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

IN THE MATTER OF:

Reg. No.:	201321868
Issue No.:	2009
Case No.:	
Hearing Date:	April 18, 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 April 18, 2013, from Inkster, Michigan. Participants included the above-named claimant. testified on behalf of Claimant. appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included Mohamad Elhajj, 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 9/12/12, Claimant applied for MA benefits, including retroactive MA benefits from 8/2012.

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

3. On 12/4/12 the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).

4. On 12/11/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 1/10/13, Claimant requested a hearing (see Exhibit 2) disputing the denial of MA benefits.

6. On 2/20/13, SHRT determined that Claimant was not a disabled individual (see Exhibit 114), in part, by application of Medical-Vocational Rule 202.17.

7. On 4/18/13, an administrative hearing was held.

8. On 4/24/13, an Interim Order Extending the Record was issued ordering Claimant to present new medical documents within 30 days.

9. By 5/27/13, Claimant failed to submit new medical records.

10. As of the date of the administrative hearing, Claimant was a ██ year old female with a height of 5'2'' and weight of 151 pounds.

11. Claimant is a tobacco smoker and has a history of alcohol abuse.

12. Claimant's highest education year completed was the 8th grade.

13. As of the date of the administrative hearing, Claimant had a hospital-issued ongoing health insurance.

14. Claimant alleged impairments and issues including dizziness, seizures and high blood pressure.

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.

Claimant testified that she was employed at the time of her hospitalization. Claimant stated that she sorted engine parts. Claimant testified that she held the job for three weeks. There is no evidence that Claimant's income from 8/2012 amounted to SGA income amounts. Based on the presented evidence, it is found that Claimant has not performed SGA since the time MA was requested and the analysis may proceed to step two for a disability analysis of all potential benefit months, including 8/2012.

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.

Hospital documents (Exhibits 13-106) related to an admission, dated [redacted], were presented. It was noted that Claimant was taken to the hospital after collapsing that morning. It was also noted that Claimant suffered seizures that morning. It was noted that Claimant was an alcoholic and that Claimant’s mother reported that Claimant was drinking more than a case of beer per day and not eating in the week prior to her admission (though Claimant testified that her mother was not around to report accurately concerning how much Claimant ate or drank). It was also noted that Claimant smoked two joints on the day of her admission. It was noted that alcohol withdrawal was the likely cause of seizures. It was noted that Claimant’s ejection fraction was 25%, most likely due to chronic alcohol abuse. It was noted that Claimant was discharged on [redacted] with principal diagnoses of alcohol abuse and seizures, likely from alcohol withdrawal.

The medical records established that Claimant’s seizures were attributed to alcohol withdrawal, a cause that does not support a basis for disability. It was also noted that Claimant had no more seizures while hospitalized. Claimant’s testimony conceded that she has not had a seizure since the 8/2012 hospitalization. Hospital documents recommended that Claimant continue taking Keppra as followed. Presumably, the medication, and Claimant’s reported lack of binge drinking resulted in a stoppage of seizures. Based on the presented evidence, it is found that Claimant has no significant impairments to performing basic work activities related to seizures.

Claimant also alleged impairments related to cardiac problems. It was established that Claimant’s ejection fraction was life threateningly low upon the 8/2012 hospitalization. Cardiac treatment records since the hospitalization were not provided. Thus, it is unverified whether Claimant’s condition has since improved or regressed.

It is notable that discharge documents noted that cardiomyopathy was a secondary diagnosis, not primary. This tends to indicate that Claimant’s alcohol abuse, not a chronic heart defect, was the cause of the low EF; in other words, Claimant’s physical problems appeared to be temporary, not ongoing.

Claimant testified that her treating cardiologist advised Claimant that her heart problems were significantly reduced. Though Claimant’s testimony could have been perceived as a concession of a lack of impairments, it is plausible that Claimant’s testimony was overly optimistic. Claimant was given an opportunity to submit cardiologist treatment

records following the hearing. Claimant failed to submit any treatment records. Claimant's failure to submit records supporting a basis for disability is supportive in finding that Claimant does not have significant impairments to performing basic work activities, even based on a de minimus standard.

Based on the presented evidence, Claimant did not establish an ongoing cardiac-related impairment for a 12 month period. Accordingly, Claimant is not a disabled individual and the denial of Claimant's MA benefit application based on disability 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 9/12/12, including retroactive MA from 8/2012, 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: 6/24/2013

Date Mailed: 6/24/2013

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: