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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013285
Issue No.: 2009
Case No.: [redacted]
Hearing Date: March 11, 2013
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 March 11, 2013, from Taylor, Michigan. Participants included the above-named claimant. [redacted] testified and appeared as Claimant's authorized hearing representative. 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 7/26/12 and 8/30/12, Claimant applied for MA benefits, including retroactive MA benefits from 5/2012 (see Exhibits 86-87).

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

3. On 8/28/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).

4. On 9/17/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 2-3; 98-99) informing Claimant of the denial.

5. On 9/19/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 11/2/12, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant's condition was expected to improve within 12 months.

7. On 3/11/13, an administrative hearing was held.

8. During and/or following the hearing, Claimant presented new medical documents (Exhibits A1-A113).

9. The new medical documents were forwarded to SHRT.

10. On 5/25/13, SHRT determined that Claimant was a disabled individual, effective 2/2013, but not a disabled individual, prior to 2/2013, in part, by application of Medical-Vocational Rule 201.12.

11. As of the date of the administrative hearing, Claimant was a [redacted] year old female with a height of 5'6'' and weight of 260 pounds.

12. Claimant has no known relevant history of alcohol, tobacco or drug abuse.

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

14. As of the date of the administrative hearing, Claimant had no medical coverage but her mother paid for some out-of pocket expenses.

15. Claimant alleged disability based on impairments and issues including: leg numbness, coronary artery disease, back pain, depression and left foot plantar fasciitis.

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 2012 income limit is $1010/month.

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 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. The below analysis is divided between psychological-related and physical-related impairments.

A Comprehensive Assessment (Exhibits 46-61) dated [redacted] was presented. It was noted that Claimant reported a history of depression, particularly since a relationship break up from 2005. Claimant reported regular mood swings. It was noted that Claimant reported having difficulty being her mother's caretaker because of Claimant's own back pain. An Axis I diagnosis of severe depressive disorder was provided. Claimant's GAF was 55.

A Psychiatric Evaluation (Exhibits 39-44) dated [redacted] was presented. It was noted that Claimant underwent several losses in the past few years (relationship, dog, house, sister and father). It was noted that Claimant reported a lost interest in activities, helplessness and hopelessness, mood swings and a lack of motivation. Claimant's GAF was 60. Claimant's prognosis was fair to poor, depending on treatment compliance. It was noted that Claimant took Zoloft and Wellbutrin which helped greatly.

A Person-Centered Plan (Exhibits 31-37) dated [redacted] was presented. It was noted that Claimant set a goal to make it through a day without crying.

Psychiatric progress notes (Exhibits 28-30) dated [redacted] were presented. It was noted that Claimant's GAF was 60.

Psychiatric progress notes (Exhibits 21-27) from 2/2012 were presented. It was noted that Claimant continued to take medication and attend therapy.

Psychiatric progress notes (Exhibits 19-20) dated [redacted] were presented. It was noted that Claimant lost 30 pounds from dieting.

A Psychiatric/Psychological Examination Report (Exhibits 15-16) dated [redacted] was presented. The report was completed by Claimant's treating therapist and signed-off by a supervising physician. It was noted that the report was based on a single examination. It was noted that Claimant reported crying spells, hopelessness, helplessness, anxiety attacks, mood swings, and sleeping difficulties. It was noted that Claimant was currently

unable to work independently or with others due to her mental and physical conditions. An Axis I diagnosis of major depressive order was given. Claimant's GAF was 60.

A Mental Residual Functional Capacity Assessment (Exhibits 17-18) dated [redacted] was completed by Claimant's treating physician. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. It was noted that Claimant was moderately limited in 11 of 20 abilities and not significantly limited in the remaining 9 of 20. Claimant was not markedly limited in any of the listed abilities.

Psychological progress notes (Exhibits A55-A58) dated [redacted] from Claimant's treating facility were presented. It was noted that Claimant showed increased depression despite compliance with therapy and medications.

Psychological progress notes (Exhibits A51-A54) dated [redacted] from Claimant's treating facility were presented. It was noted that Claimant showed increased depression despite compliance with therapy and medications.

A Comprehensive Assessment (Exhibits A36-A49) dated [redacted] from Claimant's treating facility were presented. It was noted that Claimant wants to continue with services, though she still suffers anxiety and depression. Claimant's GAF was 56.

Progress notes (Exhibit 62; A65) dated [redacted] were presented. It was noted that Claimant complained of back pain radiating into her right leg. It was noted that Claimant reported the pain prevented her from walking and that she has to rest on her back for 20 minutes per hour to alleviate the pain. It was noted that therapy and myofascial injections were not helpful. An assessment of lumbosacral neuritis radiculopathy and spondylolisthesis were given. It was noted that an MRI showed large disk herniation at L2-L3, neuroforaminal stenosis and nerve root compression. Severe disc space narrowing and endplate osteophyte formation were also noted.

Hospital documents (Exhibits 77-85; A59-A64) from an admission dated [redacted] were presented. The documents appeared incomplete but appeared to be related to cardiac problems. It was noted that Claimant had high blood pressure and non-obstructive coronary artery disease. It was noted that claimant was discharged on [redacted] in improved condition.

A Discharge Summary (Exhibit 76) from an admission dated [redacted] was presented. It was noted that Claimant underwent an anterior cervical discectomy and fusion on C6-C7 to address cervical stenosis. A cervical spine MRIU report (Exhibit 65) dated [redacted] was presented; it was noted there was disc protrusion at C6-C7 with mild-moderate stenosis. The cervical cord was noted as mildly effaced by disc protrusion. A cervical spine radiology report (Exhibit 70) dated [redacted] was presented; it was noted that fusion hardware was installed at C6-C7.It was noted that Claimant was discharged on [redacted].

A lumbar MRI report (Exhibits 66-67) dated [redacted] was presented. It was noted there were degenerative changes at L2-L3 resulting in moderate stenosis with mild stenosius at L3-L4. It was noted there was disc desiccation from L2-L3 through L4-L5. Facet hypertrophy and ligamentum flavum hypertrophy were noted at L2-L3. Similar notes were made on an MRI report (Exhibit 74) dated [redacted].

Surgery follow-up documents (Exhibits 63-64;73; A66-A67) were presented. It was noted on [redacted] that Claimant was feeling reasonable and that her pain would improve over time. Similar notes were made on [redacted].

Hospital documents (Exhibits A3-A35) from an admission dated [redacted] were presented. It was noted that Claimant complained of unrelenting lower back pain. It was noted that Claimant was confined to bed rest because the pain was so debilitating. It was noted that Claimant recently lost bowel control at one point, presumably noted because of the relationship to spinal dysfunction incontinence was also noted. Pre-operative and post-operative diagnoses were L2-L3 disc collapse and lumbar spondylosis with left radiculopathy. It was noted that an L2-L3 fusion were performed. It was noted that Claimant was discharged on [redacted].

Progress notes (Exhibits A1-A3) dated [redacted] were presented. It was noted that Claimant was slowly improving, though she complained of ongoing back pain. An assessment was given that Claimant was to continue taking pain medications and that she would improve.

Claimant's AHR presented additional documents (A69-A113). The documents were all duplicates of previously submitted documents.

In the present case, SHRT approved Claimant for Medicaid beginning 2/2013. Thus, a determination of Medicaid need only be made for the period of 5/2012-1/2013.

As of 5/2012, medical records verified that Claimant had severe lumbar and cervical pain. Presented radiology reports verified a basis for the pain as moderate stenosis, particularly at C6-C7 and L2-L3. As it happened, the pain became so severe that fusion surgery was performed in the cervical and lumbar spine. The neck and lower back pain is sufficient to presume restrictions in ambulation, bending and concentration (due to pain).

Claimant's lumbar back pain was verified as existing in 6/2012 and can be presumed to have existed in 5/2012. The records showed that Claimant attempted conservative treatments (e.g. exercise and meds), but to no avail. The pain continued, at least, until 2/2013 when fusion surgery was performed. It can be presumed that Claimant's ability to perform basic work activities was restricted for at least 12 months, starting from 5/2012.

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 spinal dysfunction. 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.

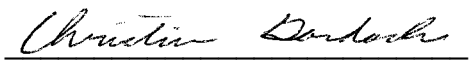
Medical records established the existence of back impairments for Claimant in 2/2012. Radiology documents specifically noted nerve root compression and stenosis. Medical documentation noted Claimant's inability to ambulate effectively due to Claimant having to spend one third of every hour on her back due to the pain. Claimant's reporting is likely not exaggerated as multiple spinal fusions were performed in the following year. Claimant's reporting of radiating pain down her leg is consistent with pseudoclaudication. Losing control of bladder and bowel function is also strongly supporting of pain and restrictions causing ambulation to be ineffective. The presented evidence justifies a finding that Claimant's lumbar pain meets the listing for spinal disorders rendering Claimant to be a disabled individual. Accordingly, DHS erred in denying Claimant's MA benefit application on the basis that Claimant was not a disabled individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

(1) reinstate Claimant's MA benefit application dated 7/26/12, including retroactive MA benefits back to 5/2012;
(2) evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.



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

Date Signed: 6/21/2013

Date Mailed: 6/21/2013

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]