

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-30533
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 12, 2013
County: Wayne DHS (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on June 12, 2013, from Taylor, Michigan. Participants included the above-named Claimant. [REDACTED] appeared and testified as Claimant's authorized hearing representative. [REDACTED] testified on behalf of Claimant. Participants on behalf of the 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 [REDACTED]/12 Claimant applied for MA benefits (see Exhibits 7-30), including retroactive MA benefits from [REDACTED]/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED] 12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 35-36).

4. On [REDACTED]/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibit 33) informing Claimant of the denial.
5. On [REDACTED] 13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 2).
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.
7. On [REDACTED] 13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A48) at the hearing.
9. On [REDACTED]/13, an Interim Order Extending the Records was mailed to Claimant giving Claimant 60 days from the date of hearing to submit various psychological records.
10. On [REDACTED]/13, Claimant submitted various medical records (Exhibits B1-B10, C1-C10 and D1-D2).
11. On [REDACTED]/13, the hearing packet was forwarded to SHRT.
12. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.21.
13. On [REDACTED] 13, SHRT presented additional documents (Exhibits E1-E22) along with the determination finding that Claimant was not disabled (see Exhibits E21-E22).
14. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'6" and weight of 155 pounds.
15. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
16. Claimant obtained a high school diploma and an Associates Degree in nursing.
17. As of the date of the administrative hearing, Claimant had private health insurance through her parents.
18. Claimant alleged disability based on impairments and issues including neuropathy, right clubfoot, back pain, asthma, fibromyalgia, postural orthostatic tachycardia syndrome (POTS) and various psychological problems.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

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 monthly income limit considered SGA for non-blind individuals is \$1010/month.

Claimant denied performing 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.

Various neurology treatment documents (Exhibits 59-62) from 2011 were presented. It was noted that Claimant complained of hand numbness, thumb tremors, dizziness, episodes of vision loss. It was noted that a CT scan was stable with a previous scan which noted a brain lesion. A history of cocaine and ecstasy abuse was noted. A CT of the head was performed and an impression of an unremarkable report was noted. A CT of Claimant's neck was also noted as unremarkable.

Orthopedic treatment documents (Exhibits A3-A5) were presented. The documents were dated [REDACTED]/11, [REDACTED]/11 and [REDACTED]/11. The documents noted that Claimant had the following procedures: right calcaneal HWR on [REDACTED]/10, right ankle arthroscopy, peroneal brevis primary repair on [REDACTED]/11 and a right ankle arthroscopy and debridement on [REDACTED] 11. On [REDACTED]/11, it was noted that Claimant needed a prescription for physical therapy and could begin weight-bearing on right foot as tolerated. It was noted that pain was well controlled.

A consultative internal medicine report (Exhibits 36-47) dated [REDACTED]/12 was presented. It was noted that Claimant reported the following complaints, right clubfoot, bursitis in the

right ankle, anxiety depression, back pain, fibromyalgia, bipolar disorder, migraine headaches, brain tumor, asthma and Barrett's esophagus. It was noted that Claimant reported that she is limited to standing, sitting or walking for 10-15 periods. It was noted that Claimant was born with right clubfoot and that she has had multiple surgeries on the foot. Claimant primarily complained of constant pain emanating from the foot. Claimant had normal range of tested lumbar motions. It was noted that Claimant's ankle had limited range of motion. The examining physician noted that Claimant's clubfoot significantly affected her lower extremities. The physician noted that Claimant's walking was limited to 10-15 minutes, 5 minutes of sitting and 15 minutes of sitting due to lower back pain. It was also noted that Claimant's standing was restricted to 10 minutes. The physician opined that Claimant could perform sedentary tasks of mildly strenuous activities involving 10-15 pounds of lifting. The examining physician opined that Claimant was moderately impaired in performing the following abilities: stooping, bending, lifting, walking, crawling, squatting, carrying and traveling and pushing and pulling heavy objects.

Handwritten psychiatric progress notes (Exhibits 82-83) were presented. The notes ranged in date from [REDACTED]/11-[REDACTED]/12. Prescriptions for Celexa, Xanax and Valium were noted.

Hospital documents (Exhibits 63-81) from an encounter dated [REDACTED]/12 were presented. It was noted that Claimant reported dyspnea. It was noted that a CT of the thorax showed unremarkable contrast from prior radiology. Other problems noted included the following: urinary tract infections, orthostatic tachycardia, anxiety, unspecified brain cyst, GERD, uterine bleeding, a history of syncope but none recently and hiatal hernia.

Hospital documents (Exhibits A19-A24) from an encounter dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of dizziness and dyspnea. A conclusion was noted of dyspnea, most likely secondary to recent diagnosed pleurisy.

Hospital documents (Exhibits A19-A24) from an encounter dated [REDACTED]/12 were presented. It was noted that Claimant presented with a complaint of a racing heartbeat. It was noted that multiple chest x-rays were taken and no acute intra-thoracic process was found. It was noted Claimant's condition improved and that she was discharged in stable condition.

Hospital documents (Exhibits A15-A18) from an encounter dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of chest pain and dyspnea. A conclusion of atypical chest pain (probably not unstable angina, rule out pulmonary embolism) was noted. Other conclusions were noted but any treatment for the problems was not noted.

Hospital documents (Exhibits C1-C10) from an encounter dated [REDACTED]/12 were presented. It was noted that Claimant presented with anxiety and suicidal thoughts. At admission, Claimant's global assessment functioning (GAF) level was noted to be 25. At

discharge Claimant's GAF was noted as 50 to 55. It was noted that Claimant was discharged on [REDACTED]/12 in stable condition.

Chiropractor documents (Exhibits A38-A43) from [REDACTED]/2012 were presented. It was noted that Claimant reported back, shoulder and neck pain. It was noted that Claimant's cervical rotation motion was restricted going right and left. Claimant's lumbar flexion was noted as restricted. Tenderness was noted in the mid and lower back. A document dated [REDACTED]/12 noted that Claimant made continual improvement and getting progressive relief from symptoms.

A Visit Note (Exhibits A7-A9) dated [REDACTED]/12 from a foot and ankle specialist was presented. It was noted that Claimant presented with a chief complaint of ankle pain, ongoing for the prior two weeks. It was noted that Claimant currently took 11 medications. It was noted that an MRI of the right ankle showed a moderate amounts of effusion and an appearance of interstitial tearing in the tendons. A patient instruction of RICE (rest, ice compression and elevation) was noted.

Hospital documents (Exhibits B1-B9) from an admission dated [REDACTED]/13 were presented. It was noted that Claimant presented with complaints of headaches. Impressions of the following were noted: fibromyalgia, severe anxiety, depression and obsessive-compulsive disorder, severe GERD. It was noted that Claimant should not take NSAIDs due to the severity of GERD. It was noted that a lumbar MRI was performed; an impression of a normal exam was noted. An impression of a normal head was noted following head radiology though a longstanding cyst was noted.

A hospital document (Exhibits B10) dated [REDACTED]/13 were presented. It was noted that Claimant appeared with a complaint of back pain. The presented document did not provide insight into the hospital course of action.

Hospital documents (Exhibits A44-A48) dated [REDACTED]/13 were presented. It was noted that Claimant presented with leg pain following a recent lumbar puncture. It was noted that Claimant's back range of motion was normal. It was noted that Claimant received a prescription for Norco and was discharged in stable condition.

Notes (Exhibits A10-A11) from a pain and spine clinic dated [REDACTED]/13 were presented. It was noted that Claimant reported radiating lower back pain. The examining physician noted that Claimant reported that the pain is alleviated with pain medication, heating pad, ice and changing positions. It was noted that Claimant's pain worsened since undergoing a lumbar puncture two weeks prior. Assessments of lumbago and neuralgia were noted. The physician noted that Norco was prescribed to treat the pain. It was noted that injections as therapy were discussed.

A Medical Examination Report (Exhibits A1-A2; D1-D2) completed by a physician was presented. It was noted that the physician first treated Claimant on [REDACTED]/13 and last examined Claimant on [REDACTED]/13. The physician provided diagnoses of lumbago, neuralgia and radiculitis. The physician noted that Claimant could occasionally lift 10 pounds and could stand and/or walk at least 2 hours in an eight-hour workday. The

physician noted that Claimant had decreased reflexes and loss of sensation in right foot. The physician noted that Claimant was restricted to operating foot controls with her left foot only. The physician noted that Claimant had no mental limitations. It was noted that Claimant can meet household needs.

Notes (Exhibits A12-A13) from a pain and spine clinic dated [REDACTED]/13 were presented. It was noted that Claimant returned and complained of pain. The physician noted that a Norco dosage was increased, medications were adjusted and that Claimant would try laser therapy for relief.

A note from a pain and spine clinic (Exhibit A14) dated [REDACTED]/13 was presented. It was noted that Claimant appeared for her first attempt at laser therapy on her foot.

Claimant seeks a disability finding primarily because of pain and ambulation restrictions caused by her right foot. The presented medical records established that Claimant has had lifelong problems with the foot, and is restricted in walking because of the clubfoot.

Based on the presented evidence, it is found that Claimant has a significant impairment to performing basic work activities for a period of 12 months or longer. Accordingly, Claimant established having a severe impairment and 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 right foot joint problems. Claimant's impairment is covered by Listing 1.02 which reads as follows:

- 1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
 - OR
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

As indicated above, the ability to ambulate effectively is defined by SSA in 1.00B2b. This definition reads:

Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Two physicians addressed Claimant's ability to ambulate. In [REDACTED]/2012, a consultative examiner noted that Claimant's joint problems restricted her to 10-15 minute periods and that Claimant could perform sedentary employment. One year later, a "treating" physician (the physician had a nine day history with Claimant) restricted Claimant to two hours of walking in an eight hour period. Though Claimant is certainly restricted because of her clubfoot, the restrictions do not rise to the level of an inability to ambulate effectively.

Listings for depression (12.04), anxiety (12.06), fibromyalgia (Social Security Rule 12-2p), spinal disorders (1.04) and asthma (3.03) were considered. Claimant failed to meet each of the considered listings.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant presented a list (Exhibits 52 and 55) of her past employment. Claimant's former jobs include the following: registered nurse, in-home health aid, bagger, animal caretaker, kennel attendant and cashier. Claimant testified that all of her past jobs required more standing, lifting and ambulation than she can now perform. Claimant's testimony was consistent with the medical evidence. It is found that Claimant cannot perform her past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can

engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding

or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

A determination of disability is dependent on Claimant's ability to perform sedentary employment, given Claimant's age, education and employment history. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10. Two physicians provided opinions of Claimant's ambulation and lifting capabilities; both physician opinions placed Claimant at a sedentary level of employment. The opinions were consistent with the medical evidence.

It is found that Claimant is exertionally restricted to performing sedentary employment. It must be considered whether Claimant has additional non-exertional restrictions.

Claimant testified that she suffers depression, agoraphobia and obsessive-compulsive disorder. Claimant also testified that she has seen a therapist regularly since she was 14 years old. Additional time was given after the hearing to present psychological treatment documents. Claimant failed to present treatment documents from a treating psychologist and/or psychiatrist. Generally, a failure to verify psychological treatment does not bode well for a claim of disability.

It was established that Claimant had one psychological-related hospitalization in [REDACTED]/2012. Claimant's GAF was extremely low at admission but rose to 50-55 upon discharge. Presumably, Claimant's GAF at discharge is more representative of her functioning level. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Unfortunately, the lack of treatment documents makes it impossible to pinpoint which abilities (e.g. social, adaptability, concentration) are moderately or markedly restricted. Claimant's GAF, generally, would probably allow Claimant to perform jobs that are simple and repetitive in nature.

There was also evidence of further problems for Claimant. Lumbar problems were not directly verified but there were records of lumbar pain management. There was also a reference to further non-exertional problems such as vision loss episodes, dizziness and neck pain. Claimant's use of Norco, a strong pain medication, including a recently increased dosage is indicative of further exertional restriction.

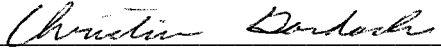
Considering all of Claimant's restrictions, Claimant is left with sedentary employment, simple and repetitive in nature, that may be interrupted by vision loss, dizziness, neck pain and foot pain. When factoring all of Claimant's problems, Claimant's ability to obtain and maintain employment is improbable. It is found that Claimant's total impairments render Claimant to be a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA benefit application.

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 [REDACTED]/12, including retroactive MA benefits from [REDACTED]/2012;
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding 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: 11/8/2013

Date Mailed: 11/8/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

