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

IN THE MATTER OF:

[redacted]

Reg. No.: 201278239
Issue No.: 2009
Case No.: [redacted]
Hearing Date: January 2, 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 held on January 2, 2013, from Inkster, Michigan. Participants included the above-named claimant. [redacted] 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 10/26/11, Claimant applied for MA benefits, including retroactive MA benefits (see Exhibits 15-16) from 7/2011.

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

3. On 5/22/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 19-20).

4. On 6/12/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 3-7) informing Claimant of the denial.

5. On 9/7/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 2).

6. On 10/25/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 92-93), in part, by determining that Claimant is capable of performing her past relevant employment.

7. On 1/2/13, an administrative hearing was held.

8. At the hearing, Claimant presented new medical records (Exhibits AA1-A44).

9. The new medical documents were forwarded to SHRT.

10. On 2/12/13, SHRT determined that Claimant was not a disabled individual (see Exhibits A45-A46), in part, by determining that Claimant is capable of performing her past relevant employment.

11. As of the date of the administrative hearing, Claimant was a [redacted] year old female with a height of 6'0'' and weight of 135 pounds.

12. Claimant is a one pack per day smoker with no known relevant history of alcohol or illegal substance abuse.

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

14. As of the date of the administrative hearing, Claimant received limited medical coverage in the form of Adult Medical Program (AMP) benefits.

15. Claimant alleged that she is disabled based on impairments and issues including: heart problems, right foot restrictions, pinched nerve in back and asthma.

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. 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 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 relevant submitted medical documentation.

A Medical- Social Questionnaire (Exhibits 5-7) dated [redacted] was presented. The form was completed by a self-described "Medicaid Advocate". A hospitalization from 2000 for heart bypass surgery was noted. A hospitalization from 7/2011 for the insertion of heart stents was also noted.

A medical document (Exhibit 47) dated [redacted] was presented. It was noted that nerve conduction tests were performed. An impression of normal conduction was noted.

A report (Exhibit 39) dated [redacted] related to views of Claimant's foot was presented. An impression was given of no fractures. An impression of calcaneal spurs was noted.

A report (Exhibit 40) dated [redacted] related to a CT of Claimant's thorax was presented. An impression of a left rib fracture was noted. An impression of mild atelectasis was also noted.

A radiology report (Exhibits 41-42) dated [redacted] was presented, following a CT of Claimant's abdomen. An impression of no acute abnormalities was noted.

A radiology report (Exhibits 43-44) dated [redacted] was presented, following a CT of Claimant's pelvis. An impression of no acute abnormalities was noted.

A hospital document dated [redacted] was presented. It was noted that Claimant presented on 3/12/10 complaining of foot pain following a motor vehicle accident. An impression of a right ankle sprain was provided. It was noted that x-rays revealed no bony abnormalities.

Lab results (Exhibits 32-36) dated [redacted] were provided. The results were not accompanied by any physician analysis.

Cardiologist treatment document (Exhibit 38; duplicated by Exhibit 79) dated [redacted] was presented. It was noted that Claimant reported pelvic pain and that a sonogram was performed. An impression of an unremarkable pelvic ultrasound was noted.

Handwritten medical treatment records (Exhibits 28-31) dated [redacted] were presented. The documents noted that Claimant was given a refill for various prescriptions.

An ECG (Exhibit 37) dated [redacted] was presented. The ECG was noted as abnormal. No accompanying medical analysis was provided.

Hospital documents (Exhibits 47-58; 84-89; A16-A40) dated [redacted] were presented. It was noted that Claimant presented with a cramping and radiating right shoulder pain. It was noted that an EKG revealed normal sinus rhythm. It was noted that Claimant's ejection fraction was 30%-35%. An impression of non-segment ST myocardial infarction and leukocytosis was noted. It was noted that two stents were successfully inserted. It was also noted that Claimant was advised to quit smoking.

Various treatment documents (Exhibits A1-A12; duplicated partially by Exhibits 59-68) were presented. The documents cover five treating physician visits over the period of [redacted]. On each occasion, it was noted that Claimant reported no dizziness or shortness of breath. It was noted that Claimant was repeatedly advised to quit smoking. On [redacted], Claimant was encouraged to walk to improve circulation.

Medical center documents (Exhibits 69, 72-74) dated 1/2012 were presented. It was noted that Claimant took 11 prescriptions including: Motrin, Simvastatin and Lisinopril.

Medical documents (Exhibits A41-A42) dated [redacted] were presented. An unspecified test was performed resulting in a physician impression of mild right carpal tunnel syndrome. A wrist brace was recommended. Another unspecified test resulted in an impression of L5-S1 radiculopathy. An MRI was recommended.

Cardiologist treatment documents (Exhibits 75-77; A13-A15) dated [redacted] were presented. It was noted that Claimant reported leg numbness. Two ultrasounds were performed. An impression of atheromatous changes of bilateral arteries with mild stenosis of the left subclavian artery was noted. It was also noted that right ankle brachial index was consistent with mild disease.

The medical records established that Claimant has impairments affecting her heart, respiratory functioning, back and legs. The impairments were sufficiently established to presume some degree of basic work restrictions meeting the de minimus requirements at step two. Determining whether the problems continued for a 12 month period is a little more difficult to decide.

The medical records verified that Claimant's heart problems began no more recently than 7/2011. Claimant was treated over the next few months and appeared to show improvements. It was verified in 2/2012 that Claimant reported leg numbness, while ultrasound testing verified heart disease as a cause.

The lack of medical records following 2/2012 is troubling. The absence might be consistent with a person who has no medical coverage, but Claimant received AMP benefits from the State of Michigan. Despite the lack of treatment records, Claimant credibly testified that she's had ongoing problems with leg numbness since 2/2012. Accordingly, it is found that Claimant satisfied the durational requirements for establishing 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 cardiac-related. Cardiac impairments are categorized under Listing 3.00. No cardiac diagnosis was provided to match a SSA listing.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's back pain complaints. There were no records verifying an MRI of Claimant's back. A diagnosis of L5-S1 radiculopathy was provided. The mere diagnosis of radiculopathy is insufficient to 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 testified she last worked for a three week period as a cleaning person. Claimant testified that she worked six hours per week. This employment will not be

evaluated at step four because Claimant's income fell far below the SGA income amount.

A Work History Report (Exhibits 90-91) was presented. Claimant noted that she last worked from 1998-2002 as a Team Leader for a drug company. Claimant noted that her job required her to walk around the factory and to lift bottles and boxes of medicine. She noted that she was frequently required to lift less than 10 pounds but lifted as much as 20 pounds. Claimant testified that her job duties required her to walk around the warehouse at all times. Claimant testified that she can no longer perform the walking necessary to fulfill her prior duties. The medical evidence was supportive that Claimant could not realistically perform non-stop walking at a full-time job. It is found that Claimant is unable to perform her past relevant employment and the analysis may proceed to step five.

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).

Claimant testified that she suffers shortness of breath. The complaint was referenced in medical documentation. Shortness of breath could be related to cardiac impairments, but so could continued smoking, both of which were verified. There was no evidence of respiratory testing or of a primary complaint of breathing difficulties. Due to the general lack of medical evidence, Claimant's breathing difficulties are not found to be persuasive evidence of restricting Claimant's employment opportunities.

Claimant testified that she has back pain and restrictions. Claimant's testimony tended to be verified by medical testing from 1/2012. No subsequent records were presented concerning the back pain. The lack of records might be consistent with someone without medical coverage, but Claimant receives AMP benefits from DHS. AMP benefit eligibility is known to cover most doctor visits and prescriptions; it is known to not cover surgeries or hospitalizations. Based on the nature of lower back radiculopathy and Claimant's

limited medical coverage, it can be presumed that Claimant's back problems have not dramatically improved.

Claimant also alleged work restrictions related to her heart. It is known Claimant's ejection fraction was a dangerously low of 30-35% in 7/2011 and that stents were inserted. There was no evidence of ejection fraction testing after 7/2011. Subsequent cardiac treatment documents noted breathing complaints, but the documents did not raise any alarming information. It was also established that cardiologist treatment documents from 2/2012 verified atheromatous changes of bilateral arteries with mild stenosis of the left subclavian artery. Based on the presented evidence, it can be concluded that some degree of cardiac improvement occurred, and that the improvement was less than total.

Other evidence established that Claimant made complaints concerning her hands. The carpal-tunnel diagnosis and wrist brace recommendation is not persuasive evidence of a significant restriction.

Other medical evidence noted that Claimant had calcaneal spurs in 2010. The relative old age of the diagnosis without updated medical evidence tends to support that the problem is not ongoing.

The radiculopathy diagnosis would reasonably restrict Claimant from performing a medium exertional level of employment. Claimant's cardiac medical history is supportive of restricting Claimant from a light exertional level of employment. The finding is further supported by the diagnosis of spurs, as outdated as the diagnosis was. It is found that Claimant is restricted to performing a sedentary level of employment.

Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school- no direct entry into skilled work), employment history (unskilled), Medical-Vocational Rule 201.12 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 10/26/11, including retroactive MA benefits from 7/2011;
(2) evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application 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: 3/12/2013

Date Mailed: 3/12/2013

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]