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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-35241
Issue No.: 2009
Case No.: [redacted]
Hearing Date: July 22, 2013
County: Wayne DHS (76)

HEARING ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the above-named 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 22, 2013, from Detroit, Michigan. Participants included the above-named Claimant. [redacted] appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [redacted], Specialist. It should be noted that the administrative judge who heard the case was not available to write the hearing decision. The hearing decision was randomly reassigned to be written by the administrative judge named at the bottom of this decision.

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 11/2011.

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 Exhibit 6).

4. On 1[redacted]/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 5-6) informing Claimant of the denial.

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

6. On [redacted]/13, SHRT determined that Claimant was not disabled, in part, by the materiality of alcohol and/or drug abuse and alternatively, by determining that Claimant did not have a severe impairment.

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

8. On [redacted]/13, the hearing judge issued an Interim Order Extending the Record allowing Claimant 30 days to present additional medical records.

9. On [redacted]/13, Claimant presented new medical records.

10. On [redacted]/13, the new medical documents were forwarded to SHRT.

11. On [redacted]/13, the medical packet was forwarded to SHRT.

12. On [redacted]/13, SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.

13. As of the date of the administrative hearing, Claimant was a [redacted] year old female with a height of 5'0'' and weight between 120-130 pounds

14. Claimant has a relevant history of alcohol, tobacco and cocaine abuse.

15. Claimant's highest education year completed was the 9th grade.

16. As of the date of hearing, Claimant was an Adult Medical Program (AMP) recipient.

17. Claimant alleged disability based on impairments and issues including poor memory, seizures, leg injuries suffered while having seizures and various psychological issues.

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).

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 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 2011 monthly income limit considered SGA for non-blind individuals is $1,000. The 2012 income limit 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 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience

were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

Hospital documents (Exhibits 54-93) from an admission dated [redacted]/11 were presented. It was noted that Claimant presented with abdominal pain. It was noted that Claimant underwent an exploratory laparoscopy and exploratory laparotomy and it was discovered that Claimant had peritonitis. It was noted that an ovarian abscess was drained. It was noted that Claimant was referred for medical management for seizure disorder (see Exhibit 58). No other seizure references were found. SHRT documentation noted that nursing staff observed seizure activity by Claimant including approximately one minute of postictal confusion. It was also noted by SHRT that Claimant received Keppra. SHRT also noted that Claimant subsequently displayed no more seizures after receiving Keppra. It was noted that Claimant's condition improved and she gradually progressed on returning to her normal diet. Noted principal diagnoses were abdominal pain and peritonitis. Throughout the records, the peritonitis was described as acute. Claimant's date of discharge was noted as [redacted]/11.

Hospital documents (Exhibits 20-52) from an admission dated [redacted]/11 were presented. It was noted that Claimant previously left against medical advice. It was noted that Claimant had gonorrhea. It was noted that Claimant returned complaining again of abdominal pain. A discharge diagnosis of peritonitis was noted. It was noted that Claimant received antibiotics and that Claimant's symptoms improved. It was noted that Claimant was discharged on [redacted]/11.

A psychological evaluation report (Exhibits 29-30) dated [redacted]/11 was presented. It was noted that Claimant returned to the hospital after leaving prematurely and was again trying to leave against hospital advice. It was noted that Claimant was asked to remove her shoelaces due to suicide concerns and that she threw her shoe and hit a nurse. It was noted that the psychological examination was performed in the midst of Claimant attempting to call persons to pick her up from the hospital. An Axis I diagnosis of depression was given. Claimant's GAF was 25-30. It was noted that Claimant's behavior was erratic and that Claimant would be transferred to the medical unit once medically stable.

Hospital documents (Exhibits A33-A53) dated [redacted]/12 were presented. It was noted that Claimant had a history of seizures and abdominal pain. It was noted that radiography revealed a mass with a cystic component near Claimant's ovary. The hospital diagnosed Claimant with the following: pelvic inflammatory disease, leukocytosis and trichomonas. It was noted that the hospital treated Claimant with antibiotics and Flagyl.

It was noted that a conservative treatment plan with antibiotics and pain management was recommended. A follow-up in two-to-three weeks was recommended.

Hospital documents (Exhibits A1-A32) from an admission dated [redacted]/12 were presented. It was noted that an ultrasound of the abdomen showed a complex mass. It was noted that Claimant was recently discharged against medical advice and that Claimant was supposed to schedule surgical intervention. Discharge diagnoses included abdominal pain and left ovarian mass. It was noted that Claimant was discharged against medical advice on [redacted]/12.

Claimant alleged that she is disabled, in part, because of seizures. Claimant testified that she has 2-3 seizures per week, including during 2013. Claimant testified that she calls her friend to assist her whenever she has a seizure. Claimant testified that she does not take medication for her seizures. It was established that Claimant was treated for seizures way back in 2011; no subsequent treatment was verified. The one-time that Claimant was treated for seizures, the seizures were controlled with medication. Claimant failed to verify a durational impairment related to seizures.

Claimant also alleged disability based on psychological problems. One medical provider diagnosed Claimant with depression. There was evidence of one evaluation where Claimant's GAF was established as 25-30. A GAF within the range of 21-30 reflects behavior that is considerably influenced by delusions or hallucinations or serious impairment, in communication or judgment (e.g., sometimes incoherent, acts grossly inappropriately, suicidal preoccupation) OR inability to function in almost all areas (e.g., stays in bed all day, no job, home, or friends). The low GAF is evidence of significant psychological problems for Claimant.

The single record of a low GAF only verified that Claimant was extremely low functioning at one point in time. To meet the durational requirements for disability, Claimant has to establish an impairment that lasts 12 months or longer.

Claimant testified that she made 10 previous suicide attempts. Claimant also testified that she had no records of previous attempts. Claimant conceded that she had no psychiatric treatment records.

Also of note is Claimant's well documented erratic behavior. The behavior is indicative of psychological dysfunction. The behavior is also indicative of alcohol and/or drug abuse. There is insufficient evidence to conclude that substance abuse is material to Claimant's depression, however, without treatment records, substance abuse is as likely an explanation as psychological disorders for Claimant's erratic behavior. Based on the presented evidence, failed to establish psychological disorders expected to last for 12 months.

The medical evidence verified treatment for sexually transmitted diseases (STDs). The evidence tended to verify that Claimant received antibiotics and medications for her diseases. The evidence did not suggest that Claimant had impairments as a result of the diseases or that she could not control the diseases with medication. Claimant failed to establish the durational requirements for a severe impairment based on STDs.

Claimant testified that she was limited to standing still without discomfort for 15 minute periods. Based on the presented evidence, the surgical mass is the cause for Claimant's alleged standing restrictions. For purposes of this decision, it will be accepted that Claimant has extreme ambulation restrictions based on an abdominal mass.

SSA applicants must follow treatment prescribed by their physician in order to get benefits if the treatment can restore the ability to work. 20 C.F.R. 404.1530 (a). If the applicant does not follow the prescribed treatment without a good reason, SSSA will not find the applicant disabled or, if already receiving benefits, SSA will stop paying benefits. 20 C.F.R. 404.1530 (b). Good reason may be factored into whether someone refuses treatment. The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of an applicant's religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Hospital records verified that Claimant repeatedly sought treatment for abdominal pain. The records verified that Claimant repeatedly left against medical advice. Records even established that surgery was planned to remove the mass, but that Claimant refused treatment. Claimant's blatant refusals to comply with medical advice justifies a finding that she failed to follow prescribed treatment even if she was deemed to be have a significant impairment expected to last 12 months.

Based on the presented evidence, it is found that Claimant does not have a severe impairment other than an abdominal mass. It is further found that Claimant's refusal to accept treatment prevents a finding for disability based on any restrictions caused by the mass. Accordingly, Claimant is not a disabled individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 2/28/12 based on a determination that Claimant is not disabled.

The actions taken by DHS are **AFFIRMED**.

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]