

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201129019
Issue No. 2009
Case No. [REDACTED]
Hearing Date: June 30, 2011
Macomb County DHS (20)

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 June 30, 2011 from Detroit, Michigan. The Claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED] Specialist, appeared and testified.

ISSUE

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 12/20/10, Claimant applied for SDA and MA benefits including retroactive MA benefits from 9/2010-11/2010.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 3/4/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2)
4. On 3/14/11, DHS denied Claimant's application for MA benefits.
5. On 4/5/11, Claimant requested a hearing disputing the denial of MA benefits.

6. On 5/6/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 61-62).
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female [REDACTED] with a height of 5'4" and weight of 250 pounds.
8. As of the date of the hearing, Claimant smokes approximately 10 cigarettes per day, occasionally uses alcohol and marijuana.
9. Claimant has a history of crack cocaine abuse and is currently enrolled in a rehabilitation program with New Passages.
10. Claimant's highest education year completed was 12th grade.
11. Claimant claimed to be a disabled individual based on physical impairments of: enlarged heart, arthritis, chronic obstructive pulmonary disease (COPD) and a herniated disc.
12. Claimant also claimed to be a disabled individual based on a mental impairment of 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 undersigned will refer to the DHS regulations in effect as of 3/2011, 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. 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 (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
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

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. *Id.* at 2.

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 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 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 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, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by reviewing Claimant's medical documentation.

Claimant was examined [REDACTED] (see Exhibit 51) regarding her lungs, heart and pulmonary function. The physician concluded Claimant was negative for active disease with no significant change since [REDACTED] (the date of Claimant's previous examination).

Claimant was examined [REDACTED] (see Exhibit 52) concerning her hip and knee. The physician concluded Claimant's hip and knee were negative for arthritis and dislocation.

Claimant's hand and right knee were examined [REDACTED] (see Exhibit 53) concerning her left hand and right knee. The examining physician found no irregularities in Claimant's knee and "minimal degenerative changes" in the hand.

On [REDACTED] Claimant was examined for COPD, herniated disc, arthritis, and depression (see Exhibits 15-31). Concerning the herniated disc, Claimant's range of motion was normal in most joints with the following noted exceptions: limited range of 50 degrees in forward flexion of hip (100 degrees is normal), 70 degree limit on lumbar spine flexion (90 degrees is normal). The examining physician concluded Claimant had the ability to perform all 23 listed abilities including bending, pulling, picking up a coin and stairs.

On a form completed on [REDACTED] (Exhibits 35-38), Claimant's examining doctor concluded that Claimant had signs of depression. The examining physician concluded Claimant had a global assessment function (GAF) score of 45. 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 . Claimant was assessed a GAF score of 45 which is representative of “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).

Claimant’s examining physician also found to be markedly limited in 3 of 20 capacities to perform a work-related ability (see Exhibits 41-42). Claimant was found markedly limited in the abilities to: understand and remember detailed instructions, carry out instructions and to maintain concentration for extended period. Claimant was found somewhere between moderately and markedly limited in the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness.

On a form completed on [REDACTED] (Exhibits 33-34), the examining physician noted Claimant suffered from the following: obesity, COPD, degenerative joint disease (DJD), neuropathy, chronic constipation, hypertension and enlarged heart. The clinical impression was that Claimant’s condition was deteriorating though no evidence was submitted with the document to support any of the above findings.

On [REDACTED], Claimant was given a psychological examination by the physician treating Claimant’s depression (see Exhibits 63-67). The examiner diagnosed Claimant as suffering from depression and gave Claimant a GAF score of 48. An identical GAF was given to Claimant from a [REDACTED] examination (see Exhibits 68-75).

Overall, the undersigned is not inclined to find that Claimant has any severe physical impairments on the ability to perform basic work activities. Though Claimant mentioned a slew of physical impairments (enlarged heart, COPD, herniated disc, arthritis and others), there is no medical evidence to support any physical limitations. Some of the potential impairments were referenced by physicians in the records, however, there is no medical evidence tying any of the alleged impairments to any limits on Claimant’s abilities. When Claimant was asked about various physical activities (e.g. walking, standing, sitting, lifting...), Claimant testified that she had some limit on every single activity. The undersigned is not inclined to accept Claimant’s testimony without any medical support for the testimony. The only medical records supporting some limit on Claimant’s abilities was a medical finding that Claimant’s left hand had minimal degenerative changes and that Claimant had some limits in her range of motion. These limits are insufficient to find that Claimant suffered from a severe impairment. It is found that Claimant does not have a physically based severe impairment.

There is a fair amount of medical evidence supporting a severe impairment based on depression. Claimant's marked limitations on her ability to follow and carry out instructions and GAF scores of 45 and 48 are strong evidence that Claimant would have problems in carrying out basic work activities. It is found that Claimant's depression qualifies as a severe impairment to meet step two of the disability analysis. Accordingly, 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 the impairment is unlisted or the claimant fails to meet the requirements of the listing, then the analysis proceeds to the next step. Claimant only established a severe impairment based on depression.

Depression is properly characterized as an affective disorder under Listing 12.04. Affective disorders are characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied. The listing for affective disorder requires:

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking; or

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or

- f. Easy distractibility; or
- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking;

OR

- 3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- b. 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;

OR

- c. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
 - 1. Repeated episodes of decompensation, each of extended duration; or
 - 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 - 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Claimant does not meet the listing requirements for depression. Claimant may meet the requirements for Part A but the medical evidence shows she did not meet the requirements for Part B. The medical evidence showed marked difficulties in the area of concentration only (See Exhibit 62), but not in any other areas. There was no evidence that Claimant met any of the criteria for Part C. It is found that Claimant failed to meet the listing requirements for depression. Accordingly, the disability analysis moves 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.*

The only impairment Claimant established as severe was an impairment based on depression. There was no evidence of any physical limits placed on Claimant due to her depression. The undersigned will examine whether the depression caused sufficient non-exertional obstacles for Claimant to perform her past employment.

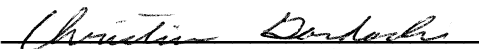
Claimant's employment history (see Exhibit 11) included employment with [REDACTED] an unspecified machine shop and as a self-employed house cleaner. As previously mentioned, Claimant had marked limitations in the ability: to understand and remember detailed instructions, to carry out instructions and to maintain concentration for extended period. Though these limitations would certainly hamper Claimant's abilities in most forms of employment, it would not preclude Claimant from performing employment involving repetitive simple tasks. Claimant's previous employment seemed to deal with precisely doing such functions.

Also, as previously stated, Claimant was found somewhere between moderately and markedly limited in the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods and the ability to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness. Though Claimant may have difficulties in these abilities, the undersigned is not inclined to find that the limitations amount to Claimant being incapable of performing her past employment. There is no evidence that Claimant's depression is any worse than when Claimant worked previously. It is found that Claimant is capable of

performing past employment and that Claimant is not a disabled individual. Accordingly, it is found 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 MA benefits to Claimant on the basis of 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: July 18, 2011

Date Mailed: July 18, 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.

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.

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