

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

IN THE MATTER OF:



Reg. No.: 2013-53295
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 14, 2013
County: Wayne DHS (57)

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, a telephone hearing was held on August 14, 2013, from Detroit, Michigan. Participants included the above-named 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 30-50).
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 6-7)
4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 4-5) informing Claimant of the denial.

5. On [REDACTED]/13, Claimant requested a hearing disputing the denial of MA benefits.
6. DHS failed to forward the medical packet to SHRT.
7. On [REDACTED]/13, an administrative hearing was held.
8. During the hearing, Claimant presented new medical documents (Exhibits A1-A58) to DHS which were eventually submitted to the Michigan Administrative Hearing System on [REDACTED]/13.
9. On [REDACTED] 13, an updated hearing packet was forwarded to SHRT.
10. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by determining that Claimant retains the capacity to perform past relevant work.
11. On [REDACTED]/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
12. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'0" and weight of 120 pounds.
13. Claimant has no known relevant history of alcohol or illegal substance abuse.
14. Claimant's highest education year completed was the 12th via general equivalency degree.
15. As of the date of the administrative hearing, Claimant had no known medical coverage.
16. Claimant alleged disability based on impairments and issues including arthritis and a history of breast cancer.

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 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 \$1,010.

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.

An Office Note (Exhibits 23) dated [REDACTED]/12 was presented. It was noted that Claimant presented with a complaint of a rash under each of her breasts. An assessment of candida infection was given. It was noted that the examining physician prescribed Claimant nystatin powder.

Medical treatment documents (Exhibits 13-19) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of constipation. Complaints of pain in back, knees and hands were also noted. It was noted that Claimant takes Advil for the pain but it does not fully address her pain. A diagnosis of DM was noted. It was also noted that Claimant was off of DM medication because of a lack of insurance. It was noted that Claimant reported dyspnea after walking half of a block. It was noted that Claimant was a tobacco smoker. It was noted that Claimant was particularly concerned about a breast cyst found in a mammogram. It was noted that Claimant missed a six-month follow-up mammogram appointment in [REDACTED]/2012. A diagnosis of arthritis was noted-addressing Claimant's body pains. It was noted that the medical examiner ordered medications for Claimant, which included test strips, simvastatin, Accupril, Lantus Solostar and aspirin. A follow-up appointment was scheduled.

Medical treatment documents (Exhibits 20-22) dated [REDACTED]/12 were presented. It was noted that Claimant presented for a follow-up to her [REDACTED]/12 appointment. It was noted that Claimant's body stiffness and pain improves with activities throughout the day. It was noted that Claimant denied SOB.

Various treatment documents (Exhibits A1-A58) from [REDACTED]-2013 through [REDACTED]/2013 were presented. It was noted that Claimant presented with a solid-feeling nodule in the right breast. It was noted that the nodule was benign but that further evaluation revealed lobular carcinoma in situ. A biopsy was also performed on Claimant's left breast, which led to the same diagnosis. It was noted that Claimant was referred to a specialist based on an increased risk of breast cancer; it was also noted that Claimant was at increased risk due to a "substantial" history of breast cancer in her family. It was noted that Claimant underwent a bilateral mastectomy on [REDACTED]/13.

Progress Notes (Exhibits A1-A2; A4-A6) from a general practitioner, dated [REDACTED]/13, were presented. It was noted that cancer was in remission. It was noted that Claimant was medication compliant with diabetes. A complaint of depression was noted, including feelings of hopelessness and anhedonia. It was noted that Claimant reported joint pain in multiple areas. It was noted that ibuprofen was refilled and a referral to physical rehabilitation was made. A referral to an eye institute was made regarding diabetes. It was noted that HTN was well controlled.

Treatment documents (Exhibits A8-A9) dated [REDACTED]/13 were presented. It was noted that Claimant reported weight loss but the treating physician noted it was thought not to be related to cancer. It was noted that Claimant was found to have occult invasive ductal carcinoma considered to be grade 1, which was confirmed as a low scoring oncotype. A plan of treatment by Tamoxifen was recommended. A plan to see Claimant in three months was noted.

Claimant alleged disability, in part, based on arthritis and joint pain. Claimant testified that she was capable of walking less than a block due to pain and shortness of breath. The presented medical records failed to note specific restrictions to Claimant's performance of work abilities. Claimant's arthritis treatment and verified diagnosis from 2012 is sufficient verification of some degree of walking impairment, at least based on a de minimus standard.

Claimant only presented arthritis treatment documents from [REDACTED]/2012 and [REDACTED]/2012. Typically, two months of treatment is insufficient to establish an impairment expected to last 12 months or longer. Claimant has some excuse for the documentation because of treatment for breast cancer, which occurred in the subsequent months. Due to the distraction of breast cancer treatment and the generally permanent nature of arthritis, it will be found that Claimant established impairments expected to last 12 months or longer.

Claimant seeks a disability determination from an unspecified retroactive month. DHS allows up to three months of retroactive MA benefits (see BAM 110). Treatment for arthritis was established, beginning [REDACTED]/2013. It is found that Claimant established a basis for disability beginning [REDACTED]/2013.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's primary basis for disability was breast cancer. The applicable listing reads:

13.10 Breast (except sarcoma—13.04) (See 13.00K4.)

A. Locally advanced carcinoma (inflammatory carcinoma, tumor of any size with direct extension to the chest wall or skin, tumor of any size with metastases to the ipsilateral internal mammary nodes).

B. Carcinoma with metastases to the supraclavicular or infraclavicular nodes, to 10 or more axillary nodes, or with distant metastases.

OR

C. Recurrent carcinoma, except local recurrence that remits with antineoplastic therapy.

Claimant was diagnosed with lobular carcinoma in situ. The diagnosis appears to be a warning sign of increased risk of breast cancer but is not verification of cancer. Claimant's most recent documentation noted that Claimant was in remission. The lack of need for chemical or radiation treatment is consistent with a non-debilitating type of cancer. Claimant's breast cancer doctor noted a need to not see Claimant for three months after Claimant underwent a mastectomy; the need to not medically see Claimant sooner than three months is evidence that further supports that Claimant's breast cancer concerns are not as far along as SSA requires. It is found that Claimant does not meet the listing for breast cancer.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of arthritis. This listing is summarily rejected due a lack of medical evidence verifying that Claimant is unable to ambulate effectively or lacks the ability to perform fine gross movements in upper extremities.

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 testified that she has past relevant employment as a factory machinist and press machine operator. Claimant testified that she cannot perform the necessary lifting, walking and bending required of her past employment. Claimant's testimony was

consistent with the medical evidence. It is found that Claimant cannot perform past employment.

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).

Given Claimant's age, education and employment history, a determination of disability is dependent on Claimant's ability to perform sedentary employment. 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.

As noted in step two, Claimant alleged substantial walking, bending and lifting restrictions. Claimant's testimony was consistent with medical records documenting her complaints. For example, Claimant's reported pain was noted as 8/10 and as a deep ache (see Exhibit 13). It was also noted that Claimant lacked insurance and had diabetes; both factors would likely make it more difficult to control arthritis pain.

Also as noted at step two, Claimant's breast cancer treatment cannot be ignored. Though Claimant appears to be in no immediate danger of breast cancer, her increased risk for cancer increases the need for accessible medical treatment. Based on the presented evidence, it is found that Claimant is restricted to sedentary employment.

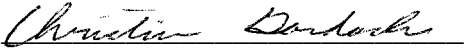
Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school equivalency), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

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 perform the following actions:

- (1) reinstate Claimant's MA benefit application dated [REDACTED]/12, including any requested retroactive MA benefits
- (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.

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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:

