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

**IN THE MATTER OF:**

[redacted]

Reg. No.: 201273907
Issue No.: 2009
Case No.: [redacted]
Hearing Date: December 19, 2012
County: Wayne DHS (31)

**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 December 19, 2012 from Detroit, Michigan. Participants included the above-named claimant. [redacted] testified on behalf of Claimant. [redacted] as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (Department) 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 12/29/11, Claimant applied for MA benefits including retroactive MA benefits from 9/2011.

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

3. On 8/15/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

4. On 8/20/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 8/23/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 10/25/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 199-200), in part, by application of Medical-Vocational Rule 202.17.

7. As of the date of the administrative hearing, Claimant was a [redacted] year old female with a height of 5'7'' and weight of 185 pounds.

8. Claimant has a 25 year history of heroin and cocaine abuse.

9. Claimant's highest level of education is the 6th grade.

10. As of the date of the administrative hearing, Claimant had no ongoing medical insurance coverage.

11. Claimant alleged that she is disabled based on impairments and issues including: osteomyelitis, shortness of breath, depression and left arm restrictions.

## 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 2011 monthly income limit considered SGA for non-blind individuals is $1,000.

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.

Hospital records (Exhibits 66-136) verifying a hospital admission from [redacted] through an unspecified date in 10/2011 were presented. It was noted that Claimant presented to the hospital with complaints of dysuria, shortness of breath and body aches. It was noted that Claimant was an active heroin and crack addict and had been for most of her life. It was noted that Claimant was septic and intubated over the period of [redacted]-[redacted]. It was noted that Claimant had multiple abscesses (see Exhibit 68). It was noted that Claimant was positive for MRSA (see Exhibit 128).

It was noted that Claimant began physical therapy on [redacted] (see Exhibit 129). It was noted that Claimant required hand-held assistance with her gait at her first therapy.

Claimant also received psychological treatments during the hospital admission. On [redacted], it was noted that Claimant reported a long history of depressive mood, feelings of hopelessness, suicidal ideation, visual hallucinations, auditory hallucinations. Axis I diagnoses were given of: substance induced psychosis, chronic depression, heroin dependence, cocaine dependence, benzodiazepine abuse and anxiety. Claimant's GAF was 30. On [redacted] it was noted that Claimant had paranoid thoughts.

Hospital documents (Exhibits 137-161) were presented. It was noted that Claimant was hospitalized on [redacted] and discharged on [redacted] (see Exhibit 156). It was noted that Claimant presented with a progressive worsening of back pain; discharge documents noted a diagnosis of lumbar spine osteomyelitis. It was noted that an MRI was consistent with the diagnosis (see Exhibit 144). It was noted that a urine test was positive for cocaine at admission. It was noted that Claimant would receive methadone treatment and that her condition was fair at discharge. Physical therapy documents (Exhibits 144-147) dated [redacted] noted that Claimant had decreased: strength, balance, endurance, independence. Discharge recommendations included 24 hour supervision and home physical therapy. A goal of 80 feet of walking was set for Claimant to achieve in 2-3 visits.

Hospital records (Exhibits 162-196) were presented. An admission of [redacted] and discharge of [redacted] was noted (see Exhibit 180). It was noted that Claimant presented with complaints of chronic back pain and left-side chest pain. It was noted that a previous spinal MRI showed progressive erosion within the endplates (L5-S1) compared to a previous MRI. It was noted that Claimant complained of 10/10 back pain.

Hospital records (Exhibits 25-64) were presented. A hospital admission from [redacted]-[redacted] was noted. A diagnosis of abdominal pain likely due to Methadone withdrawal was given.

Hospital records (Exhibits 19-23) were presented. A hospital admission from [redacted] [redacted] was noted. A diagnosis of L4-L5 osteomyelitis was given.

A consultative mental examination report (Exhibits 11-13) dated [redacted] was presented. It was noted that Claimant was a 25 year+ user of heroin and crack cocaine. It was noted that Claimant was illiterate and only finished the sixth grade. It was noted that Claimant had short-term memory problems. It was noted that Claimant had problems with concentration and focusing. Axis I diagnoses were provided for: depressive disorder, NOS; cognitive disorder, NOS and polysybstance dependence in partial remission. Claimant's GAF was 45. Claimant's prognosis was fair- to-guarded.

A consultative physical examination report (Exhibits 14-18) dated [redacted] was presented. It was noted that Claimant's lower back movements were markedly restricted. Diagnoses were given for: hypertension, previous heroin addiction, history of endocarditis, marked left shoulder movement restrictions. Claimant's prognosis was somewhat guarded. The examiner found Claimant to be disabled. The examiner noted that Claimant needs medication, psychiatric evaluation and follow-up evaluation for her back and shoulder problems.

Testimony from Claimant and the owner of her nursing home residence established that Claimant resides in a nursing home and that she requires assistance with all daily activities. The testimony was consistent with medical records establishing that Claimant has numerous medical problems including osteomyelitis in her lumbar spine and left arm restrictions. The presented evidence established significant impairments with performing basic work activities.

It is reasonable to conclude that Claimant's impairments began in 9/2011. It was that month when Claimant was hospitalized for a period of six weeks. It is also reasonable to conclude that Claimant's impairments existed for a period of 12 months since 9/2011. The consultative examiner that concluded Claimant was disabled provided the opinion on [redacted], just short of 10 months following Claimant's hospital admission in 9/2011. There is no evidence to suggest any improvement in Claimant's condition since 6/2012.

Based solely on the exertional impairments, it is found that Claimant established significant impairment to performing basic work activities for a period longer than 12 months. Thus, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may proceed 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.

A listing based on Claimant's complaints of LBP was considered. Back problems are covered by SSA Listing 1.04 which reads:

> **1.04** ***Disorders of the spine*** (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:
>
> A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);
> OR
> B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;
> OR
> C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The medical evidence established that Claimant was diagnosed with lumbar osteomyelitis. Part C considers the effects of spinal stenosis on a person's ability to ambulate. Nerve root compromise and chronic pain are also requirements. Claimant's back pain is presumably established by bone infection rather than nerve root compromise. The lumbar osteomyelitis diagnosis is functionally equivalent to spinal disorders for purposes of Claimant's circumstances as both involve pain and ambulation difficulties.

A consultative examiner determined Claimant was disabled based on marked restrictions to Claimant's back and left shoulder. The testimony of the nursing home owner and Claimant alleged that Claimant is completely dependent on others for all daily activities and that Claimant is capable of extremely slow movements and only with a walker. Physical therapy records established that Claimant's gait is dependent upon a walker and limited to extremely short distances. Between the hospital records and testimony, it was established that Claimant is unable to ambulate effectively. The records also verified that Claimant has significant ongoing pain in her lumbar spine as a result. Based on the presented medical records, it is found that Claimant meets the listing for 1.04

Medical records strongly suggest that Claimant's medical problems are the direct result of chronic drug abuse. There was a reference in 11/2011 that Claimant was positive for cocaine. No subsequent records indicated that Claimant continued using. No other evidence suggested that Claimant's abilities were impacted by ongoing drug abuse. Based on the presented evidence, it is found that Claimant is a disabled individual. Accordingly, it is found that DHS erred in denying Claimant's MA benefit application.

## 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 12/29/11 including retroactive MA benefits back to 9/2011;
(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 8, 2013

Date Mailed: January 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.

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]