

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012 21959
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 5, 2012
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on March 5, 2012. The claimant appeared and testified; [REDACTED], appeared as a witness and interpreter for the Claimant. [REDACTED], ES appeared and testified on behalf of Department of Human Services (DHS).

ISSUE

Did the DHS properly deny 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 September 20, 2011, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On October 12, 2011, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibit 1 pp. 11).
4. On December 6, 2011, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On December 20, 2011, Claimant requested a hearing disputing the denial of MA benefits on the basis of disability.

6. On February 10, 2012 , the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 2), by determining that Claimant does not have an impairment that significantly limits basic work activities.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a birth date of [REDACTED]. with a height of 5'1" and weight of 165 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or substance abuse.
9. Claimant's highest education year was unknown as she did not attend school in Iraq.
10. Claimant alleged a disability based on both her wrists, which were previously broken and do not move well.

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).

The controlling DHS regulations are those that were in effect as of 8/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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 current 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). Multiple 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).

In determining whether Claimant’s impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation.

Claimant alleged impairments with both her wrists, which she described through her interpreter as not moving well. The left wrist being more affected than the right wrist. The Claimant broke both her wrists [REDACTED] years ago and was able to work after her wrists healed. It was noted that Claimant testified that she could do some household activities, such as cooking and vacuuming and that her husband helped her with the laundry and shopping. The Claimant reported that she could feed herself and hold a fork and cut her food up. She could also shower and comb her hair. She did indicate sometimes dressing could be a problem, as her hands could not go all the way around to her back.

A Medical Social Questionnaire did not contain information about her medical problems except for the names of her doctor’s. The form is intended as a method for clients to report general information about their claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history.

The medical evidence presented consisted of a [REDACTED] x-ray of both wrists which found deformities appearing to be related to old healed fractures are seen in the distal metaphyses of the right and left radius. The bony structures are otherwise intact. There is no evidence of recent fracture or dislocation on either side. The Medical Examination Report dated [REDACTED] found slight swelling and deformity of both wrists. The claimant’s condition was noted as stable and further concluded that Claimant could meet her needs in the home. The deformity of the wrists was noted as mild. (Exhibit 1, pp 5,7 and 9).

Claimant testified that approximately [REDACTED] years ago she fell off a ladder and broke both her wrists. After the injury she returned to work. Claimant testified that she had a half block walking limit and could lift a half gallon with her right hand but could not lift with her left other than to pick up a cup. She could not pick up a coin stating her fingers do not bend. Claimant further testified that she could sit for half an hour and stand for half an hour.

The Claimant’s restrictions discussed above were not noted in the medical examination report, and no range of motion or other limitation grasping or weight limitation was noted. In fact, the report indicated that the Claimant needed no assistance with her

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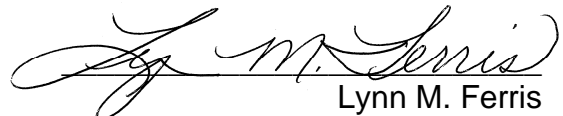
needs in the home. While the Claimant's testimony describing her physical restrictions with her wrists demonstrate a significant impairment there is no medical evidence to support the severity of her condition as reported by the Claimant and is not supportive of a finding that Claimant was physically limited. Claimant's testimony had no support from the medical evidence presented.

Claimant also alleged impairment related to her walking due to veins in her feet, however, Claimant provided no medical documentation with regard to her walking limitation.

Even applying a de minimus standard, it is found that Claimant failed to establish an impairment that has, or is expected, to last 12 months. Thus, Claimant failed to establish by objective medical evidence that she has a severe impairment. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits. Claimant's application is accordingly denied at Step 2.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 13, 2012

Date Mailed: March 13, 2012

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.

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

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cc:

