

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201210281
Issue No. 2009, 4031
Case No. [REDACTED]
Hearing Date: February 27, 2012
Wayne County DHS (18)

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 February 27, 2012. The above named claimant appeared and testified; [REDACTED] appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, 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 8/1/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 10/5/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 10/7/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 10/26/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 1/4/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 73-74) based, in part, by application of Medical-Vocational Rule 204.00.
7. On 2/27/12, an administrative hearing was held.
8. On 2/28/12 and an unspecified later date, DHS was ordered to arrange for a consultative examination and x-rays of Claimant's spine.
9. On [REDACTED] Claimant was scheduled for an appointment with a physician.
10. Claimant failed to attend the physician appointment.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'7" and weight of 240 pounds.
12. Claimant has no known relevant history of substance abuse.
13. Claimant's highest education year completed was the 12th grade via obtain of a general equivalency degree.
14. As of the date of the administrative hearing, Claimant had no health coverage and last received coverage approximately 8 years ago.
15. Claimant contended that she is a disabled individual based on impairments including: lower back pain (LBP), respiratory problems, incontinence, high blood pressure, high cholesterol, diabetes, forgetfulness, depression, gastroesophageal disease (GERD) and arrhythmia.

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 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).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other 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.

A Social Summary (Exhibits 33-34) dated [REDACTED] was presented. A Social Summary is a standard DHS form which notes alleged impairments and various other items. Claimant's Social Summary was completed by an interviewing DHS specialist. It was noted that Claimant alleged major depression, LBP, incontinence, memory problems, leg pain, hiatal hernia, HBP, high cholesterol and a hardening of heart valve.

A Medical Social Questionnaire (Exhibits 5-8) dated [REDACTED] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history; Claimant completed the form. Claimant noted feeling a heaviness and burning in her legs when she walked. Claimant noted that she cannot sit for long periods. Claimant noted a shortness of breath. Claimant listed no prior hospitalizations but noted that she went to the emergency room in 11/2009 after she fainted. Claimant noted that she was taking prescriptions for Zoloft and Lisinopril.

A Psychiatric Evaluation (Exhibits 9-13) dated [REDACTED] from Claimant's treating physician was presented. It was noted that Claimant had a long history with depression.

It was noted that Claimant's depression worsened six months ago. It was noted that Claimant complained of physical pains and a relationship problem with her daughter. It was noted that Claimant's psychological symptoms included: irritability, erratic eating habits, erratic sleep, lack of interest and motivation, feeling sad and crying spells.

The psychological examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). 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. An Axis I diagnosis of major depressive disorder, recurrent, moderate was noted. Claimant's GAF was 52. A GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

Various progress notes (Exhibits 14-67) from the agency treating Claimant's depression were presented. It was noted that Claimant began taking Zoloft in 5/2011. On [REDACTED] Claimant noted that she has "been doing good so far". Many of the records referred to assisting Claimant with an SSA benefit application.

A Comprehensive Assessment dated [REDACTED] from Claimant's treating therapist was presented. The assessment was not notable other than remaining consistent with other presented information including finding Claimant's GAF at 52.

Claimant completed an Activities of Daily Living (Exhibits 16-20) dated [REDACTED]; this questionnaire was designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble sleeping because of leg pain and urination. Claimant noted taking naps because she is tired. Claimant noted she performs her own cooking and shopping. Claimant noted that she enjoys bowling, shooting pool and playing darts. Claimant noted seeing friends and family once or twice per week.

Medical records (Exhibits 75-79) from a [REDACTED] physician appointment were presented. It was noted that the appointment addressed a lung nodule, hypertension, depression, GERD, hiatal hernia, sciatica and incontinence. It was noted that Claimant was prescribed Oxybutynin, presumably to address Claimant's incontinence complaints. It was recommended that Claimant continue taking the following medications: Sertraline, Lisinopril and aspirin.

Medical records from a [REDACTED] medical encounter were provided. Claimant's blood pressure was noted as 130/72. It was noted that Claimant should cease taking Oxybutynin and begin taking Vitamin D.

A Radiological Report (Exhibit 83) dated [REDACTED] was presented. It was noted that there was minor flattening at L3-L4 which did not significantly efface the ventral thecal sac. It was noted that there was similar bulging at L4-L5 which also did not significantly efface the ventral thecal sac. It was noted that CT examination demonstrated normal vertebral body height and alignment.

Claimant testified that she was limited to five minutes of walking before needing to stop due to pain. Claimant stated that she could only sit or stand for 30 minute periods before changing position due to pain. Claimant estimated that the most she could lift was a gallon of milk. Claimant stated that she could bend her back but doing so would be painful. Claimant did not think she was capable of squatting or kneeling. Claimant does not use a walking assistance device for ambulation.

Claimant alleged that she was disabled, in part, because of arrhythmia, other cardiac problems and forgetfulness. Claimant's testimony was completely unverified. Claimant's heart issues and forgetfulness is found to not be relevant to an evaluation of disability.

Claimant also alleged that she is disabled, in part, due to GERD, diabetes, incontinence, HBP, high cholesterol, diabetes and respiratory problems. The impairments were at least referenced to some degree in the medical documentation. However, the evidence for each of these diagnoses was so slight that no reliable conclusions may be drawn as to how Claimant might be impaired in the performance of basic work activities.

Claimant alleged that she has LBP and/or sciatica problems. The only medical evidence supporting the allegation was a radiology report from 21 years ago. The submitted report did not note an impairment that would justify a finding that Claimant is currently impaired in performing basic work activities. Further, the report was over 20 years old; thus, any impairment that could have been established would not be reliable evidence of Claimant's ability to perform basic work activities today.

Despite Claimant's numerous complaints of physical problems, none were adequately supported by medical evidence as being a significant impairment to the performance of basic work activities. It is found that Claimant failed to have a physically-based severe impairment.

Claimant also alleged that she is psychologically impaired. It was well-established that Claimant was treated for depression. Claimant was prescribed medication to treat depression and her GAF of 52 is indicative of a person with functioning difficulties.

Though the diagnosis was well-established, there was little support that depression significantly impacts Claimant's ability to perform basic work activities. Claimant's social functioning does not appear to be impacted as she was consistently described as cooperative by her therapist; further, Claimant regularly visits with friends and family. There is no evidence of any periods of decompensation (i.e. psychological hospitalizations). There was also no evidence that Claimant has difficulty in performing daily activities due to depression. Claimant alleged that she is forgetful, but there is no evidence to support the allegation. Based on the presented evidence, depression is not found to significantly impact Claimant's ability to perform basic work activities.

Claimant alleged multiple physical and psychological problems. Even if applying a de minimus standard, the presented medical evidence failed to establish that any of the alleged impairments were severe. It is found that Claimant failed to establish a disability for purposes of MA benefit eligibility.

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.

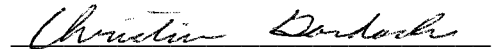
A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- 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 not disabled for purposes of MA benefits based on a finding that Claimant failed to establish a severe impairment. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly 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 properly denied Claimant's MA and SDA benefit application dated 8/1/1. The actions taken by DHS are AFFIRMED.


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

Date Signed: July 17, 2012

Date Mailed: July 17, 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

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cc:

