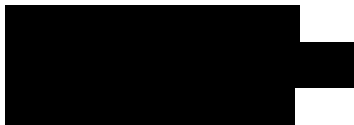


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201327105
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 5, 2013
County: Macomb DHS (36)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on August 5, 2013, from Sterling Heights, Michigan. Participants included the above-named claimant. [REDACTED], Claimant's mother, testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for 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 November 15, 2012, Claimant applied for MA benefits, including retroactive MA benefits from August 2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On January 10, 2013, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On January 16, 2013, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On January 25, 2013, Claimant requested a hearing disputing the denial of MA benefits.
6. On April 6, 2013, the State Hearing Review Team determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 204.00
7. As of the date of the administrative hearing, Claimant was a 28 year old female with a height of 5'5" and weight of 165 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
9. Claimant's highest education year completed was high school with additional certification as a pharmacy technician.
10. As of the date of the administrative hearing, Claimant had been receiving Adult Medical Program (AMP) benefits since April 2013.
11. Claimant alleged disability based on impairments of seizures and migraine headaches.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the 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 income limit is \$1010/month.

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). 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.

Medical records (Exhibits 27-28; 38-39) from January 2011 were presented. It was noted that Claimant presented with complaints of a headache. It was noted that a head CT was performed and an impression of no evidence of acute intracranial pathology was given. It was noted that a brain MRI was recommended.

Medical center documents (Exhibits 29-31; 40-41; 62-67) from August 2011 were presented. It was noted that Claimant presented with abdominal pain. It was noted that a CT of the abdomen and pelvis was performed. Impressions were noted of no bowel obstruction and no significant abnormality.

Medical center documents (Exhibits 32-37; 21-26; 42-61) from September 2011 were presented. It was noted that Claimant presented with complaint of a migraine rated on a scale of 0 to 10 as a 15/10. It was also noted that Claimant passed out for a few seconds while at work. It was noted that a CT of the brain was performed and showed stable findings. Final diagnoses of acute syncope and headache were given.

Hospital documents (Exhibits 88-102) from October 2011 were presented. It was noted that Claimant presented with a third syncope episode in the past month. It was noted that there were no exacerbating or relieving factors. It was noted that Claimant was taking Imitrex. It was noted that a CT scan of the head revealed prominent bilateral ganglia calcifications which were abnormal for a young patient.

An electrophysiology report (Exhibit 86-87) dated November 10, 2011 was presented. It was noted that Claimant underwent head-upright tilt table testing. It was noted that Claimant had symptoms of lightheadedness without significant changes in heart rate or blood pressure.

Hospital documents (Exhibits 15-19; 85) from April 2012 were presented. It was noted that Claimant was positive for a C777T mutation which was an increased factor in coronary disease and venous thrombosis. It was also noted that Claimant's triglycerides were high.

Hospital and treatment documents (Exhibits 68-84; 104-150) from June 12, 2012 were presented. It was noted that Claimant presented to a hospital on June 11, 2012 with complaints of a seizure. It was noted that Claimant had three seizures while in the hospital. Medical history noted that a brain MRI was performed. A diagnosis of seizure disorder was noted. It was noted that a CT of the brain was performed and showed changes. It was noted that four day epilepsy monitoring was done and Claimant had five or six "typical spells" which were "best explained by pseudoseizures." It was noted that Claimant's mother was very concerned and knowledgeable, possibly to the point of Munchausen Syndrome. It was noted that Claimant was discharged on June 15, 2012.

A consultative psychology examination (Exhibits 158-164) dated October 2012 was presented. It was noted that Claimant reported depression symptoms following the loss of her grandmother in 2009. It was noted that Claimant reported being forgetful. It was noted that Claimant's stream of mental activity was slowed but organized. It was noted

that Claimant impressed as highly anxious, emotionally overwhelmed and at times, tearful. Axis I diagnoses were given for conversion disorder and depressive disorder. Claimant's GAF was 55. Claimant's prognosis was fair to guarded.

A letter from treating neurologist (Exhibit 167) dated April 24, 2013 was presented. It was noted that, per the doctor's preference, Claimant had been off of work and driving since October 2011. It was recommended that Claimant remain off of work for another year. It was noted that Claimant had neck pain which was also a factor.

A Medical Examination Report (Exhibits 8-9) dated November 26, 2012 was presented. Diagnoses for non-epileptic seizures, migraine headaches and possible conversion disorder were noted. It was noted that Claimant's condition was stable. It was noted that Claimant could not meet her needs in the home due to the seizures.

Claimant testified that her doctor advised her that she cannot drive until she goes six months without seizures. Claimant's mother testified that Claimant recently started displaying confusion after having a seizure. Claimant testified that her activities often require the presence of her mother; one example given is that her mother is on guard when Claimant showers in case Claimant has a seizure.

The presented evidence established that Claimant has ongoing impairments from reoccurring seizures. The seizures would reasonably preclude Claimant from performing several jobs including employment involving heights, heavy lifting and machinery.

Claimant seeks a determination of disability from August 2012. The evidence established that Claimant had seizure problems prior to August 2012 and they have been ongoing through the hearing date. Thus, Claimant's impairments meet the durational requirement for a finding of disability.

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 most prominent impairment appears to be seizures. Claimant's seizures are most closely associated with Listing 11.03 which reads:

11.03 Epilepsy - nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly in spite of at

least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

Claimant's mother testified that Claimant had six seizures in 2013. Claimant's seizure average is less than one per month, far below the one per week requirement of the above listing. It is found that Claimant does not meet the listing for epilepsy.

A listing for affective disorder (Listing 12.04) was considered based on complaints of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation. It should also be noted that there was no evidence of ongoing therapy contained within the file, only a single psychological examination.

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 has a strong and reliable work history. It was not disputed that Claimant worked for ten years as a pharmacy technician. Claimant credibly testified that she was basically fired due to her medical condition after she passed out at her job. Though the evidence suggested that Claimant might have maintained her employment if her former employer was not shamefully lacking in accommodation, for purposes of this decision, it will be found that Claimant's former employer is representative of other employers in Claimant's field. Accordingly, it is found that Claimant cannot perform her past relevant employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, is 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).

For purposes of this decision, only an evaluation of sedentary employment will be considered. Sedentary employment requires a minimum of lifting and standing.

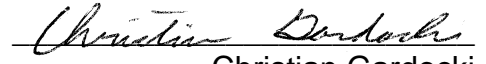
Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

Claimant's treating physicians determined that Claimant's seizures were severe enough to justify precluding Claimant from all types of employment. The presented documents essentially justify the restriction based on the potential for danger whenever Claimant has a seizure. Claimant's physician's restrictions are exceptionally conservative. Consideration has to be given to the frequency and events of Claimant's seizures. Seizures averaging less than one per month are not deemed to be frequent enough to justify a total preclusion from performing employment. There was also no particular evidence to suggest that Claimant's seizures were particularly violent or dangerous, to herself or others. Despite the recommendations of Claimant's physicians, it is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual under 45), education (high school), employment history (semi-skilled but not transferrable), Medical-Vocational Rule 201.28 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly 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 properly denied Claimant's MA benefit application dated November 15, 2012 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: August 21, 2013

Date Mailed: August 21, 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;
- 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

201327105/CG

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/aca

cc:

