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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-31372
Issue No.: 2009
Case No.: [redacted]
Hearing Date: July 24, 2013
County: Macomb (20)

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 July 24, 2013, from Warren, Michigan. Participants included the above-named Claimant. [redacted] Claimant's mother, testified on behalf of Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the 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 [redacted]/12, Claimant applied for MA benefits, including retroactive MA benefits from [redacted]/2012.

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

3. On [redacted]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 225-226).

4. On [redacted]13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 176-181) informing Claimant of the denial.

5. On [redacted]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 182).

6. On [redacted]/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have an impairment expected to last 12 months or longer.

7. On [redacted]/13, an administrative hearing was held.

8. Claimant presented new medical documents (Exhibits A1-A21) at the hearing.

9. On [redacted]13, an Interim Order Extending the Record was mailed to Claimant and her AHR to allow 30 days from the date of hearing to submit treating psychiatric records and radiography reports.

10. On [redacted]/13, Claimant submitted additional documents (Exhibits B1-B14).

11. On [redacted]/13, an updated hearing packet was forwarded to SHRT.

12. On [redacted]/13, SHRT determined that Claimant was not disabled, in part, by determining that Claimant was not prevented from performing all type of work for a period of 12 months or longer.

13. On [redacted]/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

14. As of the date of the administrative hearing, Claimant was a [redacted]-year-old female with a height of 5'4'' and weight of 165 pounds.

15. Claimant has no known relevant history of alcohol or illegal substance abuse.

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

17. As of the date of the administrative hearing, Claimant was an Adult Medical program recipient since approximately [redacted]/2013.

18. Claimant alleged disability based on impairments and issues including bronchitis, degenerative joint disease, chronic diarrhea and anxiety disorder.

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 as sessment 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 monthly income limit considered SGA for non-blind individuals is $1,010.

A consultative examination noted that Claimant worked until 12/2012 (see Exhibit 130). It was also noted that Claimant quit her job due to ongoing stomach pain. SSA employment information verified that Claimant grossed $6344.14 (see Exhibit 135) in 2012. Accepting that Claimant worked in 12/2012, she probably did not meet the presumptive SGA income limit in 11/2012, the month of application, or 12/2012. It is found that Claimant is not performing SGA and has not performed SGA since the date of application; 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 sp eaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work sit uations; 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 s evere impairment. *Grogan v. Barnhart* , 399 F.3d 12 57, 1263 (10th Cir. 2005); *Hinkle v. Apfel* , 132 F.3d 1349, 1352 (10 th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6 th Cir. 1988). Similarly, Socia l Sec urity Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a sev ere impairment only when the medical ev idence 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 indi vidual's ag e, educatio n, or work experienc e 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 (1 st Cir. 1986).

SSA specifically notes that age, education, and work e xperience are not considered at the second step of the disability analysis . 20 CF R 416.920 (5)(c). In determinin g whether Claimant's impairment s amount to a severe impairment, all other releva nt evidence may be considered. The analysis wi ll begin with the relevant submitted medical documentation.

A Phys ical Residual Functi onal Capacity Questionnaire (Exhibits 126-129) dated [redacted]/08 was presented. The q uestionnaire was completed by Claimant 's treating physician who noted that he s ees Claimant every three mo nths. It was noted that Claimant's symptoms in cluded severe abdominal pain. A diagnosis of a small bowel obstruction was noted. A very guarded prognos is was noted. It was noted that Claimant could not even perform low stre ss jobs and that she could not sit or stand even t wo hours in an eight-hour day.

Hospital documents (Exhibits 39-125) from an admission date[redacted]/12 were presented. It was noted that Claimant presented with a year-long history of nausea, vomiting and chest pain. A history of anxiety attacks was noted. Complaints of shortness of breath and weakness were also noted. It was noted t hat radiology revealed that Claimant had a gastric mass and severe ulc er diseases . It was noted that Claimant underwent a diagnostic laparoscop y, truncal vagotomy, antrectomy and Billrot h 2 recons truction. It was noted that an ab dominal abscess complication oc curred and that the abscess was drained. It was noted that Claimant's nausea, bowel movements and diet im proved over

the hospital stay. It was noted that Claimant was discharged on [redacted]/12 and was instructed to follow-up in 7-10 days.

Hospital documents (Exhibits 15-37) from an admission dated [redacted]/12 were presented. It was noted that Claimant presented with complaints of abdominal pain, nausea and vomiting. It was noted that x-rays were negative for bowel obstructions, though there was retained barium in the colon, possibly also the stomach. Discharge documents were not presented, but a discharge date of [redacted]/12 was noted.

Hospital documents (Exhibits 10-14) from an encounter dated [redacted]/12 were presented. It was noted that Claimant presented with three-month long elbow pain. It was noted that views of the elbow were taken; an impression of no abnormalities was noted. It was noted that Claimant was prescribed Vicodin.

A consultative mental status examination report (Exhibits 130-134) dated [redacted]/13 were presented. It was noted that Claimant complained of migraines, back pain, GERD, ulcers, panic attacks and anxiety. It was noted that Claimant reported a history of panic attacks and anxiety. It was noted that Claimant's panic was managed with medication. It was noted that Claimant had no problems with concentration that appear to interfere with her ability to perform work activities. An Axis I diagnosis of panic disorder was noted. Adjustment disorder (mild) was also noted. Claimant's GAF was 60. A fair prognosis was noted.

Hospital documents (Exhibits 184-224) from an admission dated [redacted]/13 were presented. It was noted that Claimant presented with complaints of abdominal pain and vomiting. A diagnosis of afferent loop syndrome was noted. It was noted that Claimant underwent laparotomy and anastomosis to correct the problem. It was noted that Claimant became symptom-free and was discharged on [redacted]/13. It was noted that Claimant was placed on a liquid diet until seen again in 7-10 days.

A Medical Examination Report (Exhibits A1-A2) dated [redacted]/13 from Claimant's treating physician was presented. Noted current diagnoses included bleeding ulcer, GERD, clinical depression and anxiety disorder. It was noted that Claimant's condition was stable. It was noted that Claimant could not work at all and that she could never perform lifting or any repetitive leg or arm actions. It was noted that Claimant could meet her household needs.

Hospital documents (Exhibits A3-A21) from an encounter dated [redacted]/13 were presented. It was noted that Claimant presented with complaints of coughing.

A physician letter (Exhibits B7-B8) dated [redacted]/13 was presented. It was noted that an MRI of Claimant's lumbar was performed. Noted impressions included degenerative changes at L5-S1 with moderate bilateral neural foraminal stenosis. It was also noted there was no significant spinal canal stenosis.

Physician letters (Exhibits B9-B10) dated [redacted]/13 were presented. It was noted that radiology was performed on Claimant's hip. It was noted that radiology was negative on Claimant's left hip. An impression of Claimant's right hip noted a small calcification suggestive of peritendinitis or bursitis.

Psychiatric examination documents (Exhibits B1-B6) were presented. The examining psychiatrist noted no history with Claimant except for an examination on [redacted]/13. It was noted that Claimant reported at least two panic attacks per day. It was noted that Claimant also reported sleep disturbance, appetite disturbance and physical pain. The examining psychiatrist noted Axis I diagnoses for panic disorder, major depressive disorder and generalized anxiety disorder. Claimant's GAF was noted as 45. It was also noted that Claimant was markedly limited in all three listed memory abilities and all eight listed concentration-related abilities.

Hospital documents (Exhibits B11-B14) dated [redacted]/13 were presented. It was noted that Claimant presented with a complaint of anxiety. The hospital actions and plan were not noted in presented documents.

Claimant alleged a disability claim, in part, based on exertional restrictions. Claimant testified that she could not hold or lift even 10 pounds of weight.

Claimant also alleged disability based on non-exertional restrictions. Claimant testified that she would likely have any employment interrupted by psychological setbacks. Claimant testified that she was psychiatrically hospitalized in [redacted]/2013 for six days, but medical records were not presented.

Evidence was presented verifying psychological impairments. A consultative examiner on [redacted]/13 indicated that Claimant's GAF was 60 and noted a fair prognosis. The examiner also noted that Claimant's panic was managed with medication. The examiner noted that Claimant had no problems with concentration that appear to interfere with her ability to perform work activities. An Axis I diagnosis of panic disorder was noted. Adjustment disorder (mild) was also noted. 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; Claimant's GAF places her at the high functioning end of persons with moderate symptoms.

On [redacted]/13, a second examining physician noted a much bleaker outlook for Claimant. The examiner was not a treating physician as Claimant had no history with the examining physician; thus, on patient history alone, the examination merits no more weight than the consultative examination. The GAF of 45 cited by the examiner 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)." The GAF was consistent with the numerous marked restrictions found by the examiner.

Determining which examinatio n carries more weight cannot be decided by patient history, as both examiners had no prior history with Claiman t. Presented medical records tended to verify that Claimant suffers a fairly hi gh degree of anxiety. It i s reasonably possible that Claimant's chronic stomach ulcers are caused at leas t in some part by stress. Considering that Claimant's stomach ulcers were so severe t hat surgery was requir ed, it is also reasonable to presum e a fairly high amount of anxiety. This evidence is supportiv e of finding that Claim ant has marked psychological restrictions, which is consistent with the findings of the examiner's conclusions from [redacted]. Based on the pr esented evidence, it is found that Claimant has marked social and concentration restrictions.

Claimant's lack of t herapy documents is problematic for determining that the impairments are uncontrolled a nd will lik ely last 12 mont hs or longer. Claimant's counselor testified that Claim ant has attended ther apy and is making efforts to improve her psyche. The verified efforts are suggest that Claimant's problems have and will last 12 months or longer.

Claimant seeks a dis ability finding beginning in [redacted]/2012. Between Cla imant's exertional and non-exertional impairm ents, it is found t hat Claimant establis hed s ignificant work impairments since [redacted]/2012.

As it was found that Claimant es tablished 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 s equential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CF R, Part 40 4. 20 CFR 416.920 (a)(4)(iii). If Cla imant's impairments are listed and deemed to meet the 12 month requiremen t, 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 anxie ty. Anxiety dis orders are covered by Listing 12.06 which reads:

> **12.06** ***Anxiety-related disorders***: In these disorders anx iety is either the predominant disturbance or it is experi enced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisti ng the obsessions or compulsions in obsessive compulsive disorders.
>
> The requir ed level of severity for these disorders is met when the requirements in both A and B are satisf ied, or when t he requirements in both A and C are satisfied.
>
> A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
   a. Motor tension; or
   b. Autonomic hyperactivity; or
   c. Apprehensive expectation; or
   d. Vigilance and scanning; or
2. A persistent irrati onal fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense appre hension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsi ons which are a source of marked distress; or
5. Recurrent and intrusive recollections of a traumatic experience, whic h are a source of marked distress;

AND

B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

OR

C. Resulting in complete inabilit y to functi on independently outside the area of one's home.

Starting with Part A, the m edical records sufficiently verified that Claimant regularly suffers panic attacks at least once per day . It is found that Claimant meets the requirements for Part A of the above listing.

Turning to Part B, it was established that Claimant has marked difficulty in concentration and social functioning. An examining psychiatrist determined that Claimant had all of the following marked restri ctions: understanding simp le instructions, remembering location s and work-like procedures, carry ing out simple instructions , sustaining attention and concentration for extending periods, performi ng activities within a schedule, making simple wor k-related decisions and the ability to complete a normal workday without psychological impairment. The marked restrict ions are strong ev idence that Claimant is markedly limited in areas of concentration.

The exam iner only found Claimant to be markedly restricted in one of five soc ial interaction abilities- th e ab ility to accept inst ructions an d respond to criticism. Claimant was found moderately restricted in the other four listed social abilities: interacting appropriately with the public, asking simple questions or requesting assistance, getting along with coworkers and maintaining socially appropriate behavior.

Based on the presented evidence, it is found that Claimant meets the listing for anxiety-related disorders. Claimant is found to be 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 [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: [redacted]