

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

IN THE MATTER OF:

████████████████████
████████████████████
████████████████████

Reg. No.: 2012 73181
Issue No.: 2009
Case No.: ██████████
Hearing Date: March 4, 2013
County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on March 4, 2013, from Madison Heights, Michigan. Participants on behalf of Claimant included the Claimant and a witness, ██████████. The claimant's Authorized Hearing Representative, ██████████, also appeared on her behalf. Participants on behalf of the Department of Human Services (Department) included ██████████ ES.

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 June 7, 2012, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On August 9, 2012, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

4. On August 10, 2012, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On August 20, 2012, Claimant requested a hearing disputing the denial of MA benefits.
6. On October 11, 2012 the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, by determining that Claimant's impairments were not expected to last 12 months or was expected to improve.
7. An Interim Order was issued on May 6, 2013 requesting additional evidence be obtained on claimant's behalf. The evidence received was sent to the State Hearing Review for its review.
8. On November 12, 2013 the State Hearing Review Team determined that the claimant was not disabled finding the claimant capable of performing light unskilled work and that drug and alcohol abuse was material.
9. As of the date of the administrative hearing, Claimant was a ■-year-old female (DOB ■ with a height of 5'7" and weight of 145 pounds. The claimant is now ■ years of age.
10. The Claimant graduated from high school. Claimant's past relevant work history included managing administrative matters including hiring and training staff and implementing cash management policies for a local furniture store, performing secretarial work, word processing, filing, and light administrative duties. The claimant last worked in 2012.
11. Claimant alleged a disability based on impairments and the Claimant has alleged physical disabling impairments due to chronic pain, migraines, thyroid condition, degenerative disc disease, neural cardiac syncope, asthma, gastric bypass surgery history, and neuropathy in hands and arms.
12. Claimant has alleged mental disabling impairments which include chronic depression and has received treatment.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

The controlling DHS regulations are those that were in effect as of June 2012, the month of the application which Claimant contends was wrongly denied.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 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 (see BEM 260 at 1-2):

- 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).

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 at 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 current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). Multiple 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 minimis 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).

Claimant alleged a disability based on impairments and the Claimant has alleged physical disabling impairments due to chronic pain, migraines, thyroid condition, degenerative disc disease, neural cardiac syncope, asthma, gastric bypass surgery history, and neuropathy in hands and arms.

Claimant has alleged mental disabling impairments which include chronic depression and has received treatment.

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation. A summary of the medical evidence follows.

A Psychiatric Evaluation was conducted [REDACTED] by the claimant's then treating psychiatrist. The claimant had been referred for the evaluation by her then therapist. The evaluation report notes the claimant's chief complaint is alcohol dependence. The claimant also reported a history of severe gambling which is now cured and in remission. The claimant reported no psychiatric hospital admissions. The claimant had a closed head injury by history and gastric bypass surgery. The claimant reported with good grooming and hygiene was cooperative, friendly and maintained appropriate eye contact. Her speech was normal in volume, rate, rhythm, clarity and velocity. Claimant's mood was euthymic and her affect was normal quality and appropriateness and a full range. No suicidal or homicidal thoughts, no delusions and no paranoia. Thought process was goal directed, linear, logical and coherent. Claimant's cognitive function was intact and her insight and judgment was intact.

The diagnosis was alcohol dependence, rule out alcohol induced mood disorder secondary to medical condition, hypothyroidism, nicotine dependence, closed head injury, impulse control disorder (pathological gambling recovered). The claimant's GAF Score was 55. The recommendations were additional medications, supportive psychotherapy and case management involvement as needed. The claimant was to return back for further review and monitoring of any medication side effects.

The claimant was admitted to the hospital in [REDACTED] for two days complaining of the episodic left facial and arm numbness and weakness. A history of alcohol abuse and migraine headaches with questionable history of a stroke 17 years ago was present. A CT of claimant's head revealed no acute processes. At that time claimant reported she began a drinking binge three weeks prior to her admission and ending nine days prior to the admission. Physical examination showed normal range of motion of all extremities. Decreased sensation to touch and pinprick on the left lower face as well as the left upper extremity. Strength was 5/5 in all four extremities with equal grip strength. Speech was fluent with no aphasia. Discharge diagnosis included migraine headache with left facial and upper extremity numbness, possible history of CVA 17 years ago, history of alcohol abuse, tobacco dependence, hypothyroidism and history of gastric bypass surgery. During her hospital stay a consultative examination was done and all findings were within normal limits including neurological findings. The exam also noted subjective decreased sensation to pinprick in left V3 and left upper extremity.

A consultative medical examination was also conducted on [REDACTED]. The claimant presented as well-developed, well-nourished, cooperative and in no acute distress. The Impression was asthma history; currently using an inhaler as needed. By way of history taken during the exam, the report states "Examinee states she has alcoholism, she states she has been drinking heavily for several years. She states she's tried to stop; she drinks over a fifth a day. The examinee states she last drank seven days prior to this exam. Anxiety - the examinee has anxiety disorder and is taking medications for the problem. The examinee has a history of alcoholism and states that she quit drinking but has been a heavy drinker. Stroke - the examinee states she had stroke like symptoms and states she no longer has those problems that this was in her 20s." A review of the physical examination indicates that the claimant's range of motion in all extremities was within normal limits and that straight leg raising testing was negative. As regards current abilities, the claimant was able to perform all abilities and the examiner imposed no restrictions. All reflexes were normal.

The Claimant presented no medical records or other medical evidence of .neuropathy in her hands and arms and feet, chronic pain, thyroid condition, degenerative disc disease neural cardiac syncope and asthma except by way of history.

The Claimant testified to the following limitations, she could stand and sit approximately 15 to 20 minutes. She could walk a couple of blocks, and needed help with dressing and showering. The heaviest weight she could carry was a quart of milk. The Claimant testified she could do grocery shopping and can drive. Claimant testified that she could not squat and could bend somewhat with trouble bending forward. The Claimant presented no follow-up treatment or hospitalization since her [REDACTED] hospitalization.

However, the evidence was not supportive of a finding that Claimant was physically limited to the extent she now testified to. Claimant testified to ongoing restrictions, but Claimant's testimony had no support from medical documents and had no further follow up to present after her hospital stay in [REDACTED]


Claimant also alleged impairments related to depression and anxiety. The Claimant's treating psychiatrist, however, diagnosed the Claimant with alcohol dependence, and did not list any significant limitations or lack of functional capacity in Claimant's functioning at the time of the exam. The medical records did not document a severe impairment. The records reviewed established 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.

An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities.

An impairment or combination of impairments is “not severe” when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual’s ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. Even applying a de minimis standard, it is found that Claimant failed to establish an impairment that has or is expected to last 12 months and which is severe. Thus, Claimant failed to establish having a severe impairment. Accordingly, it is found that DHS properly denied Claimant’s application for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied MA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 10, 2013

Date Mailed: December 10, 2013

NOTICE OF APPEAL: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department’s motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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;

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- 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

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]