

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201263026
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 14, 2012
County: Wayne DHS (18)

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 November 14, 2012, from Taylor, Michigan. Participants included the above-named claimant. [REDACTED]

[REDACTED] appeared as Claimant's authorized hearing representative. [REDACTED] testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) 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 1/3/12, Claimant applied for MA benefits, including retroactive MA benefits from 11/2011 (see Exhibit 147).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/9/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).
4. On 4/11/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 7/2/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 8/21/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 203), in part, by determining that Claimant does not have a significant limit to performing basic work activities.
7. On 11/14/12, an administrative hearing was held.
8. Following the hearing, Claimant presented new medical documents (Exhibits A1-A40).
9. The new medical documents were forwarded to SHRT.
10. On 4/8/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 203.28.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'4" and weight of 189 pounds.
12. Claimant is a tobacco smoker but has no known relevant history of alcohol or illegal substance abuse.
13. Claimant's highest education year completed was the 11th grade.
14. As of the date of the administrative hearing, Claimant had no medical coverage.
15. Claimant alleged that she is disabled based on impairments and issues including: diabetes, kidney stones, enlarged spleen, fibromyalgia, neuropathy, neck pain, sciatica pain and Addison's disease.

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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that the request noted that Claimant required special arrangements to participate in the administrative hearing. The request noted that an in-person hearing was requested. Claimant's request was granted.

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. 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 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 relevant submitted medical documentation.

Hospital records (Exhibits 109-140) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left lower quadrant pain. Radiology reports noted an unremarkable examination of the abdomen and chest. It was noted that radiology of Claimant's sacrum and coccyx was taken after Claimant slipped and fell in the hospital; the following radiology report noted no acute findings. It was noted that Claimant was discharged on [REDACTED]

Hospital records (Exhibits 71-108) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of back pain after rolling out of bed. It was noted that an MRI verified minimal L5-S1 disc bulge and mild facet degenerative changes without canal stenosis. It was also noted that there was mild encroachment of the right inferior L4-L5 neural foramen. It was noted that pain control was recommended. It was noted that Claimant had no weakness, sensory deficits or paralysis. A final diagnosis of lumbar pain was provided.

Hospital records (Exhibits 60-70) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left hip and back pain. It was noted that x-rays taken of Claimant's hip were negative for: fracture, degenerative joint disease, foreign bodies and lesions. Discharge instructions noted that Claimant could relieve pain with Motrin and stretching. A final diagnosis of piriformis syndrome was provided.

Hospital records (Exhibits 201-202) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of back pain and spasms. A diagnosis was not noted.

Hospital records (Exhibits 195-199) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of migraines. It was noted that Claimant was discharged after her condition improved.

Hospital records (Exhibits 43-59) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented while crying and with a mask over her eyes complaining of a radiating neck and head pain. Radiology from 3/2011 was cited and noted multiple disk herniations in the cervical and lumbar spine. It was also noted that Claimant's reported pain was likely muscular in nature. A physical examination noted reduced strength (4 out of 5) in elbow flex and finger flex. Final diagnoses of migraine headaches and neck pain were provided. It was noted that Claimant's smoking may be a contributor to Claimant's pain.

Hospital records (Exhibits 188-192) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of a left wrist injury. A radiology report noted that views of the left wrist revealed no abnormalities.

Hospital records (Exhibits 159-186) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with left side chest pain, back pain and shortness of breath. It was noted that an admission diagnosis of pneumonia was made. Radiology reports noted mild infiltrates. Further radiology reports noted only residual infiltrates on the left. It was noted that Claimant was discharged on 11/9/11.

Hospital records (Exhibits 154-157) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain and right arm abscesses. A history of MRSA was noted.

Hospital records (Exhibits 28-42) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left flank pain and blood in urine. Urinalysis results noted no abnormalities. A final diagnosis of renal colic was noted.

Hospital records (Exhibits 13-27) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with left-sided abdomen pain which Claimant believed to be from kidney stones. It was noted that images of the lower thorax were obtained; the findings were noted as unremarkable. It was noted that spleen, pancreas and adrenal glands were unremarkable. It was noted that no kidney stones were present. It was noted that calcifications were present throughout the pelvis, most likely due to vascular calcifications and phleboliths. A final diagnosis of left flank pain was provided. An impression was given that there was no evidence of obstruction. A generic final diagnosis of left flank pain was given.

Hospital records (Exhibits 149-152) from an encounter dated [REDACTED] were presented. It was noted that Claimant complained of abdomen pain. It was noted that Claimant was given pain medication and discharged.

Hospital records (Exhibits A35-A40) from an encounter from [REDACTED] were presented. It was noted that Claimant presented with complaints of low back pain, swelling and pain. A final diagnosis of an abscess (boil) was noted; a secondary diagnosis of lumbar pain was also noted.

Hospital records (Exhibits A11-A34) from an encounter from [REDACTED] were presented. It was noted that Claimant presented with complaints of swelling and pain. A primary discharge diagnosis of left axillary abscess was noted.

Hospital records (Exhibits A1-A10) from an admission from [REDACTED] were presented. It was noted that Claimant presented with a cough with green phlegm and left axillary pain. A diagnosis of acute bronchitis exacerbated by chronic cigarette smoking was noted.

Claimant alleged disability based on several problems including: diabetes, kidney stones, enlarged spleen, fibromyalgia, neuropathy, adhesions and Addison's disease. None of these problems were verified as restrictive to Claimant's potential performance of basic work activities.

Numerous medical records established that Claimant received substantial medical treatment in the prior two years through the emergency room. The majority of records did not involve impairments (e.g. kidney stones, an abscess and boil and pneumonia) that would likely adversely affect Claimant for a 12 month period. Verified diagnoses for cervical and lumbar pain were the exceptions.

Claimant stated that she is restricted in standing, walking and sitting because of lumbar and cervical pain. The specific degree of restrictions will be determined later. Cervical and lumbar spine abnormalities were verified. Based on a de minimus standard, it is reasonable to presume some degree of restrictions based on the spinal problems.

The verified cervical spine and lumbar problems are of a nature that they are unlikely to improve without medical treatment. Claimant's lack of insurance can justify a presumption that restrictions from cervical and lumbar spine will continue for 12 months or longer. It may also be presumed that the restrictions began at least since 11/2011.

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 since 11/2011. 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 back pain. Spinal disorders are covered by 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.

There was no verification of spinal arachnoiditis or stenosis. There was a potential for nerve root impingement based on radiology from 2011. However, the medical evidence did not establish any related sensory or reflex loss or motor loss. Accordingly, Claimant does not meet the above listing.

A listing for affective disorder (Listing 12.04) was considered based on Claimant's complaints of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

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 listed zero past relevant employment on a Medical- Social Questionnaire (Exhibits 11-12). Claimant testified that she worked two weeks in 2009 as a driver. Claimant also testified that she worked in newspaper ad sales. Neither of Claimant's past jobs appeared to involve SGA. Without past employment amounting to SGA, Claimant cannot be capable of returning to past relevant employment amounting to SGA. Accordingly, the disability 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).

For purposes of this decision, only an evaluation of sedentary employment will be considered. Claimant testified that she is limited to 30 minutes of sitting due to back pain. There was no direct evidence of restrictions noted by any of the treating physicians. It is possible that restrictions can be presumed based on the medical evidence.

Presented radiology noted mild facet degenerative changes and a minimal disc bulge in the neck. Other radiology verified mild encroachment of vertebrae in the lumbar. The diagnosis surely creates discomfort for Claimant. However, the evidence is not suggestive that Claimant cannot perform the sitting or ambulation required for sedentary employment. The usage of "mild" and "minimal" is suggestive of a limited adverse effect

to Claimant. Further, there is no evidence that Claimant made attempts to minimize her pain (e.g. exercise, stretching quitting smoking...). Based on the presented evidence, it is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (limited but capable of communicating in English), employment history (none), Medical-Vocational Rule 201.18 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly 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 properly denied Claimant's MA benefit application dated 1/3/12, including retroactive MA benefits from 11/2011, based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.



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

Date Signed: 5/2/2013

Date Mailed: 5/3/2013

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.

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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:

