with other physicians (see Exhibits 24-45). Part of [REDACTED] recommendations was that Claimant needed assistance with all household duties (e.g. eating, toileting, bathing, grooming, dressing...) because of the arthritis. [REDACTED] recommendation was partially confirmed by [REDACTED] on 2/8/11 (see Exhibit 208) who recommended assistance for Claimant with dressing, mobility and housework.

The undersigned is inclined to accept, at least, the verified limitations on Claimant's personal care as fact. The undersigned would have preferred to find specific restrictions to Claimant's ability to walk, stand or lift though the records did not appear to identify any such restrictions. Nevertheless, the need for assistance for personal care can easily be construed as limits on Claimant's physical basic work activities.

The undersigned was also persuaded by Claimant's testimony concerning the pain she suffers. Claimant's testimony was supported by several medical documents referring to Claimant's pain associated with the rheumatoid arthritis (see Exhibit 25 and 28) and references to prescriptions (e.g. Vicodin) for the pain. The undersigned finds that the pain suffered by Claimant could affect basic work activities such as concentration which would affect activities such as concentration which in turn, would affect an ability to follow instructions and other social-related basic work activities. Accordingly, Claimant should pass step two of the disability analysis by having a serious impairment. The analysis may 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 Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If an impairment is unlisted, then the analysis proceeds to the next step.

Claimant alleged many issues, most having to do with her joints. Claimant alleged: carpal tunnel syndrome, fibromyalgia, rheumatoid arthritis and bone problems associated with her knee. Listing 1.02 appears to be the most appropriate listing that Claimant could meet; it reads:

1.02 Major dysfunction of a joint(s) (due to any cause) : Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

There is no medical evidence to support that Claimant's joints had any deformities. There is only minor medical evidence to indicate that Claimant had any limited range of motion in her joints. A preliminary report dated [REDACTED] (see Exhibit 24) indicated a limited range in motion to Claimant's right shoulder. However, a 1/31/11 examination indicated Claimant had normal range of motion in all areas (see Exhibits 5-8).

There was also no medical evidence that Claimant had an inability ambulate effectively. Claimant conceded that she does not require any assistance in walking such as use of a cane, walker or wheelchair.

Claimant's allegation of disability based on hypertension (see Listing 4.00) was considered and rejected. Claimant also added a disability based on depression (see Listing 12.04) which was considered and rejected.

Claimant's allegation of disability based on hepatitis C need not be considered. There is zero medical evidence to support a finding based on this disability. It is found that Claimant failed to meet a listed impairment. Therefore, the disability analysis proceeds 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.

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only

affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

Claimant's employment history within the last 15 years is minimal. Claimant testified that she only worked approximately 1-2 years (2003-2005) as a nursing assistant. Her duties included working with patients, dispensing drugs and assisting with the general needs of her patients.

Claimant listed additional employment with [REDACTED] (see Exhibit 18) from 2004-2007 but testified that this was not true employment. Claimant testified that her father owned the business and that she did little more than accompany him to work. Claimant did not adequately clarify why she would have listed the three year period as part of her employment history.

Based on the limited employment by Claimant, the undersigned will evaluate Claimant's nursing assistant employment as the standard for her ability to perform prior work. Claimant's duties qualify as light work.

There is insufficient evidence that Claimant's alleged depression or hypertension place any limitations on Claimant's ability to perform light work. Claimant's primary argument appeared to be that her rheumatoid arthritis was painful and disabling. Claimant's testimony had mixed support from the medical records.

In Claimant's favor, Claimant had a history of taking prescriptions to address her pain. She had undergone injections also to address the pain. One physician indicated Claimant was so limited that she required assistance with several personal care activities (see Exhibits 11-18). This doctor also labeled Claimant's condition as deteriorating and concluded that Claimant was incapable of any employment (see Exhibit 15).

Not in Claimant's favor was a 1/2011 examination that concluded Claimant had normal range of motion in all of her joints and no swelling in her joints. The examination did not specify any limits on Claimant's ability to work.

Based on the sum of the evidence, the undersigned is inclined to find that Claimant's true abilities lie somewhere between unable to perform any work and no apparent limits on work. Other medical examinations performed throughout 2010 tended to support such a conclusion. A 2/8/11 examination (the most current examination in the record) concluded Claimant could not perform her usual occupation but could perform any job with restrictions of no weight lifting. The undersigned believes this description most

closely resembles an ability to perform sedentary employment. Adopting the finding that Claimant's past employment involved light work and that Claimant is limited to sedentary work, it can be found that Claimant is not capable of performing past employment. Accordingly, the disability analysis may proceed to step five.

At the fifth step in the analysis, the burden shifts from Claimant to DHS to present proof that Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c)

It has already been found that Claimant is capable of performing sedentary work. Claimant is a [REDACTED] year old person; as a [REDACTED] year old person, Claimant is considered to be closely approaching advanced age. Claimant is a high school graduate. Claimant has a history of semi-skilled labor that would not likely be transferrable to other employment. Claimant's circumstances are described by Medical Vocational Rule 201.14 which directs a finding that Claimant is a disabled person. Accordingly, it is found that DHS erred in determining that Claimant was not a disabled person for purposes of 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).

State Disability Assistance (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:

- Receives other specified disability-related benefits or services, see Other Benefits or Services below, or

201124976/CG

- 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 has already found Claimant to be disabled for purposes of MA benefits by finding that Claimant has physical impairments expected to last one year or more. This finding makes Claimant automatically eligible for SDA benefits based on the lesser 90 day requirement. It is found that DHS improperly denied Claimant SDA benefits based on the finding that Claimant was 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 improperly denied Claimant's application requesting SDA and MA benefits. It is ordered that DHS:

- reregister Claimant's application dated 11/16/10 for MA (including three months of retroactive MA benefits) and SDA benefits;
- process Claimant's application based on the finding that Claimant is a disabled individual; and
- supplement Claimant for any benefits not received as a result of the improper denial.
-

The actions taken by DHS are REVERSED.


Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: June 13, 2011

Date Mailed: June 13, 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.

201124976/CG

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.

CG/ctl

cc:

[REDACTED]

Wayne County DHS (35)/1843

[REDACTED]

Administrative Hearings