

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201249018
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 2, 2012
County: Macomb DHS (36)

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 2, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] testified and appeared as Claimant's translator. 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 3/5/12, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/9/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 4/13/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 19-21) informing Claimant of the denial.

5. On 4/20/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 6/6/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 22-23), in part, by application of Medical-Vocational Rule 202.13.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'1" and weight of 150 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or substance abuse.
9. Claimant is not an American citizen and is not able to communicate well in English.
10. As of the date of the administrative hearing, Claimant had no ongoing medical coverage and last received medical coverage in 2/2012.
11. Claimant alleged that she is a disabled individual based on impairments including: high blood pressure, diabetes and chronic diarrhea.

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 3/2012, 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.

It should be noted that Claimant originally requested a hearing to dispute a denial of an MA benefit application dated 11/28/11. Claimant testified that she agrees that DHS properly denied the application. Claimant subsequently reapplied for MA benefits on 12/21/11. Claimant's hearing request could not have been tied to the denial of the application dated 12/21/11 because the hearing request was submitted to DHS on 3/1/12, several weeks before DHS denied the application. Despite Claimant's premature hearing request, the application dated 12/21/11 was ultimately denied by DHS due to a finding that Claimant was not disabled. It is found that there is jurisdiction to determine

whether Claimant's application dated 12/21/11 was properly denied because of the DHS denial prior to the hearing date.

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 3-4) dated [REDACTED] was presented. A Social Summary is a standard DHS form to be completed which notes alleged impairments and various other items of information. It was noted that Claimant alleged impairments of: diabetes, high blood pressure, female issues, right hand joint issues and side pain. It was noted that Claimant had right hand difficulty. It was noted that Claimant was forgetful.

A Medical Social Questionnaire (Exhibits 5-7) 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 her son. It was noted that Claimant alleged impairments of: severe diabetes with neuropathy complications, hypertension, chronic diarrhea, severe pelvic pain due to uterine fibroids and rheumatoid arthritis. A previous hospital encounter for endoscopy was noted.

A Medical Examination Report (Exhibits 8-9) 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 diabetes mellitus, neuropathy and hypertension. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet her household needs.

A medical center report (Exhibits 17-18) dated [REDACTED] was presented. It was noted that Claimant sought treatment for lower back pain, neck pain, right hand finger pain and knee pain. A back examination revealed paraspinous muscle tenderness and spasms on both sides. Mild hyperflexia was shown in Claimant's knees. Claimant's power was 5/5. Leg raising test was negative.

A neck examination revealed normal range of motion with flexion, extension and rotation. Claimant's power was 5/5. Claimant's reflexes and sensation were normal. X-rays of the cervical spine showed multi-level degenerative joint disease (DJD). Assessments of arthritis and radiculitis were given.

X-rays were also taken of Claimant's LSS (presumably intended to mean lower lumbar spine). It was noted that the x-rays revealed multi-level DJD. An assessment of radiculopathy was given.

Claimant's right hand was examined and x-rays were taken. An assessment of tendonitis was given.

Claimant's son completed an Activities of Daily Living (Exhibits 16-20) dated [REDACTED] this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. It was noted that Claimant had interrupted sleep. It was noted that Claimant fixed meals for herself, her son and spouse. It was noted that Claimant shops weekly and that her daughter helps her sometimes.

Claimant testified that she had a three block walking limit and a 20 minute standing limit before she felt dizzy. Claimant does not use a walking aid.

Claimant contended that her ability to perform work activities was greatly restricted by her numerous bowel movements. Claimant asserted that she has 10-15 bowel movements per day. Her son contended that Claimant uses the bathroom every 10 minutes. Claimant's and her son's testimony was completely and utterly unverified. The submitted medical records made no references to potential restrictions due to bowel movements. This will not be a factor in determining whether Claimant is disabled.

Claimant alleged that she is fatigued by either diabetes and/or hypertension. Submitted medical records at least established that Claimant was diabetic and being treated for hypertension. However, the records failed to note fatigue as a symptom of diabetes and/or hypertension. Claimant's alleged fatigue will not be a factor in the disability analysis.

There was some evidence that Claimant was impaired because of lower back pain and cervical pain. Diagnoses of DJD, tendonitis, radiculitis and radiculopathy are each suggestive of some restrictions to Claimant's back, neck and right hand. The presented medical records failed to establish any specific restrictions to the performance of basic work activities despite the diagnoses. Some unspecified restriction to lifting, grasping with the right hand and walking can be implied from the mere diagnoses. Applying a de minimus standard, it is found that Claimant established a significant impairment to performing basic work activities.

Claimant testified that she has dealt with leg pain for several years and that she had to quit her housekeeping job in 2009 due to leg pain. The impairments of DJD, radiculopathy and tendonitis are such that they are not known to improve over time. It is

found that Claimant established having impairments that have, or will last, for 12 months.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having 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. Claimant also failed to establish meeting Part A of the above listing. Claimant's straight leg raising test was negative for lower back pain. There was also no evidence of any loss in range of motion. It is found that Claimant failed to establish meeting the listing for spinal disorders.

A listing for neuropathy (11.14) was considered based on a diagnosis of neuropathy. This listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the 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.

Generally, reasonable Claimant testimony should be given deference in determining whether a claimant is capable of performing past employment. A claimant is the only person with first-hand knowledge of prior job duties and is in the best position to state whether previous employment could be performed.

Claimant's relevant past employment was as a housekeeper. Claimant testified that she would not be able to perform her past employment because her legs and fingers hurt. Claimant also cited fatigue as an obstacle. Based on the medical evidence, Claimant's testimony was reasonable. It is found that Claimant cannot perform past relevant employment.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

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.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Applying a de minimus standard, it was found in step two that Claimant's cervical and lumbar pain was a significant impairment to the performance of basic work activities. It was not established to what extent Claimant was restricted. In lieu of medical evidence to the contrary, Claimant should be expected to do some walking, standing and lifting. It is also worth noting that step five does not apply a de minimus standard.

Hypertension and diabetes are serious problems for an individual, but the mere diagnoses are not particularly probative in determining Claimant's exertional capabilities. The verified diagnoses of radiculopathy from DJD, tendonitis and mild hyperflexia of the knee are more probative. These problems would reasonably lead to a presumption that Claimant is not capable of lifting up to 50 pounds while frequently lifting up to 25 pounds. Frequent lifting or carrying objects weighing up to 10 pounds with some lifting up to 20 pounds appears to be a reasonable expectation for Claimant. It is found that Claimant is capable of light work, but not medium or a more exertional level of employment.

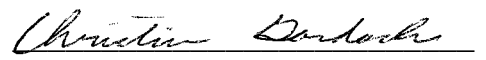
Based on Claimant's exertional work level (light), age (advanced), education (limited due to Claimant's inability to communicate in English) and employment history (unskilled), Medical-Vocational Rule 202.01 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA 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 benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 3/5/12;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA 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) if Claimant is found eligible for future MA benefits, to schedule a review of benefits in one year from the date of this administrative decision.

The actions taken by DHS are REVERSED.


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

Date Signed: July 11, 2012

Date Mailed: July 11, 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

CG/hw

cc:

