

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201229312
Issue No. 2009
Case No. [REDACTED]
Hearing Date: April 18, 2012
Oakland County DHS (03)

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 upon the claimant's request for a hearing. After due notice, an in-person hearing was held on April 18, 2012 from Walled Lake, Michigan. The claimant appeared and testified; [REDACTED] 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 9/15/11, Claimant applied for MA benefits (see Exhibits 70-89) including retroactive MA benefits back to 6/2011 (see Exhibits 68-69).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 11/4/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 10-11).
4. On 11/9/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 4-9) informing Claimant of the denial.

5. On 1/25/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 3/1/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 107-108), in part, by finding that Claimant does not have a significant impairment to performing basic work activities.
7. On 4/18/12, an administrative hearing was held.
8. Following the administrative hearing, Claimant submitted additional medical documentation (Exhibits 108-117).
9. The additional medical documents were forwarded to SHRT along with the originally presented medical documentation.
10. On 8/22/12, SHRT determined that Claimant was not a disabled individual (see Exhibits 118-119), in part, by determining that Claimant can perform her past relevant employment.
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 coverage and had not had any coverage since approximately 2005.
14. Claimant alleged that she is a disabled individual based on impairments and issues including: leg pain, depression, bone disease, migraine headaches, lower back pain (LBP), neck pain and knee 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 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 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 submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

A Social Summary (Exhibits 29-31; duplicated in Exhibits 45-47) dated [REDACTED] was presented. Claimant's form was completed by a Medicaid advocate. It was noted that Claimant alleged impairments of shortness of breath, back pain, arthritis, diabetes. It was noted that Claimant reported knee pain.

A Medical Social Questionnaire (Exhibits 32-35; duplicated in Exhibits 48-51) dated [REDACTED] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant's form was completed by a Medicaid advocate. Previous hospital encounters were noted from: 2004 for a hysterectomy, 2005 for an infection, 1/2011 for a urinary tract infection and 7/2011 for acute chest pain.

A document (Exhibit 15; duplicated by Exhibit 94) dated [REDACTED] was presented. The document noted that Claimant had a dry cough and lost her voice.

Hospital documents (Exhibits 16-19, 21-28; duplicated by Exhibits 95-106) were presented. It was noted that Claimant was admitted to a hospital on [REDACTED] for atypical

chest pain, general weakness and paresthesias of the face. It was noted that Claimant was discharged on [REDACTED]. It was noted that the lab work was reviewed and all were within normal limits. It was noted that myocardial infraction was ruled out. It was noted that a stress echocardiogram showed no significant abnormalities. Claimant's strength, speech and mood were noted as normal.

A Medical Examination Report (Exhibits 90-91) 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 diagnoses of: incontinence, knee pain, osteoarthritis and hypertension; two other items were listed but not legible. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

A Discharge Summary (Exhibits 92-93) was presented. It was noted that Claimant was admitted to a hospital on [REDACTED] and discharged on [REDACTED]. It was noted that Claimant reported left flank pain. A discharge diagnosis of acute diverticulitis was noted. It was noted that Claimant had significant history of GERD and nephrolithiasis. It was noted that Claimant had no restrictions on sexual activity, work lifting or driving.

An internal examination report (Exhibits 108-114) dated [REDACTED] was presented. It was noted that Claimant was taking Motrin for various pains, but stopped taking it because she could not afford it. It was noted that Claimant reported a back pain which radiated to her knees. It was noted that Claimant also reported hip pain and bilateral knee pain. It was noted that Claimant began feeling anxiety after her spouse died in the previous year. It was noted that Claimant suffered from migraine headaches for 30 years, and that she usually gets them once per week.

A physical examination noted normal range of the lumbar spine, strength of 5/5 in all extremities, mild tenderness in the lower back. A straight leg raising test was noted as mildly positive bilaterally. Claimant's right hip range of motion was noted as mildly decreased. Mild swelling and mild tenderness on palpitation was noted on both of Claimant's knees. It was opined that Claimant had arthritis. It was noted that Claimant could retain and follow simple instructions. An assessment of arthritis of the back, hips and knees was given. Anxiety and migraines were also noted in the assessment. The physician was given a list of 23 current abilities including: standing, sitting, bending, stopping, carrying, writing, climbing stairs, pushing, pulling and others. The physician found Claimant capable of performing all activities without noting any restrictions.

Hospital documents (Exhibits 115-117) dated [REDACTED] were presented. It was noted that Claimant reported chest pain, leg pain and back pain. It was noted that Claimant's neck was supple, non-tender; no cervical lymphadenopathy was noted. Lower extremities were noted as tender and without swelling.

Claimant completed an Activities of Daily Living (Exhibits 36-38 and 20; duplicated in Exhibits 52-55) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted difficulty sleeping due to pain. Claimant noted she cannot lift more than 10 pounds or stand for long on her feet. It was noted that Claimant prepares her own meals, but sometimes receives help. It was noted that Claimant performed various cleaning for 15-30 minutes at a time. It was noted that Claimant shops once or twice per month and she sometimes receives help. It was noted that Claimant used to exercise, but no longer does. It was noted that Claimant's friends and family visit her since her husband died. Claimant testified that she drives herself.

Claimant alleged anxiety and depression as a basis for disability. Claimant stated that she feels depressed and endures constant crying spells. Claimant estimated that she lost 42 pounds over a 1.5-2 year period. The presented documentation noted that Claimant lost her spouse within the previous year. The evidence was lacking in support of a finding any restrictions to Claimant's basic work activity performance based on anxiety or depression. No psychological treatment records were presented. There was no evidence that Claimant took medication for depression or anxiety. Though weight loss may be a symptom of depression, and the loss of a spouse is undoubtedly an event that could cause depression, those circumstances are insufficient to presume that Claimant has impairments to performing basic work activities. Based on the presented evidence, it is found that Claimant failed to establish a psychological impairment to performing basic work activities.

Claimant testified that she has bad days and good days. She estimated that she could lift no more than 10 pounds. Claimant estimated that she could stand for no more than 10 minutes on a good day and that she cannot get out of bed on a bad day.

Claimant's testimony that she could stand no longer than 10 minutes on a good day and lift no more than 10 pounds is strongly suggestive of significant impairments to the performance of basic work activities. Claimant's testimony was unsupported by the evidence. After Claimant was hospitalized for three days based on chest pain complaints in 7/2011, the discharge instructions specifically noted no restrictions to Claimant's lifting abilities. An examination as recent as 4/2012 similarly noted no restrictions to Claimant's standing ability. Claimant conceded that she does not use any walking assistance devices; an unusual circumstance for a person who can walk no longer than 10 minutes. Though there were multiple diagnoses of arthritis which is suggestive of some physical restrictions, the only specific references to restrictions in the medical documents were that Claimant had no restrictions.

Claimant's migraine headaches could conceivably restrict her from performing basic work activities. It was noted that Claimant had suffered the migraines for 30 years; it was not disputed that Claimant worked through the migraines for at least some of those

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years. Again, the medical evidence simply does not allow a finding that Claimant was significantly impaired from performing basic work activities.

Though step two is intended to apply a de minimus standard, the presented medical evidence failed to establish that Claimant has any significant restriction to performing basic work activities. Accordingly, it is found that DHS properly found that Claimant is not a disabled individual.

It should be noted that even if Claimant was found to have a significant impairment to performing basic work activities, it would have been subsequently found that Claimant was capable of performing her past relevant employment of a restaurant hostess after a finding that Claimant failed to meet SSA listings for depression, anxiety, spinal disorders and joint dysfunction. In such a circumstance, Claimant would have been found not disabled at step four of the disability analysis.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 9/15/11, including retroactive MA benefits from 6/2011, based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.


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

Date Signed: August 29, 2012

Date Mailed: August 29, 2012

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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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