

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20135708
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 7, 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 February 7, 2013, from Taylor, 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], 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 5/25/12, Claimant applied for MA benefits (see Exhibits 13-15).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 7/13/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 16-17).
4. On 7/17/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 3-4) informing Claimant of the denial.

5. On 10/10/12, Claimant requested a hearing (see Exhibit 2) disputing the denial of MA benefits.
6. On 12/14/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 291-292), in part, by application of Medical-Vocational Rule 202.21.
7. On 2/7/13, an administrative hearing was held.
8. At the hearing, Claimant presented new medical documents (Exhibits A1-A4).
9. The new medical documents were forwarded to SHRT.
10. On 4/9/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'3" and weight of 125 pounds.
12. Claimant has no known relevant history of alcohol, tobacco or illegal substance abuse.
13. Claimant's highest education year completed was the 12th grade.
14. As of the date of the administrative hearing, Claimant was covered by health insurance from her mother, since 1/2013.
15. Claimant alleged that she is disabled based on impairments and issues including: stroke related restrictions, gastroparesis, Parkinson's Disease, neuropathy, diabetes and renal complications.

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 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 documents (Exhibits 26-33) from an admission dated [REDACTED] were presented. It was noted that Claimant was brought to the hospital by her parents after Claimant acted confused. It was noted that Claimant was discharged on [REDACTED]. Nine discharge diagnoses were noted with the primary diagnosis being acute encephalopathy with altered mental status and acute hyperglycemia.

Hospital documents (Exhibits 172-220) from an admission dated [REDACTED] were presented. It was noted that Claimant was brought to the hospital after she was found unconscious. It was noted that Claimant was discharged on [REDACTED]. An assessment of severe hypoglycemia was noted.

Hospital documents (Exhibits 139-171) from an admission dated [REDACTED] were presented. It was noted that Claimant was brought to the hospital by EMS in an unresponsive state with low blood sugar. It was noted that Claimant's blood sugar and heart were monitored. It was noted that Claimant was discharged on [REDACTED]. An impression of severe hypoglycemia was noted.

Hospital documents (Exhibits 121-138) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of low blood sugar and decreased mental status. A radiology report of Claimant's chest noted no abnormalities. It was noted that Claimant was discharged after labs were taken. An assessment of hypoglycemia was noted.

A hospital document (Exhibits 120) from an encounter dated [REDACTED] was presented. It was noted that Claimant presented with a complaint of high blood sugar.

Hospital documents (Exhibits 92-119) from an encounter dated 1 [REDACTED] were presented. It was noted that Claimant presented with complaints of low blood sugar and

a confused mental status after driving on the wrong side of the street. Radiology and cardiac testing were noted as normal. The following assessment was noted: severe hypoglycemia, diabetic gastroparesis and chronic kidney disease (Stage III).

A letter (Exhibits 231-232) from Claimant's treating physician concerning a neurological consultation dated [REDACTED] 1 was presented. It was noted that Claimant had a stroke in 2010 which was followed by a triple bypass. It was noted that Claimant complained of nerve pain in her legs following the surgery. An impression of peripheral sensory neuropathy was noted.

A letter (Exhibits 225-226) from Claimant's treating physician for a date of service from [REDACTED] was presented. It was noted that Claimant underwent an ankle nerve block and that she tolerated the procedure well.

A letter (Exhibits 223-224) from Claimant's treating physician for a date of service from [REDACTED] was presented. It was noted that Claimant underwent an ankle nerve block and that she tolerated the procedure well.

A letter (Exhibits 229-230) from Claimant's treating physician for a date of service from [REDACTED] was presented. It was noted that Claimant underwent an ankle nerve block and that she tolerated the procedure well.

Hospital documents (Exhibits 34-61) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdomen pain, chest pain, nausea and vomiting. It was noted that the nausea and vomiting was due to renal insufficiency. An assessment of gastroparesis was noted. It was noted that Claimant was given meds and hydration and discharged in improved condition.

Hospital documents (Exhibits 62-83) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with her family following erratic behavior by Claimant. Noted examples included: attacking her stepfather, grabbing the steering wheel while her spouse was driving and pulling a knife on her spouse. It was noted that Claimant was tearful and depressed. It was noted that x-rays were taken of Claimant's chest after Claimant reported chest pain; corresponding radiology reports noted that the views showed normal activity. Discharge information was not presented.

Hospital documents (Exhibits 236-257) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of depression and suicidal ideation. It was noted that Claimant told her mother and step-father that she wanted to end her life. It was noted that Claimant stated that she was mad when she mentioned suicide and did not mean it. An Axis I diagnosis of bipolar disorder was noted. A GAF of 30 was noted. It was also noted that Claimant was treated for hypoglycemia.

Hospital documents (Exhibits 258-285) from an admission dated [REDACTED] were presented. It was noted that Claimant presented after falling and losing consciousness. It was noted that Claimant reported shoulder pain after regaining consciousness. An

impression of no cholelithiasis and no cholecystitis was noted. It was noted that Claimant could have Parkinson's Disease. It was noted that Claimant was discharged on [REDACTED]. Discharge diagnoses included: subarachnoid hemorrhage with aftercare for healing traumatic fracture of bone, convulsions, diabetes with neurological manifestations, bipolar disorder and others. Discharge instructions noted appointments with a: neurosurgeon, internist, endocrinologist, neurologist and gastroenterologist. Discharge instructions also included Claimant to take 16 medications.

Clinic documents (Exhibits A2-A4) dated [REDACTED] were presented. It was noted that Claimant reported right hand and right leg tremors which were getting progressively worse. It was noted that Claimant reported falling regularly, approximately two times per month. An assessment of Parkinsonism was noted.

A Medical Needs (Exhibit A1) dated [REDACTED] from a treating physician was presented. It was noted that Claimant was last seen 10/31/122. A diagnosis of Parkinson's Disease was noted. It was noted that Claimant cannot work at any job for an indefinite period and that she will require treatment for the rest of her life. It was noted that Claimant requires assistance with each of the following: eating, bathing, grooming, dressing, taking medications, meal preparation, shopping, laundry and housework.

The medical records established a slew of problems for Claimant. Established diagnoses included: Parkinson's disease, neuropathy, diabetes, hypoglycemia and bipolar disorder. It was established that Claimant suffers right-sided tremors which contribute to regular falling. The recent hospitalization for a broken clavicle was persuasive evidence establishing the history. The tremors causing Claimant to fall would impair Claimant's walking, standing, lifting and dexterity abilities. Claimant established impairments to performing basic work activities.

Claimant was not diagnosed with Parkinson's disease until 11/2012. Medical records established multiple physical and psychological problems requiring hospital intervention prior to and after 5/2012. Based on the presented evidence, it is reasonable to presume a potential for disability dating back to 5/2012.

Claimant's physician noted that Claimant is indefinitely incapable of working and will require medical treatment for the rest of her life. The medical evidence established that Claimant meets the durational requirements for disability.

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 Parkinson's Disease. The disease is covered by Listing 11.06 which finds disability if the following is established:

11.06 *Parkinsonian syndrome* with the following signs: Significant rigidity, bradykinesia, or tremor in two extremities, which, singly or in combination, result in sustained disturbance of gross and dexterous movements, or gait and station.

The evidence established that Claimant suffers tremors in two extremities, her right arm and right leg. The evidence established that Claimant suffers regular falls, and significant disturbance in her dexterity. A fall causing a broken clavicle was verified. The disturbance in dexterity was verified by a treating physician who noted that Claimant requires assistance in performing multiple household activities. Based on the presented evidence, it is found that Claimant meets the listing for 11.06 and is a disabled individual. Accordingly, the MA application denial was improper.

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 5/25/12;
- (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: 5/3/2013

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.

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:

