

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No. 201236274  
Issue No. 2009  
Case No. [REDACTED]  
Hearing Date: May 23, 2012  
Monroe County DHS

**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, an in-person hearing was held on May 23, 2012 from Monroe, Michigan. The claimant appeared and testified; [REDACTED] appeared as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, [REDACTED], Manager, and [REDACTED], Manager, appeared and testified.

**ISSUE**

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) 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 9/9/11, Claimant applied for MA benefits including a request for retroactive MA benefits for 8/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 1/5/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2) based on an unspecified Social Security Administration ruling.

4. On 1/10/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 2/20/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 4/16/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 42), in part, by finding that Claimant retains the capacity to perform a wide range of unskilled work.
7. On 5/23/12, an administrative hearing was held.
8. Claimant presented medical documentation at the administrative hearing that was not previously considered by SHRT.
9. On 5/24/12, the additional medical documentation was forward to SHRT for consideration of disability.
10. On 6/20/12, SHRT determined that Claimant was not disabled, in part, based on application of Medical-Vocational Rule 202.15.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'4 ½ " and weight of 158 pounds.
12. Claimant has a history of alcohol and drug abuse and is currently a smoker.
13. Claimant's highest education year completed was the 12<sup>th</sup> grade.
14. As of the date of the administrative hearing, Claimant had no ongoing medical coverage and last had medical coverage in approximately 9/2011 through the State of Michigan.
15. Claimant alleged that she is a disabled individual based on impairments including: depression, bipolar disorder, anxiety and panic attacks, hip pain, lower back pain, sciatica, hand and foot pain, neuropathy, seizures, chronic obstructive pulmonary disease (COPD) and neck 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

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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 stated she worked as a babysitter for her daughter. Claimant credibly testified that she made less than \$500/month; no evidence was submitted to contradict Claimant's testimony. Claimant's employment as a babysitter does not amount to 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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. Claimant submitted numbered records at the hearing; Claimant's numbered exhibits overlapped with the already numbered DHS exhibits. To distinguish Claimant's exhibits from DHS' exhibits, Claimant's exhibits will be prefaced with a "C".

A Social Summary (Exhibits 6-7) 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. Claimant's form was completed by a hospital representative. It was noted that Claimant was brought to the hospital on 8/2011 following an accidental overdose on Vicodin and Xanax. It was noted that Claimant reported a history of depression, bipolar disorder, COPD, osteoarthritis (in left hip, hands, lower back and feet) and sciatic nerve damage. It was noted that Claimant

also reported problems with concentration stemming from a closed head injury from an auto accident (in 1999).

A Medical Social Questionnaire (Exhibits 8-9) 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's form was completed by a hospital rep. It was noted that Claimant had three prior hospitalizations: in 3/2010 due to alcohol poisoning, 2009 stemming from alcohol abuse and 2009 due to back pain. Claimant testified that her back pain hospitalization may have been alcohol related. Claimant testified that she was also hospitalized in 8/2011 due to a urinary tract infection.

Claimant testified that she takes five medications that are paid for by her daughter. Claimant currently takes: Neurontin, Zoloft, Trazodone, Abilify and Ultram.

Hospital records (Exhibits 10-41) stemming from a [REDACTED] admission were presented. Claimant was discharged on [REDACTED]. It was noted that the admission stemmed from an accidental overdose of medication including: Xanax, opiates and possibly Neurontin. Claimant denied that she was suicidal. It was noted that Claimant was opiate dependent due to back pain.

A physical examination report (Exhibits 22-23) dated [REDACTED] was submitted. The report noted assessments that Claimant had COPD and was a heavy smoker. It was also noted that Claimant abused alcohol. Other assessments included: major depression, hypomagnesemia and hypokalemia.

Hospital records (C1-CC5) dated [REDACTED] stemming from an apparent fall were submitted. It was noted that Claimant suffered lacerations to the back of her head. It was noted that Claimant was depressed. A local anesthetic was applied and staples were used to close the wound.

Hospital records (Exhibits C6-C34) dated 8/2012 from a hospital admission were presented. It was noted that Claimant was admitted on [REDACTED] and discharged on [REDACTED]. The discharge summary noted that Claimant was confused and disoriented upon admission. It was noted that Claimant may have had psychological problems and possibly prescription drug dependence. A history of bipolar disorder and alcohol dependence was noted.

Claimant was psychologically examined on [REDACTED]. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4<sup>th</sup> 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 psychosis was provided. Axis II was deferred. Axis III referenced Claimant's medical history which included COPD and back pain. Axis IV was "moderate". Claimant's GAF was 25. A GAF within the range of 21-30 reflects behavior that is considerably influenced by delusions or hallucinations OR serious impairment, in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends).

Claimant testified that she had good days and bad days with her feet. Claimant stated that she suffers neuropathy. She testified that she can only walk a few feet when she has bad days. Claimant stated she has one hour sitting limits on bad days. Claimant stated that her lifting ability is affected by hip pain; she estimated that she can lift five pounds comfortably but that she strains to lift 10 pounds or more.

Claimant stated that she is capable of performing the activities of bathing, grooming, cooking and cleaning. Claimant stated that she needs help with lifting her laundry.

Claimant testified that she has walking, standing and sitting restrictions due to neuropathy in her feet and hip pain. Claimant stated that her hip pain stems from a 1984 motorcycle accident and that she had her hip replaced. Though Claimant's testimony was generally credible, it was also unverified by medical documentation. The three verified times Claimant required medical treatment did not appear to be related to a physical disability. It is theoretically possible that when Claimant fell and received treatment in 2/2012 that the fall was caused by walking restrictions, however, this is pure speculation. The corresponding medical records failed to identify any difficulties for Claimant in walking.

Medical records referenced a medical history of COPD. A mere reference is not sufficient to draw any conclusions concerning Claimant's ability to perform basic work activities based on a history of COPD.

Claimant also testified that she has seizures, has neck pain, hand and foot pain. Again the testimony was not verified. Though Claimant undoubtedly has pains and seizures (the prescription for Neurontin tends to verify the seizures), there is simply no additional documentation to determine the severity or degree of the problem. There was no evidence to conclude that Claimant's pain or seizures are sufficiently debilitating that Claimant's ability to perform basic work activities is impaired. Based on the presented evidence, Claimant failed to establish any impairments to performing physical-type basic work activities.

There was a stronger argument to be made for psychological impairments to the performance of basic work activities. Claimant was hospitalized in 8/2011 due to psychosis. It was noted that Claimant was hearing the voice of her ex-husband and holding her heart monitor while referring to it as a cross. Claimant's GAF of 25 is supportive that Claimant was barely functional at that point in time. However, there is little evidence to conclude that Claimant is still as lacking in function as she was in 8/2011.

The cause of Claimant's 8/2011 behavior was not clearly identified by the accompanying records. Psychotherapy group records refer to Claimant stating that "she is hoping not to use" and that "she can't keep doing this to herself" (see Exhibit 20). These statements suggest that drugs contributed to Claimant's 8/2011 hospitalization. It was noted elsewhere that Claimant was neither eating nor taking her medication prior to the hospitalization. Whatever the cause, there is a lack of evidence that Claimant has suffered any comparable break-downs since the hospitalization. This is supportive of finding that the hospitalization was an isolated incident.

The evidence strongly suggests that Claimant has a need for psychological medications. There is a lack of evidence to suggest that Claimant has a significant impairment to the performance of any basic work activities. The most favorable conclusion that can be made for Claimant concerning disability is that there is one precedent for potential psychological regression if Claimant is not compliant with medications. This is not sufficient to establish disability. Claimant has been compliant with medication and the evidence is simply lacking to establish ongoing impairments to the performance of basic work activities. Even upon application of a de minimus standard, it is found that Claimant failed to establish any significant impairment to the performance of basic work activities. 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 Claimant's MA benefit application dated 9/9/11 (including Claimant's request for retroactive MA benefits) based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.



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



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Date Signed: July 3, 2012

Date Mailed: July 3, 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:

