

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-21969
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: Oakland DHS (04)

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 May 8, 2013, from Pontiac, Michigan. Participants included the above-named claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). 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 8/3/12, Claimant applied for MA benefits, including retroactive MA benefits from 6/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/11/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-7).
4. On 10/16/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 1-5) informing Claimant of the denial.
5. On 1/4/13, Claimant requested a hearing disputing the denial of MA benefits.

6. On 2/28/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.
7. On 5/8/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-11) after the hearing.
9. On 5/30/13, the new medical documents were forwarded to SHRT.
10. On 7/26/13, SHRT determined that Claimant was not disabled, 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 [REDACTED] with a height of 5'0" and weight of 110 pounds.
12. Claimant has a relevant history of substance abuse.
13. Claimant's highest education year completed was the [REDACTED] [REDACTED].
14. As of the date of the administrative hearing, Claimant had no medical coverage.
15. Claimant alleged disability based on impairments and issues including: sciatic pain, left-side numbness, bipolar disorder, post-traumatic stress disorder (PTSD) and seizures.

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 Claimant required special arrangements to participate in the administrative hearing; specifically, an in-person hearing was requested. The hearing was conducted in accordance with Claimant's request.

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 (10/2010), p. 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:

- 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).

BEM 260 (7/2012) pp. 1-2.

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 (7/2012), p. 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 \$ [REDACTED]/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.

A [REDACTED] (Exhibit 62) dated 6/ [REDACTED] /08 of Claimant's lumbar was presented. An impression of Grade I anterolisthesis of L5-S1 was noted. Moderate neural foraminal narrowing was also noted at L5-S1.

Various treatment documents (Exhibits 65-69) were presented. The documents were dated from 2009 and prior. It was noted that Claimant had a left knee replacement and complained of back pain.

[REDACTED] (Exhibits 21-27) dated 1/2010 were presented. It was noted that Claimant sought treatment for several reported disorders. It was noted that a nurse practitioner diagnosed Claimant with bipolar disorder, PTSD and polysubstance abuse. Claimant's GAF was noted as 49.

[REDACTED] (Exhibits 32-61) dated [REDACTED] were presented. It was noted that Claimant complained of abdomen pain and vomiting. It was noted that Claimant felt bad after receiving IV fluids and medications. A discharge diagnosis of gastroenteritis and abdominal pain was noted.

A [REDACTED] examination (Exhibits 29-31) dated 9/11/12 was presented. An assessment was provided of chronic back pain, chronic left knee pain and history of PTSD. It was noted that Claimant wanted to work and was looking for a sit-down job.

A [REDACTED] examination report (Exhibits A1-A11) dated 5/14/13 was presented. Axis I diagnoses of cocaine dependence and Percocet dependence were noted. Claimant's GAF was noted as 60-65.

The presented evidence established that Claimant was treated in the past for knee and lumbar pain. The only internal medicine documentation presented since 2010 was a one day hospital encounter for vomiting. Claimant's most recent medical documentation verifying back and/or knee problems were from 2009. A consultative examiner gave an impression of back or knee pain but no restrictions were noted. Based on the presented evidence, Claimant failed to verify any exertional restrictions to performing basic work activities.

Claimant alleged multiple psychological problems. Claimant failed to present any treatment records concerning her psychology. The only medical evidence of psychological restrictions came from a consultative examiner who noted a personality disorder but also drug abuse. Again, no restrictions were noted.

Based on the presented evidence, Claimant failed to establish any significant restrictions to performing basic work activities. Accordingly, the denial of Claimant's MA application is found to be proper.

It should be noted that if the consultative examiner's impressions justified a finding that Claimant has basic activity work restrictions, Claimant would have been found to not meet a SSA listing and capable of performing sedentary employment at step five of the disability analysis.

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 8/3/12, including retroactive MA benefits from 6/2012, based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.

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

Date Signed: 8/30/13

Date Mailed: 8/30/13

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/tb

cc:

