

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201260665
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 26, 2012
Wayne DHS (49)

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 September 26, 2012 from Detroit, Michigan. The claimant appeared and testified. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

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 2/2/12, Claimant applied for SDA and MA benefits, including retroactive MA benefits from 11/2011-1/2012.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 5/16/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 5/21/12, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/21/12, Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On 8/8/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 41-42), in part, by application of Medical-Vocational Rule 204.00.
7. As of the date of the administrative hearing, Claimant was a 30 year old female with a height of 4'11" and weight of 150 pounds.
8. Claimant has no relevant history of tobacco, alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 10th grade.
10. As of the date of the administrative hearing, Claimant had no medical coverage but received free prescriptions through an agency treating her for psychological problems.
11. Claimant alleged that she is disabled based on impairments and issues including: anxiety, depression, back problems and arthritis of the hands.

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 (RTM).

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 2012 income limit is \$1010/month.

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 Services*, 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 CF R 416.920 (5)(c). In determining whether Claimant’s impairment amounts to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

A Social Summary (Exhibits 3-4) dated 2/2/12 was presented. The form was completed by a DHS specialist. It was noted that Claimant reported impairments of depression, anxiety and back pain. It was noted that Claimant reported a 20 pound lifting limit and a 15-20 minute standing restriction.

A Medical Social Questionnaire (Exhibits 5- 7) was presented. Claimant completed the form on [REDACTED]. Claimant noted impairments of depression, back problems and memory. Emergency room visits were noted on [REDACTED] for back pain and blood pressure and on [REDACTED] for back pain.

A Psychiatric/Psychological Examination Report (Exhibits 8-10) was presented. The report was completed by Claimant’s therapist, an LLMSW, on [REDACTED]. It was noted that Claimant was first examined on [REDACTED] and most recently examined on [REDACTED]. It was noted that Claimant was recommended for monthly medication reviews and individual therapy sessions. It was noted that Claimant was prescribed Seroquel and Cymbalta. It was noted that Claimant functions independently. It was noted that Claimant completes her daily living activities without assistance. An Axis I diagnosis of mood disorder was noted. Claimant’s GAF was noted as 65. A GAF score within the range of 61-70 is representative of a person with “Some mild symptoms OR some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships.”

A Mental Residual Functional Capacity Assessment (MRFCA) (Exhibits 11-12) was presented. The form was completed by Claimant’s therapist on [REDACTED]. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient’s ability to perform each of the 20 abilities as either “not significantly limited”, “moderately limited”, “markedly limited” or “no evidence of limitation”. The form will be discussed below in greater detail.

A consultative psychological examination report (Exhibits 17-20) was presented. The examining physician completed the report on [REDACTED]. The examiner noted that

Claimant responded well to instructions and positive criticism. Claimant's contact with reality was good. Claimant's affect was pleasant. It was noted that Claimant reported a history of visual hallucinations but that she no longer has them. It was noted that Claimant had good working relationships with her previous peers and supervisors. It was noted that Claimant was in prison from an unspecified month in 2010 until 7/2011. An Axis I diagnosis of adjustment disorder with anxiety and depression was noted. Claimant's GAF was noted as 64.

A consultative physical examination report (Exhibits 21-27) was presented. It was noted that Claimant reported a 15 minute sitting restriction, 5 minute standing limit and 10 minute walking limit. A physical examination was performed. All examined systems were negative for abnormalities. It was noted that Claimant walked without assistance and could perform heel walk, toe walk and tandem walk. Claimant's range of motion was normal for all examined areas. It was noted that Claimant had no lumbar back pain. It was noted that Claimant had no restrictions to bending, squatting and single leg standing. Claimant was not limited by pain in any testing. Claimant's reflexes were normal. An impression was given that Claimant has bilateral low back pain and bilateral lower extremity pain from the knees to feet and from hand to wrist.

Claimant completed an Activities of Daily Living (Exhibits 13-16). Claimant's form was undated and was missing the first page. Claimant noted that she forgets important things. Claimant noted she does not fix her own meals. Claimant noted she washes dishes and sweeps the floor. Claimant noted her aunt does the shopping for Claimant; Claimant testified her son's father does the shopping for her. Claimant noted she reads and sews. Claimant noted she has nightmares causing her to wake up in a cold sweat. Claimant testified that she does not do her laundry because she is unable to walk up and down the two and a half flight of stairs necessary to reach the laundry area. Claimant testified that she is able to bathe, dress, cook and clean without any notable problems.

Claimant stated that she has a 1 block walking limit due to back pain. Claimant stated that she has a two hour standing limit before her legs tire. Claimant stated that she can sit for eight hour period but would need periodic breaks.

Looking at Claimant's psychological symptoms, Claimant stated that she has anxiety from her time in prison. The testimony would be consistent with a diagnosis of adjustment disorder. Claimant's GAF scores of 64 and 65 support a finding that Claimant has psychological obstacles, but only moderate functioning limits. Moderate restrictions are not persuasive evidence of a significant impairment to performing basic work activities.

Claimant was found markedly restricted in two abilities on the MRFCA. Claimant was found markedly restricted in the ability to interact appropriately with the general public and the ability to accept instructions and respond appropriately to supervisor criticism. The restriction to responding to criticism is contradictory to Claimant's description of having positive relationships with her peers and supervisors. The restriction is also contradictory to the consultative examiner's statement that Claimant responded well to instructions and positive criticism. There was also no particular evidence that Claimant would have notable difficulties in interacting with the general public. Less deference was given to the conclusions of the MRFCA because the opinions were provided by Claimant's therapist, not a physician. The presented evidence established no significant psychological impairments to performing basic work activities.

There was a general absence of evidence of restrictions to Claimant's exertional abilities. The only medical evidence concerning physical problems was the consultative examination report. The examiner found Claimant was unrestricted in range of motion and all 23 listed activities (see Exhibit 26) including: bending, standing, walking, lifting, climbing stairs and writing. Though it is reasonably possible that Claimant has body pain that may affect some of her abilities, the presented medical evidence determined that Claimant was unrestricted in physical activities. It is found that Claimant has no significant impairments to performing basic work activities and is therefore not a disabled individual. Accordingly, the DHS denial of Claimant's MA application was proper.

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 determination that Claimant has no significant impairment to performing basic work activities. 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 2/2/12, including retroactive MA benefits for 11/2011-1/2012, based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.



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

Date Signed: 10/9/2012

Date Mailed: 10/9/2012

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CG/hw

cc:



C. Gardocki

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