

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201268228
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County: Macomb DHS (12)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on November 1, 2012, from Clinton Township, Michigan. Participants included the above-named claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. 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) 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 5/14/12, Claimant applied for MA benefits including retroactive MA benefits from 3/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 6/13/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 82-81).
4. On 6/19/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 7/31/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 9/14/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 75-76) by determining that Claimant was capable of performing past relevant work.
7. On 11/1/12, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits 102-83) at, and following the administrative hearing, which were forwarded to SHRT along with previously presented documents.
9. On 1/23/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 103), in part, by determining that Claimant may perform her past relevant employment.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'3" and weight of 128 pounds.
11. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
12. Claimant's highest education year completed was the 12th grade.
13. As of the date of the administrative hearing, Claimant had no ongoing medical insurance coverage.
14. Claimant alleged that she is disabled based on impairments and issues including: spinal pain and restricted ranges of motion, cardiac problems and chest 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).

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 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.

It should be noted that DHS inexplicably numbered the presented medical documents in reverse order. Thus, when documents are cited by exhibit number, the numbering is from high-to-low.

A Medical- Social Questionnaire (Exhibits 78-76) dated [REDACTED] was presented. The form was completed by a self-described "authorized rep". It was noted that Claimant alleged heart problems, fractured sternum and back pain. A previous hospitalization, from 3/2012, was noted.

Hospital records (Exhibits 72-14) were presented. The documents noted a hospital admission from 3/14/12 through [REDACTED]. It was noted that Claimant presented with complaints of chest pain. It was noted that Claimant had a "substantial cardiac history" (see Exhibit 66) involving four drug-eluting stents. During the hospital stay, it was noted that Claimant had ventricular fibrillation. At one point, Claimant became unresponsive and required CPR to revive her. Claimant's ejection fraction at the outset of the admission measured at 35%-45%. On [REDACTED] Claimant's ejection fraction was documented to be 55-60% (see Exhibit 29). Discharge diagnoses included: polymorphic ventricular tachycardia, non-ST elevation MI, coronary artery disease, ischemic cardiomyopathy, hypertensive heart disease and dyslipidemia.

Hospital records (Exhibits 97-91) dated [REDACTED] were presented. It was noted that Claimant presented to the emergency room with complaints of chest pain. Radiography documents (Exhibits 92-91) noted that Claimant's chest was fractured. It was noted that the fracture was likely related to the CPR performed on Claimant days earlier.

A Medical Examination Report (Exhibits 75-74) dated [REDACTED] was presented. The form was completed by Claimant's treating physician who noted first examining Claimant in 2005. It was noted the physician last examined Claimant on [REDACTED]. Current diagnoses included: coronary artery disease, sternum fracture, subendo infarct, cardiac arrest and pneumonia.

A Classification of Patients with Disease of the Heart dated [REDACTED] was presented. The completing physician noted Claimant was at a Class III functional capacity and a Class

C therapeutic capacity. A Class III functional capacity is representative of patients with cardiac disease resulting in marked limitation of physical activity, who are comfortable at rest while less than ordinary activity causes fatigue, palpitation, dyspnea or anginal pain. A Class C therapeutic classification is representative of patients with cardiac disease whose ordinary physical activity who should be moderately restricted and whose more strenuous efforts should be avoided.

A medical document (Exhibit 102) dated [REDACTED] was presented. It was noted that multiple views of Claimant's lumbar spine were taken. An impression was given of minimal degenerative osteoarthritic changes. It was also noted that the views showed minimal levoscoliosis and minimal narrowing of the intervertebral disc space at L4-L5.

Claimant completed an Activities of Daily Living (Exhibits 8-5) dated [REDACTED]. Claimant noted that she had difficulty sleeping due to her fractured sternum and lower back pain. Claimant noted that she does less laundry than she used to because of sternum and back pain. Claimant noted she does her own shopping but receives help from store clerks and neighbors in carrying her groceries.

The medical evidence established that Claimant has a history of heart problems. It was established that the heart problems were so serious that Claimant was hospitalized and in need of CPR in 3/2012. Though Claimant's health has since improved, it was established that she has physical limitations due to her heart. The heart classification form tends to verify that Claimant is markedly restricted from physical activities. Physical activities is presumed to include basic work activities such as lifting, carrying, bending and walking. It is found that Claimant established having significant restrictions to performing basic work activities.

The treating physician classifying Claimant's heart capabilities did so on [REDACTED] nearly three months following Claimant's most recent hospitalization. There is no evidence to presume that the restrictions are going to end within 12 months. It is also presumed that the restrictions began in 3/2012, the date of Claimant's most recent hospitalization. It is found that Claimant meets the durational requirements for having a severe impairment.

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 heart-related issues, specifically CAD. Cardiovascular impairments are covered by Listing 4.00. CAD is best covered by Listing 4.04 which reads:

4.04 Ischemic heart disease, with symptoms due to myocardial ischemia, as described in 4.00E3-4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

A. Sign- or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less:

1. Horizontal or downsloping depression, in the absence of digitalis glycoside treatment or hypokalemia, of the ST segment of at least -0.10 millivolts (-1.0 mm) in at least 3 consecutive complexes that are on a level baseline in any lead other than a VR, and depression of at least -0.10 millivolts lasting for at least 1 minute of recovery; or
2. At least 0.1 millivolt (1 mm) ST elevation above resting baseline in non-infarct leads during both exercise and 1 or more minutes of recovery; or
3. Decrease of 10 mm Hg or more in systolic pressure below the baseline blood pressure or the preceding systolic pressure measured during exercise (see 4.00E9e) due to left ventricular dysfunction, despite an increase in workload; or
4. Documented ischemia at an exercise level equivalent to 5 METs or less on appropriate medically acceptable imaging, such as radionuclide perfusion scans or stress echocardiography.

OR

B. Three separate ischemic episodes, each requiring revascularization or not amenable to revascularization (see 4.00E9f), within a consecutive 12-month period (see 4.00A3e).

OR

C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing:
 - a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or
 - b. 70 percent or more narrowing of another nonbypassed coronary artery; or
 - c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or
 - d. 50 percent or more narrowing of at least two nonbypassed coronary arteries; or
 - e. 70 percent or more narrowing of a bypass graft vessel; and
2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

Claimant's medical history failed to verify a suboptimal stress test result, or that Claimant was incapable of performing a stress test. There was also no evidence of revascularization or verification of any angiographic measurements meeting the listing of 4.04. Claimant does not meet the SSA listing for ischemic heart disease.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. There was a single record which verified degenerative osteoarthritic changes and levoscoliosis and minimal narrowing of the intervertebral disc space at L4-L5; all of the problems were described in degrees of "minimal". The minimal problems are far short of verifying a compromised nerve root, a requirement to meet the listing for spinal disorders.

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.

A history of Claimant's employment (Exhibits 90-83) was presented. Claimant testified that she was most recently employed as a caregiver. Claimant stated that her duties included: dispensing medication, feeding patients and helping patients dress and shower.

Claimant testified that her past relevant work included a job as an office assistant. Claimant stated that the job required significant standing, which she can no longer perform.

Claimant also stated that she worked as a dispatcher and as a telemarketer. Claimant described both jobs as mostly sit-down and requiring typing.

Claimant's heart capacity as noted on the Classification of Patients with Disease of the Heart would reasonably restrict Claimant from anything more strenuous than sit-down employment. Thus, Claimant is not capable of her past employment as an office

assistant or as a caregiver. Claimant's employment as a dispatcher and telemarketer is a trickier issue.

Claimant denied that she could perform her past employment as a telemarketer or dispatcher. SHRT reasonably concluded otherwise. As noted above, Claimant's heart classification means that "less than ordinary activity causes fatigue, palpitation, dyspnea or anginal pain". Even sit-down jobs, such as telemarketing and dispatching, would likely require ordinary and less than ordinary activity. It is not tempting to find that someone can perform past employment which would exacerbate heart problems. Based on the presented evidence, it is found that Claimant is not capable of performing 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).

At step four it was concluded that Claimant was incapable of performing her past sedentary employment due to her heart conditions. For purposes of this decision, it will be accepted that Claimant is capable of performing some very limited types of sedentary employment.

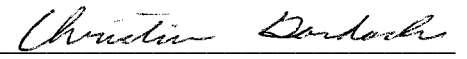
Based on Claimant's exertional work level (sedentary), age (advanced age), education (high school but not providing entry into skilled work), employment history (semi-skilled but not transferrable), Medical-Vocational Rule 201.06 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly determined 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 5/14/12 including retroactive MA benefits back to 3/2012;
- (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 in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.


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

Date Signed: February 8, 2013

Date Mailed: February 8, 2013

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.

201268228/CG

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

CG/hw

cc:

