

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-6208
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 23, 2012

ADMINISTRATIVE LAW JUDGE: Susan C. Burke

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 conducted from Detroit, Michigan on January 23, 2012. The Claimant appeared, along with [REDACTED] Claimant's mother, and testified. [REDACTED] Medical Contact Worker, appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance ("MA-P") benefit program.

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 March 9, 2011, Claimant submitted an application for public assistance seeking MA-P and retro MA-P benefits to December of 2010.
2. On August 10, 2011, the Medical Review Team (MRT) determined that Claimant was not disabled.
3. The Department notified Claimant of the MRT determination on August 12, 2011.

4. On October 11, 2011, the Department received Claimant's timely written request for hearing.
5. On December 28, 2011, the State Hearing Review Team found Claimant not disabled.
6. At the time of the hearing, the Claimant was [REDACTED] years old with a birth date of [REDACTED].
7. Claimant has a high school diploma and a license in cosmetology.
8. Claimant is not currently working.
9. Claimant incurred a head trauma in 2007 and suffered several episodes of hospitalization for loss of speech and body movement.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of twelve months or longer.
11. Claimant's complaints and allegations concerning her impairments and limitations, when considered in light of all objective medical evidence, as well as the record as a whole, reflect an individual who is so impaired as to be incapable of engaging in any substantial gainful activity on a regular and continuing basis.

CONCLUSIONS OF LAW

The Medical Assistance program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services, formerly known as the Family Independence Agency, 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 Bridges Reference Tables ("RFT").

Federal regulations require that the Department use the same operative definition for "disabled" as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

"Disability" is:

...the inability to do any substantial gainful activity 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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. (SGA) 20 CFR 416.920(b).

In this case, Claimant is not currently working. Claimant testified credibly that she is not currently working and the Department presented no contradictory evidence. Therefore, Claimant may not be disqualified for MA at this step in the sequential evaluation process.

Second, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment expected to last twelve months or more (or result in death) which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

In this case, medical evidence has clearly established that Claimant has an impairment (or combination of impairments) that has more than a minimal effect on Claimant’s work activities. The January 13, 2010 report of [REDACTED] MA, CCC-SLP showed Claimant to have been received with “unintelligible speech, characterized largely by weakness, inaccurate phoneme production and nasal quality.” She presented with gait instability. Claimant suffered a head trauma in 2007.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant’s impairment, or combination of impairments, meets or medically equals the criteria of an impairment listed in Appendix 1 of Subpart P of 20 CFR, Part 404. (20 CFR 416.920 (d), 416.925, and 416.926.) This Administrative Law Judge finds that the Claimant’s medical record will support a finding that Claimant’s impairment(s) is a “listed impairment” or is medically equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A.

In the present case, Claimant has alleged suffering from a head trauma in 2007, with several episodes of hospitalization for loss of speech and body movement.

Listing 11.18 Cerebral trauma states:

Evaluate under the provisions of 11.02, 11.03, 11.04, and 12.02, as applicable.

11.04 Central nervous system vascular accident. With one of the following more than 3 months post-vascular accident:

A. Sensory or motor aphasia resulting in ineffective speech or communication; or

B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).

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The medical evidence shows that Claimant suffered from a head trauma in 2007. Claimant was taken to the hospital twice in December of 2007 and admitted for four days due to black-out episodes. (p. 60 of evidence.)

A medical report of January 7, 2008 from [REDACTED] stated that Claimant was unable to work from January 1, 2008 to "unknown" due to slurred speech and syncope. (p. 57 of evidence.)

On August 24, 2009, Claimant was described as having "possible pseudotumor cerebri with compression of the lateral ventricles and obliteration of the cortical sulci." [REDACTED] FACR. (p. 50 of evidence.)

The January 13, 2010 report of [REDACTED] CCC-SLP showed Claimant to have been received with "unintelligible speech, characterized largely by weakness, inaccurate phoneme production and nasal quality." She presented with gait instability. (P. 19 of evidence.)

The DHS 49 of March 1, 2010, shows Claimant to have poor speech and limitations in comprehension, memory, and sustained concentration. (p. 23, 24 of evidence.)

A March 26, 2010 psychiatric report restricted Claimant to work that involves brief superficial interaction with coworkers; not able to manage own funds; closed head injury. Atul C. Shah, MD.; (p. 82, 84 of evidence.)

On May 28, 2010, [REDACTED] MA CCC-SLP determined for Claimant a prognosis of fair: speech language therapy for longer than twelve months due to severity of her disorder, age and pattern of regression-recoupment. The diagnosis was severe receptive language disorder; moderate expressive language disorder; profound articulation disorder; severe fluency disorder; (p. 94 of evidence.)

On July 6, 2010 [REDACTED] internist, found that Claimant had a normal neurological exam; episodes of normal speech intermingled with child-like speech (p. 9 of evidence.)

On January 26, 2011, Claimant was discharged from [REDACTED] with discharge instructions regarding syncope. (p 76, 79 of evidence.)

The March 31, 2011 report of [REDACTED] psychiatrist showed: head injury, seizure disorder; prognosis fair to guarded; (p. 16, 17 of evidence.)

Claimant and her mother testified credibly that in December of 2011 Claimant suffered from an episode where she lost her ability to speak normally for four days. In addition,

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the Medical Contact Worker wrote on August 2, 2011, "Client came in today; her speech was very bad. I could barely understand what she was saying." (P. 12 of evidence.)

It is noted that Claimant may recover her speech and gait for periods of time, but as noted in the May 28, 2010 examination, Claimant has a pattern of regression-recoupment.

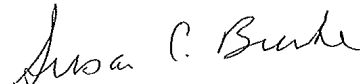
In light of the foregoing, it is found that the Claimant's impairment meets, or is the medical equivalent thereof, of a listed impairment within 11.00, specifically 11.18. Accordingly, the Claimant is found disabled at Step 3 with no further analysis required.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Claimant disabled for purposes of the MA-P program as of December 1, 2010.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate re-processing of the March 9, 2011 application to determine if all other non-medical criteria are met and inform Claimant of the determination in accordance with Department policy.
3. The Department shall review Claimant's continued eligibility in one year from the date of this decision in accordance with Department policy.



Susan C. Burke
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 2/3/12

Date Mailed: 2/3/12

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

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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.

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 at
Michigan Administrative hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

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cc:

