

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201276278
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. [REDACTED] testified on behalf of Claimant. 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 2/13/12, Claimant applied for MA benefits (see Exhibits 17-18) including retroactive MA benefits (see Exhibits 15-16) back to 1/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 5/23/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 19-20).
4. On 6/18/12, 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 9/5/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 2).
6. On 1/2/13, an administrative hearing was held.
7. Following the hearing, Claimant presented new medical documents (Exhibits A1-A4).
8. The new medical documents were forwarded to SHRT.
9. On 4/14/13, SHRT determined that Claimant was not a disabled individual, in part, by application of an unspecified Medical-Vocational Rule.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'5 ½" and weight of 280 pounds.
11. Claimant has no known relevant history of alcohol or illegal substance abuse though she was a tobacco user until quitting in 11/2012.
12. Claimant's highest education year completed was the 12th grade.
13. As of the date of the administrative hearing, Claimant had no medical coverage but received some services through a hospital due to her low-income status.
14. Claimant alleged impairments and issues including: heart disease, agoraphobia, panic attacks and anxiety, diabetes, lower back pain and fatigue.

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. 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.

An Office Note (Exhibit 65) dated [REDACTED] was presented. It was noted that Claimant presented for diabetes treatment and had difficulty paying for medications. An assessment of diabetes, hypokalemia and leukosytosis was noted. Coronary artery disease was noted as stable.

An Office Note (Exhibits 38-39) dated [REDACTED] was presented. It was noted that Claimant was recently hospitalized due to facial swelling, sialolithiasis (stones in the salivary glands) and sialadenitis (salivary gland swelling). It was noted that Claimant reported ongoing face pain and swelling. An impression was given that Claimant’s condition has improved due to removal of the stone. It was also noted that Claimant had diabetes (type 2) which was not optimally controlled.

Treatment documents (Exhibits 59-64) from 9/2011 were presented. The documents noted Claimant’s ongoing pain complaints related to sialolithiasis. It as noted that Claimant had an infection in her gland and was treated with antibiotics. Various lab results (Exhibits 46-55) from 9/2011 and earlier were presented. The lab results were not considered because they did not include physician analysis.

Hospital office notes (Exhibits 56-57) dated [REDACTED] were presented. It was noted that Claimant presented with ongoing complaints of facial pain and swelling related to sialolithiasis. Imaging studies noted no significant abnormalities. It was noted that gland removal surgery was discussed with Claimant.

Hospital documents (Exhibits 43-45) were presented. The documents noted an admission on [REDACTED] after Claimant presented with complaints of chest pain. It was noted that two stents were placed. It was noted that Claimant’s ejection fraction was 45-50%. LV diastolic dysfunction was noted. It was noted that Claimant was treated with several medications prior to discharge on [REDACTED] in stable condition.

Health clinic documents (Exhibits 41-42) dated [REDACTED] were provided. It was noted that Claimant recently went to the emergency room with complaints of chest pain and was told that she was having a heart attack. It was noted that Claimant quit smoking. It was noted that Claimant needs to follow-up with a cardiologist.

A consultative psychiatric examination report (Exhibits 29-32; duplicated by 34-37) dated [REDACTED] was presented. It was noted that Claimant began feeling depression and

anxiety after her first heart attack in 2006. It was noted that she has a fear of dying, particularly in her sleep and that she has anxiety and panic attacks, particularly when stressed. It was noted that Claimant reported symptoms including: social isolation, disturbed memory and disturbed sleep. Axis I diagnoses were noted for major depressive disorder (recurrent in partial remission) and panic disorder (chronic with agoraphobia). Claimant's GAF was 60. Claimant's prognosis was fair. It was noted that Claimant was not able to manager her own funds.

A hospital office note (Exhibit A1) dated [REDACTED] was presented. It was noted that Claimant was a type 2 diabetic with right foot infection. A diagnosis of cellulitis was noted. It was noted that the cellulitis was resolved. It was noted that Claimant should get diabetic shoes, though it was noted that Claimant would have difficulty complying due to her finances.

A hospital office note (Exhibit A2) dated [REDACTED] was presented. It was noted that cellulitis was resolved though Claimant still had skin fissures.

Claimant established a history of cardiac, diabetic and emotional obstacles. At the time of hearing, Claimant saw a therapist weekly and a psychiatrist monthly, despite her lack of insurance. Treatment records were not presented but it was established by a consultative examiner that Claimant has difficulties with social functioning and concentration due to depression and/or anxiety. One noted example was that Claimant reported that she does not feel safe with anyone but family (see Exhibit 68). Claimant's concentration and social functioning problems are sufficient to meet the de minimus requirements of step two.

It was noted in the consultative examination report that Claimant's depression and anxiety began in 2006 while worsening in 1/2012, following a heart attack. Claimant credibly testified that her depression and anxiety continue to adversely affect her concentration and social functioning. It is found that Claimant's impairments lasted 12 months or longer.

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 anxiety. Listing 12.06 covers anxiety-related disorders and reads:

12.06 Anxiety-related disorders: In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Autonomic hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inability to function independently outside the area of one's home.

The analysis will begin with Part B of the above listing. The record was devoid of any psychiatric treatment records. Claimant conceded an absence of psychiatric hospitalizations in her history. A consultative examiner verified a probability of concentration and social difficulties, however, the evidence failed to establish marked restrictions. A general distrust of strangers and reliance on family members are not marked restrictions. There is testimony to suggest difficulties for Claimant outside of her home, but her difficulties are less than "a complete inability". Based on the presented evidence, Claimant does not meet the listing for anxiety disorders.

A listing for affective disorders (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. Some consideration was given that Claimant requires a highly supportive living arrangement based on Claimant's testimony that she requires the support system of her family to leave the house. Claimant's GAF was 60 which is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Moderate functioning problems are not deemed to amount to a requirement of a highly supportive living arrangement. It was also not established that Claimant 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.

A listing for chronic skin disorders (Listing 8.04) was considered based on evidence of a foot infection. This listing was rejected due to a failure to establish lesions persisting for three months despite prescribed treatment.

A listing for heart disease (Listings 4.00) was considered based on treatment for CAD. These listings were rejected due to an absence of evidence of: stress testing, repeated episodes of heart failure and cardiac testing during periods of stability.

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 had a lengthy and steady history of employment as a help desk supervisor. Claimant testified that her duties included attending meetings and supervising employees. Claimant testified that she had to walk two to three miles per day. Claimant testified that she can no longer handle the stress or walking required of her previous employment. Based on the medical evidence, Claimant's testimony was reasonable. It is found that Claimant is not capable of performing past 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).

An analysis of Claimant's exertional capabilities will begin with an evaluation of sedentary employment. Claimant conceded that she has no sitting restrictions. There was no evidence of recent treatments for Claimant's heart and nothing to indicate that Claimant could not perform the limited standing and lifting required for sedentary employment. It is found that Claimant may perform sedentary employment.

Claimant testified that her anxieties and depression would preclude performance of most or all types of employment. Claimant testified that she has difficulty sleeping and has anxiety when around people. Claimant testified that six months prior, she often had to be unexpectedly picked-up because she could not continue driving due to anxiety. Claimant also testified that she usually needs a friend or family member to go with her whenever she leaves the house.

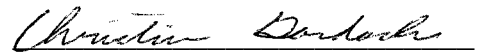
Claimant's lengthy employment history justifies some deference to Claimant's testimony, however, restrictions must be primarily based on medical evidence. The most persuasive medical evidence of psychological restrictions was Claimant's GAF of 60. A GAF of 60 is at the high-functioning end of moderate restrictions. This would not preclude Claimant from performing many levels of employment, even sedentary employment. It is found that Claimant's psychological restrictions may restrict potential sedentary employment, but not so significantly to prevent the performance of most types of sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual), education (high school graduate), employment history (unskilled), Medical-Vocational Rule 201.27 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 2/13/12, including retroactive MA benefits from 1/2012, 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: 4/26/2013

Date Mailed: 4/26/2013

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:

