

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201261500
Issue No. 2009
Case No. [REDACTED]
Hearing Date: September 12, 2012
Washtenaw DHS (20)

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 September 12, 2012 from Ypsilanti, Michigan. The claimant appeared and testified; [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Manager.

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 3/19/12, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/20/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 17-19).
4. On 4/25/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 7-15) informing Claimant of the denial.
5. On 6/22/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 8/13/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 138), in part, by determining that Claimant retained the capacity to perform past relevant employment.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'4 " and weight of 170 pounds.
8. Claimant has no known 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 received ongoing Medicaid from DHS since 3/2012.
11. Claimant alleged that she is a disabled individual based on impairments and issues including: asthma, high blood pressure, neuropathy, gastroparesis and retinopathy.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the

program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

It was not disputed that DHS found Claimant to be a disabled individual beginning 3/2012 based on Claimant's receipt of Medicaid beginning 3/2012. The present case involved an application for MA benefits seeking MA beginning 12/2011. Thus, the only period of disability in dispute concerns the period from 12/2011-2/2012.

DHS initially thought that Claimant was approved for SSI benefits based on a presented State Online Query (SOLQ) report (Exhibits 135-137). After DHS reevaluated the SOLQ, DHS noted that Claimant was not approved for SSI benefits. Claimant initially thought she was approved for SSA benefits, but then noted that she still has an administrative hearing pending with SSA and that the only income that she receives is State Disability Assistance from DHS. It is found that Claimant is not eligible for MA for the period of 12/2011-2/2012 based on receipt of SSI.

For the period in dispute, 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 was a disabled individual from 11/2011-2/2012. *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. 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 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 relevant submitted medical documentation.

A Social Summary (Exhibits 45-46) dated [REDACTED] was presented. Claimant's form was completed by an unknown representative. Claimant's listed impairments included gastroparesis, hypertension, hyperlipidemia, asthma and DM2.

A Medical Examination Report (Exhibits 21-23) dated [REDACTED] was completed by a physician. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of diabetes, gastroparesis, asthma, HTN, neuropathy and proteinuria. The physician noted that Claimant's history of complaints included a recurrent abdominal pain, nausea and vomiting. It was noted that Claimant's medications included: Albuterol, insulin, provastatin, domperidone, metoclopramide, metoprolol, gabapentin and nortriptyline. An impression was given that Claimant's condition was stable. It was noted that Claimant could meet her household needs. It was noted that Claimant was normal in the following examined areas: general, heart, respiratory, cardiovascular, neuro, musculoskeletal and abdominal. Claimant was noted as having a depressed affect and limited comprehension.

A Medical Social Questionnaire (Exhibits 33-34) dated [REDACTED] was presented. The form was completed by an unknown representative. It was noted that Claimant was hospitalized four times for gastroparesis between [REDACTED]

A Medical Needs form (Exhibits 25-27) was presented. The form was signed on [REDACTED] by Claimant's physician. It was noted that Claimant saw the physician monthly and would be required to do so for the duration of Claimant's lifetime. It was noted that Claimant was unable to work at her usual occupation and could work some jobs with limitations. It was noted that Claimant missed work frequently due to hospitalizations related to gastroparesis flares.

A hospital document (Exhibits 47) concerning a [REDACTED] gastric emptying study was provided. The study indication was that Claimant had gastroparesis.

Hospital documents (Exhibits 121-130) were presented. An admission date of [REDACTED] and a discharge date of [REDACTED] was noted. It was noted that Claimant presented with vomiting and abdominal pain. It was noted that Claimant had poorly controlled type 1 diabetes. It was noted that Claimant vomited three times in the emergency department.

Hospital documents (Exhibits 111-120) were presented. An admission date of [REDACTED] and a discharge date of [REDACTED] was noted. It was noted that Claimant presented with symptoms of nausea, vomiting and abdominal pain. A principal diagnosis of gastroparesis was noted.

Hospital documents (Exhibits 101-110) were presented. An admission date of [REDACTED] and a discharge date of [REDACTED] was noted. It was noted that Claimant presented with symptoms of nausea, vomiting and abdominal pain. A principal diagnosis of gastroparesis was noted.

Hospital documents (Exhibits 93-100) were presented. An admission date of [REDACTED] and a discharge date of [REDACTED] were noted. It was noted that Claimant presented with nausea, vomiting (with blood) and generalized abdominal pain. It was noted that urine studies were notable for proteinuria.

Hospital documents (Exhibits 83-92) were presented. An admission date of [REDACTED] and a discharge date of [REDACTED] were noted. It was noted that Claimant presented with nausea, vomiting (with blood) and abdominal pain. It was noted that Claimant reported that her pain was constant and worse when eating.

Hospital documents (Exhibits 75-82) were presented. An admission date of [REDACTED] and a discharge date of [REDACTED] were noted. It was noted that Claimant presented with nausea, vomiting (with blood) and abdominal pain. It was noted that Claimant reported

that her pain was constant and worse when eating. Claimant's diabetes was noted as poorly controlled.

Hospital documents (Exhibits 67-74) were presented. It was noted that Claimant presented to a hospital and was admitted on [REDACTED] after reporting a sharp abdominal pain and bouts of nausea and vomiting. A principal diagnosis of gastroparesis was provided.

Hospital documents (Exhibits 57-66) were presented. It was noted that Claimant was admitted on [REDACTED] and discharged on [REDACTED]. It was noted that Claimant went to the hospital after suffering nausea, abdominal pain and vomiting. A principal diagnosis of gastroparesis was provided. It was noted that Claimant reported abdominal pain, but no evidence for the etiology was given. A history of diabetes, HTN, hyperlipidemia and gastroesophageal reflux disease was noted.

Hospital documents (Exhibits 131-134) were presented. It was noted that Claimant was admitted on [REDACTED] and discharged on [REDACTED]. It was noted that Claimant went to the hospital after suffering nausea, abdominal pain and vomiting. A principal diagnosis of gastroparesis was provided.

Claimant completed an Activities of Daily Living (Exhibits 35-44) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted that her feet keep her up all night. It was noted that Claimant needed no help with grooming. It was noted that Claimant makes small meals for herself. It was noted that Claimant does her own cleaning and shopping. It was noted that Claimant visits with her friends and family twice per week.

Claimant's primary complaint was symptoms of gastroparesis. It was established that Claimant was admitted to a hospital nine times over the period of four months due to vomiting, nausea and abdominal pain. It cannot be realistically expected that Claimant could have performed any basic work activities while suffering nausea, vomiting and abdominal pain for a period which required nine hospitalizations. It is found that Claimant established having a significant impairment to performing basic work activities.

It is known that Claimant was eventually found disabled by DHS, such that she was approved for Medicaid beginning 4/2012. Though Claimant's current symptoms are presumably reduced due to receipt of Medicaid, there is no evidence that the symptoms would have been addressed without Medicaid. This tends to establish that the nausea, vomiting and abdominal pain brought on by the gastroparesis would have continued for a period of 12 months. Accordingly, it is found that Claimant's significant impairment to performing basic work activities were expected to last for a period of 12 months or longer.

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 most prominent impairment appears to be gastroparesis. Gastroparesis is a digestive problem. Digestive problems are located in Listings 5.00. There was no evidence that Claimant meets any of the various digestive listings. Similarly, there was a lack of evidence that Claimant's other medical problems (GERD, hyperlipidemia, diabetes, hypertension, neuropathy or retinopathy) meet a SSA listing.

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.

Claimant stated that she had multiple full-time jobs in the last 15 years. Claimant stated that each of full-time jobs involved work in the field of fast food and/or as a cashier. Claimant noted that she worked for her most recent employer until 11/2011 when she began missing work due to gastroparesis symptoms. Claimant stated that her most recent employer fired her due to the absences. Claimant stated that she could not perform any of her past relevant employment due to the chronic gastroparesis symptoms. Claimant's repeated hospitalizations are persuasive evidence to support Claimant's testimony. It is found that Claimant could not perform her 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).

Once again, the primary evidence concerning Claimant's abilities rests on Claimant's nine hospitalizations. Claimant could not possibly have performed SGA during a period when she was hospitalized nine times over four months and had no end in sight to the hospitalizations. It is found that Claimant was incapable of performing SGA for the period of 12/2011-3/2012. Accordingly, Claimant is found to be a disabled individual for the period of 12/2011-3/2012 and that DHS erred in determining that Claimant was not a disabled individual.

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 3/19/12, including Claimant's request for retroactive MA benefits from 12/2011;
- (2) 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) schedule a review of benefits no sooner than one year from the date of this administrative decision.

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The actions taken by DHS are REVERSED.



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

Date Signed: 9/21/2012

Date Mailed: 9/21/2012

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

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