

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201132866
Issue No. 2009 4031
Case No. [REDACTED]
Hearing Date: July 11, 2011
Wayne County DHS (43)

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 July 11, 2011 from Detroit, Michigan. The Claimant appeared and testified; [REDACTED] appeared and testified as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), [REDACTED] Specialist, appeared and testified.

ISSUE

Whether DHS properly terminated Claimant's 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. Claimant was an ongoing MA benefit recipient.
2. Claimant's only continuing basis for receiving MA benefits would be as a disabled individual.
3. On 4/26/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-7).
4. On 5/2/11, DHS mailed Claimant a Notice of Case Action (Exhibits 3-5) informing Claimant of the termination of MA benefits.

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5. On 5/9/11, Claimant requested a hearing (see Exhibit 2) disputing the denial of MA benefits.
6. On 5/22/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 54-55).
7. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female [REDACTED] with a height of 4'11" and weight of 155 pounds.
8. Claimant has no relevant history of tobacco usage or alcohol consumption though has a history of substance abuse treatment for crack cocaine.
9. Claimant's highest education year completed was 11th grade.
10. Claimant had medical coverage (Medicaid) for an unspecified period through 5/2011.
11. Claimant alleged physical impairments of arthritis, HIV and seizures.
12. Claimant alleged mental impairments of depression and dementia.

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 5/2011, 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

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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.

A [redacted] dated form (Exhibits 10-11) referring to a most recent examination of [redacted] (presumably intended to mean [redacted] listed diagnoses of HIV, seizure disorder and depression. It was also verified that Claimant took eight medications to assist with the three medical problems. It was reported that Claimant suffered from arthritic pain in her wrists and knees, had dementia and that Claimant suffered from fatigue and chronic pain. Claimant's seizure disorder was noted as "stable on meds". The examining physician indicated Claimant was unable to meet her needs in home for cleaning, shopping and taking medications.

The same examiner also completed a DHS form concerning Claimant's HIV status (Exhibits 16-18). Claimant's HIV was confirmed by blood test. The examiner noted Claimant had marked limitations in daily activities, social functioning and concentration.

A DHS referred physician examined Claimant on [redacted] (see Exhibits 31-36). Claimant's medical history was summarized. The notes included Claimant reporting a sleeping disorder and suffering from hallucinations though there was no psychiatric hospitalization history. Claimant was diagnosed with schizoaffective disorder. Claimant was noted as having judgment and impulse control problems.

Part of the examination included asking Claimant relatively simple questions. Claimant was unable to: recite two numbers backwards, name any big cities, name any living famous people or to perform simple mathematical calculations. The examiner concluded Claimant "demonstrated little in the way of cognitive strengths, with problems with concentration" and also "problems with short-term memory and the ability to pay attention." The examiner concluded Claimant would "appear to have difficulty engaging in work-type activities other than those of an extremely simple nature... as her physical condition allows."

Claimant's AHR is also Claimant's live-in caretaker. Claimant and her AHR described an environment of Claimant being completely reliable on the caretaker for many activities including cleaning, shopping and hygiene. Though the provider encourages Claimant's independence, little progress has been made despite four year efforts. The AHR testified that on two occasions when Claimant attempted to cook, the result was that a fire was started.

Claimant's inability to perform socially and daily activities were well evidenced by Claimant's testimony, her provider's testimony and the medical records. Based on the totality of evidence, Claimant established a severe non-exertional impairment. Accordingly, the disability analysis moves 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 a listed impairment is not met, then the analysis moves to step four.

Based on the medical evidence, Claimant's best opportunity to meet a listed impairment would be the listing for psychotic disorders. The listing reads as follows:

12.03 Schizophrenic, paranoid and other psychotic disorders: Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

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.

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

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:

- a. Blunt affect; or
- b. Flat affect; or
- c. Inappropriate affect;

OR

4. Emotional withdrawal and/or isolation;

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 schizophrenic, paranoid, or other psychotic 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.

Looking at Part A, the medical records establish Claimant suffers various degrees of all four listed behaviors. Claimant's hallucinations were documented sufficiently to meet the requirements of Part A, as was her disorganized behavior (e.g. fires caused by her cooking attempts), and withdrawal (see Exhibit 32). Claimant need only meet one of them to establish meeting Part A. It is found that Claimant met Part A of the above listed impairment.

There was sufficient evidence that Claimant suffered from hallucinations. There was evidence that Claimant saw a hallucination of her brother a few days prior to the [REDACTED] psychological examination. The corresponding examination report also noted that Claimant once lost her temper when she thought that the television was reporting a story about her. There is sufficient medical information to conclude that Claimant meets the requirements for Part A.

Claimant's treating physician verified Claimant as having marked difficulties in daily living, social functioning and concentration. The physician's conclusion was well supported by the evidence and testimony. As a result, Claimant satisfied the impairment for Part B.

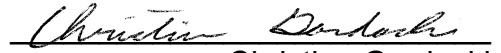
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By meeting the criteria of Part A and B, Claimant established meeting the listed impairment for psychotic disorder. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in terminating Claimant's MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly terminated Claimant's MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefits back to the date of closure;
 - (2) process Claimant's reinstated benefits on the basis that Claimant is a disabled individual;
 - (3) supplement Claimant for any benefits not received as a result of the improper termination;
 - (4) if Claimant is found eligible for MA benefits, to schedule a review date of 7/2012.
- The actions taken by DHS are REVERSED.


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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