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

IN THE MATTER OF:

[redacted]

Reg. No.: 20131034
Issue No.: 2009
Case No.: [redacted]
Hearing Date: February 27, 2013
County: Macomb DHS (20)

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 February 27, 2013, from Warren, Michigan. Participants included the above-named claimant. 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 6/26/12, Claimant applied for MA benefits.

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

3. On 9/12/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

4. On 9/17/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 9/26/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 11/13/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 28), in part, by determining that Claimant does not have a significant impairment that limits basic work activity performance.

7. On 2/27/13, an administrative hearing was held.

8. At the hearing, Claimant presented new medical records (Exhibits 29-47).

9. The new medical documents were forwarded to SHRT.

10. On 5/13/13 SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform her past relevant work.

11. As of the date of the administrative hearing, Claimant was a [redacted] year old female with a height of 5'7'' and weight of 192 pounds.

12. Claimant has no known relevant history of alcohol or illegal substance abuse.

13. Claimant's highest education year completed was the 12th grade and she has certification in medical billing.

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: fatigue, back pain and muscle stiffness.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id*. Families with dependent children, caretaker relatives of dependent children, persons

under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id*. AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id*. at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id*. at 9.

Significant duties are duties used to do a job or run a business. *Id*. They must also have a degree of economic value. *Id*. The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id*.

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2011 monthly income limit considered SGA for non-blind individuals is $1,000. The 2012 income limit is $1010/month.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Claimant testified that she performed volunteer work for 10 hours per week in the hopes of returning to work. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id*.

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step

two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

A Medical-Social Questionnaire (Exhibits 9-11) dated 7/5/12 was presented. No previous hospitalizations were noted.

Chiropractor documents (Exhibits 19-22; duplicated by 23-26) dated [redacted] were presented. It was noted that Claimant presented with complaints of lower back pain with leg tingling, neck pain and bilateral arm pain. Claimant described the pain as 10/10. It was noted that Claimant's spine was in need of adjustment.

A Medical Examination Report (Exhibits 17-18) dated [redacted] was completed by Claimant's chiropractor. It was noted that the chiropractor first and last treated Claimant on [redacted] The chiropractor provided diagnoses of neck pain, low back pain and body tingling. An impression was given that Claimant's lumbar condition was stable while other areas were improving. It was noted that Claimant can meet household needs. It was noted that x-rays revealed degenerative disc disease with spondylosis in the cervical, thoracic and lumbar spine.

Hospital discharge instructions (Exhibits 31-35) dated [redacted] were presented. The documents were generic instructions for stress reaction and cirrhosis. It was also noted that Claimant was to call a specific physician for an appointment and to not drive or operate machinery while taking a prescribed medication. An attached prescription for valium was presented.

An MRI Report (Exhibits 37-38) of Claimant's lumbar spine dated [redacted] was presented. An impression of minimal to mild degenerative changes at L1-L2, L4-L5 and L5-S1 was noted. A mild diffuse disc bulge was noted at L4-L5. A minimal disc bulge was noted at L5-S1. It was noted that there was minimal to mild multilevel facet arthrosis. It was noted there was no significant spinal canal or neural foraminal stenosis.

A treating physician letter (Exhibit 3) dated [redacted] was presented. The two sentence letter stated that Claimant has significant back pain, needs to be off of work and requires further treatment and evaluation.

Various documents (Exhibits 39-41) from a neurologist were presented. A prescription (see Exhibit 40) for Naproxen dated [redacted] was presented. A referral for a neurology consult dated [redacted] was also presented.

Claimant presented copies of several prescriptions from 7/2012. The medications included: Cephalexin, Naproxen, Cyclobenzaprine, Ibuprofen and Methylprenisolone.

A Medical Examination Report (Exhibits 4-5) dated [redacted] was completed by a consultative examining physician. The date noted as Claimant's first examination date was illegible, though it was legibly written that the date was in 2012. It was noted that the physician last examined Claimant on [redacted]. The physician provided diagnoses of: chronic pain, depression, back pain, insomnia, headaches and pelvic swelling. An impression was given that Claimant's condition was stable. It was noted that Claimant could stand and/or walk six hours in an 8-hour day. It was noted that Claimant could sit 6 hours in an 8-hour workday. It was noted that Claimant could occasionally lift up to 20 pounds. It was noted that Claimant was capable of repetitive arm and leg maneuvers. No mental limitations were noted.

An undated letter (Exhibit 29) from Claimant's chiropractor was presented. It was noted that Claimant presented with complaints of back pain. It was noted that stress was a contributing factor to the pain. It was noted that lower back pain was increased if sitting longer than 30 minutes and standing without movement. A second undated letter (Exhibit 30) from the chiropractor noted that Claimant was treated 31 times over the period of [redacted].

Claimant testified that she did not want to have a disability hearing. Claimant does not consider herself to be disabled. Claimant also testified that she does not want disability benefits from the Social Security Administration. Claimant also testified that she has ongoing back pain and muscle fatigue despite substantial chiropractor adjustments. Claimant hoped to be eligible for Medicaid so that she could continue receiving back treatments and for reimbursement of past medical expenses. Though Claimant's request was sincere and sensible, her request is not one that may be considered. The only way for Claimant to be eligible for Medicaid is based on a finding of disability.

Claimant has not been hospitalized for any of her symptoms. One emergency room visit was verified. Claimant testified that she was given a prescription for pain and quickly sent on her way. This tends to support a finding that Claimant has any impairment to performing basic work activities.

The medical evidence established that Claimant suffered immense back pain in 6/2012 and 7/2012. Claimant managed to receive treatment for the pain. Claimant concedes that her pain significantly decreased following chiropractic treatments. Claimant's health improvement, also acknowledged by her chiropractor, tends to support a finding of non-disability.

Claimant still complains of muscle stiffness and fatigue but there is little medical support of the problem. Claimant testified that she sought treatment from a neurologist but was unable to afford testing for a thorough examination.

Claimant's testimony was very sincere. Claimant is believed to be a hard working person with some physical problems, most of which improved after chiropractor treatment. The presented medical records do not support a 12 month impairment which significantly restricts Claimant's ability to perform basic work activities. It is found that Claimant is not disabled. Accordingly, the MA benefit application denial was proper.

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 6/26/12 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: 5/23/2013

Date Mailed: 5/23/2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639

Lansing, Michigan 48909-07322

CG/hw

cc: [redacted]