

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201228638
Issue No. 2009, 4031
Case No. [REDACTED]
Hearing Date: March 19, 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 March 19, 2012. The claimant appeared and testified; [REDACTED] 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 9/27/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 1/9/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2), in part, by application of Medical-Vocational Rule 202.20.
4. On 1/17/12, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 1/27/12, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 3/1/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 25-26) based, in part, by application of Medical-Vocational Rule 202.21.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'7" and weight of 160 pounds.
8. Claimant smokes 10 cigarettes per day and has a history of alcohol and drug abuse.
9. Claimant's highest education year completed was the 12th grade (via equivalency degree); Claimant has additional education in the fields of medical assistance and insurance coding.
10. As of the date of the administrative hearing, Claimant had ongoing Adult Medical Program (AMP) benefits through the State of Michigan since approximately 11/2010.
11. Claimant contended that she is a disabled individual based on an impairments including: chronic obstructive pulmonary disease (COPD), neck and arm pain, hepatitis C, degenerative disc disease (DDD), anxiety, hand and foot numbness and upper back pain.

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 controlling DHS regulations are those that were in effect as of 9/2011, the month of the application which Claimant contends was wrongly denied. 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 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 and 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 3-4) dated [REDACTED] was presented. A Social Summary is a standard DHS form to be completed by DHS specialists which notes alleged impairments and various other items of information. It was noted that Claimant alleged impairments of depression, anxiety, back and disc disease, numbness in hands, shoulder pain, constant headaches, dizzy spells and neck problems.

A Medical Social Questionnaire (Exhibits 5-7) dated [REDACTED] was presented. The Claimant completed form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history; Claimant's form was completed by an unknown "patient rep". Claimant listed that she had impairments including: chronic headaches, chronic neck and spine problems and depression. Two previous hospitalizations were noted, both in late 2010 and both due to neck and shoulder pain.

Hospital records (Exhibits 8-16) stemming from an [REDACTED] hospital encounter were presented. It was noted that Claimant was moving heavy furniture approximately two weeks prior to the hospital visit and has since suffered a gradual increase in radiating pain between her neck and arm. It was noted that Claimant reported that the pain was extreme and occurred with any body motion.

In the hospital, a head-toe nursing assessment was performed. Claimant's gait was noted as steady. Claimant rated her pain as an 8/10. Claimant was able to perform all ranges of motion with her neck but complained of a throbbing pain described as 10/10. Claimant similarly described of a pain in her left shoulder. It was noted that Claimant had intermittent parasthesias (presumably meant to be paresthesias) in her left hand. Claimant was able to fine touch distally.

Upon discharge, it was noted that Claimant's condition was improved. Claimant was prescribed Flexeril, Motrin and Norco upon discharge. Claimant was also advised to return to the ER if her symptoms worsened or new symptoms arose and to follow-up with her primary care physician.

A Medical Examination Report (Exhibits 23-24) dated [REDACTED] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of generalized anxiety disorder, chronic obstructive pulmonary disease (COPD), eczema and degenerative disc disease (DDD). An impression was given that Claimant's condition was stable. It was noted that Claimant can not perform housework, laundry, run errands or prepare meals. It was noted that a previous MRI showed mild mid cervical DDD, most pronounced at C4-C5 and C5-C6.

Claimant was given additional time after the hearing to submit an updated Medical Examination Report from her treating physician, which would have addressed Claimant's ability to perform various activities such as standing and lifting. Electromyography results from 3/2012 were also requested. The requested evidence was not submitted.

Claimant completed an Activities of Daily Living (Exhibits 18-22) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble sleeping due to anxiety and chronic neck pain. Claimant noted that she also suffers shoulder pain and constant headaches. Claimant noted that she fixes her own meals. Claimant noted that she cannot lift overhead items and lower items. Claimant noted she does light housework and that her mother finishes the work if Claimant's pain gets too unbearable. Claimant noted she only cleans in 15 minute intervals. It was noted that Claimant does her own shopping. Claimant noted she does not drive due to legal issues concerning her license. Claimant stated she can bathe herself but that she cannot take showers because they are too painful.

Looking at exertional basic work restrictions, Claimant testified that she has a walking limit of 100 yards before back pain prevents her from walking further. Claimant does not use a walking aid. Claimant estimated that she could stand one hour before back pain prevented further standing. Claimant stated she can sit but that she needs to adjust her

sitting position. Claimant stated she cannot squat due to arthritis in her knees. Claimant stated she is not able to bend due to back pain. Claimant's testimony was consistent with the medical evidence. Claimant's walking restriction is a significant impairment to the performance of basic work activities.

The evidence tended to establish that Claimant's back and neck pain have occurred for a period of two years or longer. Claimant stated that her pain is constant and worsening. There is no evidence to suggest that Claimant's pain or limitations will improve within 12 months from the date of Claimant's application. It is found that Claimant satisfied the durational requirements for a severe impairment.

Because Claimant established a significant impairment to performing basic work activities and that the impairment is expected to last 12 months, it is found that Claimant has a severe impairment. Accordingly, the disability 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, then the analysis proceeds to the next step.

Claimant's primary impairment involved back pain. Musculoskeletal issues are covered by Listing 1.00. Back problems are covered by SSA Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by

chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Looking at Parts B and C, there was no evidence of spinal arachnoiditis or stenosis. Thus, Claimant cannot be found disabled based on these sections of the spinal disorder listing.

Looking at Part A, Claimant's description of her pain suggested a reasonable possibility that medical evidence exists to meet this listing. The presented Medical Examination Report verified a diagnosis of DDD. The report also noted a pain prescription for Tramadol; this is somewhat supportive of a neuro-anatomic distribution of pain. Claimant's testimony that back pain limits her walking, standing and lifting was also supportive of a finding that Claimant suffers a neuro-anatomic distribution of pain. Claimant complained of foot and hand numbness which may support a finding of sensory loss.

A physical examination from [REDACTED] noted no focal sensory or focal motor loss (see Exhibit 10). Claimant's treating physician noted on [REDACTED] that Claimant had an impairment of left hand tingling and numbness (see Exhibit 23); this is supportive of finding that Claimant some degree of motor and sensory loss.

As noted above, updated medical records of Claimant's ability to perform various exertional activities was requested, but not submitted. This evidence would have been beneficial in identifying Claimant's limitations. Claimant's physician established that Claimant is not able to do laundry, housework, run errands or prepare meals. The restrictions were presumably based on Claimant's back pain. An inability to perform daily activities is persuasive evidence of an inability to ambulate. An inability to ambulate is persuasive evidence of a loss of motor and/or sensory function.

Based on the presented evidence, the evidence tended to establish that Claimant meets the listing for spinal disorders and that Claimant is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's application for 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).

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

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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 disabled for purposes of MA benefits because Claimant met the listing for spinal disorders. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly 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 improperly denied Claimant's application for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated 9/27/11;
- (2) evaluate Claimant's eligibility for MA and SDA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision if Claimant is found eligible for future MA and SDA benefits.

The actions taken by DHS are REVERSED.



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

Date Signed: June 18, 2012

Date Mailed: June 18, 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:



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