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

IN THE MATTER OF:

[redacted]

Reg. No.: 201268551
Issue No.: 2009
Case No.: [redacted]
Hearing Date: January 9, 2013
County: Wayne DHS (19)

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 conducted on January 9, 2013, from Inkster, Michigan. Participants included the above-named claimant. [redacted] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (Department) included [redacted], Medical Contact Worker.

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 2/2/12, Claimant applied for MA benefits including retroactive MA benefits from 11/2011.

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On 4/16/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 15-16).

4. On 5/1/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 3-4) to inform Claimant of the denial.

5. On 7/27/12, Claimant requested a hearing (see Exhibit 2) disputing the denial of MA benefits.

6. On 9/27/12, the State Hearing Review Team (SHRT) approved Claimant for MA benefits effective 8/2012, but determined that Claimant was not a disabled individual for the period of 11/2011-7/2012, in part, by application of Medical-Vocational Rule 201.14 (see Exhibits 107-108).

7. DHS approved Claimant for MA benefits effective 3/2012.

8. As of the date of the administrative hearing, Claimant was a [redacted] year old female with a height of 5'1" and weight of 189 pounds.

9. Claimant is a half pack per day smoker, but has no relevant history of alcohol or illegal substance abuse.

10. Claimant's highest education year completed was the 12th grade.

11. As of the date of the administrative hearing, Claimant had recently been issued Medicaid and was eligible for other medical coverage through a university hospital program.

12. Claimant alleged that she is disabled based on impairments and issues including: bulging discs, Complex Regional Pain Syndrome (CRPS) and migraine headaches.

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 CRF 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 monthly income limit considered SGA for non-blind individuals is $1,010.

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 F2d 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.

An undated and unsigned medical Social Questionnaire (Exhibits 20-22) was presented. The form was not considered because it was unsigned.

A Medical Examination Report (Exhibits 25-26) 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 a diagnosis of CRPS. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. It was noted that Claimant had an antalgic gait and requires use of a cane.

Hospital records (Exhibits 27-39; 44-45; 51-54) from 2010 were presented. It was noted that Claimant presented to the hospital several times complaining of migraine headaches, leg pain and leg weakness. It was noted that Claimant was prescribed Vicodin to treat her migraine headaches (Exhibit 37). A diagnosis of possible CRPS (Exhibit 38) was noted.

Medical documents (Exhibits 40-42) dated [redacted] were presented. It was noted that an MRI revealed herniated discs at L3-L4 and L4-L5, but no stenosis was noted. It was noted that the herniation was not severe enough to justify surgery.

Medical documents (Exhibits 91-92) dated [redacted] were presented. It was noted that Claimant presented with leg pain consistent with CRPS. It was noted on [redacted] (see Exhibits 93-94) that Claimant had CRPS affecting her left leg.

Medical documents (Exhibits 46-50; 105-107) from 1/2011 were presented. The documents were not notable.

Medical documents dated [redacted] were presented. It was noted that Claimant received a sympathetic block injection in an attempt to control her leg pain.

In a sympathetic block injection follow-up on [redacted], it was noted that the sympathetic block injection caused minimal response. It was noted that Claimant would be rescheduled for a second block. It was noted on [redacted] that Claimant's pain remained status quo (see Exhibits 99-100).

Medical documents (Exhibits 55-61) dated [redacted] were presented. It was noted that Claimant presented with complaints of pain and contusions following a vehicle accident.

On [redacted], Claimant received a second sympathetic block injection(see Exhibits 102-103). The next noted follow-up occurred on [redacted].

Medical documents (Exhibits 62-74) dated [redacted] were presented. It was noted that Claimant presented with complaints of a migraine headache and chest pain. A generic diagnosis of migraine and chest pain was noted. Presented radiography reports noted no relevant findings.

Medical documents (Exhibits 75-90) dated [redacted] were presented. It was noted that Claimant presented with abdominal pain. A diagnosis of abdominal pain related to acute hepatitis was noted.

A medical document (Exhibit 43) dated [redacted] were presented. It was noted that Claimant presented with lower extremity pain related to CRPS.

In a follow-up appointment with the physician who performed a sympathetic block, it was noted on [redacted] that Claimant's pain seemed to be stabilizing. It was also noted that Claimant had poor control of her foot (see Exhibit 104).

Typically, the disability analysis undertaken by SHRT is not a significant factor in the disability analysis and a de novo review is performed. In the present case, the SHRT analysis was consistent with the facts and will be accepted as an appropriate analysis. The SHRT analysis found that: Claimant had a significant impairment to performing basic work activities, Claimant's impairments did not meet a SSA listing, Claimant was not capable of performing past relevant work and Claimant was limited to sedentary employment.

At the time of 11/2011, the first month where Medicaid is sought, Claimant was to be [redacted] years and three months old. That placed Claimant nine months away from her [redacted] birthday.

Upon a finding that a claimant is capable of performing at a certain exertional level, the claimant's circumstances are placed into a grid for a determination of whether he or she is disabled. A claimant's age need not be mechanically applied. SSA states, "If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case." 20 CFR 416.963(b).

It is known that Claimant was diagnosed with CRPS. CRPS is known to be a very painful and debilitating condition. It was documented that Claimant complained of severe pain throughout 2011, eventually leading her to seek pain management and hospital trips even though she did not have insurance. Based on the medical evidence, Claimant established severe restrictions due to generalized pain and pain while walking.

The medical evidence and overall factors of Claimant's circumstance justifies evaluating Claimant as a [redacted] year old even though she was short of her [redacted] birthday.

Based on Claimant's exertional work level (sedentary), age (advanced age for purposes of evaluation), education (high school graduate) and employment history (unskilled), Medical-Vocational Rule 201.04 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 2/2/12 including retroactive MA benefits back to 11/2011;
(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 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: January 18, 2013

Date Mailed: January 18, 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.

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: [redacted]