

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-35373
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 1, 2013
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on July 1, 2013, from Inkster, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. 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]/[REDACTED]/12, Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED]/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED]/[REDACTED]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).

4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 35-40) informing Claimant of the denial.
5. On [REDACTED]/13, Claimant requested a hearing disputing the denial of MA benefits.
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.14.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A18) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. On [REDACTED]/13, an Interim Order Extending the record was mailed, allowing Claimant 60 days from the date of hearing to submit a Medical Examination Report and treatment documents.
11. On [REDACTED]/13, Claimant submitted a Medical Examination Report (Exhibits B1-B2).
12. On [REDACTED]/13, the updated hearing packet was forwarded to SHRT.
13. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.14.
14. On [REDACTED]/13, the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision (Exhibits C1-C2).
15. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'9" and weight of 190 pounds.
16. Claimant has a relevant history of tobacco abuse.
17. Claimant's highest education year completed was the 12th grade and ongoing certification as a licensed hair stylist.
18. As of the date of the administrative hearing, Claimant did not have health insurance but was able to obtain low-income prescriptions through an unspecified program.
19. Claimant alleged disability based on impairments and issues including high blood pressure, diabetes and depression.

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.

A Non-Emergent Psychiatric Evaluation (Exhibits 45-49) dated 1/██/12 was presented. It was noted that Claimant presented with complaints of various depression symptoms including helplessness, hopelessness, guilt, difficulty sleeping and anhedonia. It was noted that Claimant regularly drank a pint of vodka (3-4 times per week). A history of sexual abuse victimization was noted. The examining physician noted that Claimant's concentration was adequate and that it had no impact on functioning. The examiner noted Claimant's judgment was impaired, which had a moderate impact on functioning. The examiner recommended outpatient therapy for Claimant.

DHS presented hospital documents (Exhibits 15-30) from an admission dated ███/██/12. A Discharge Summary noted that Claimant was hospitalized with acute anteroseptal myocardial infarct. It was noted that Claimant underwent a stent angioplasty of the left anterior descending artery. It was noted that Claimant did well post-operatively. It was noted that Claimant's ejection fraction was 60%. It was noted that Claimant was discharged on ███/██/12 in stable condition. It was noted that Claimant was a 1.2 pack/day smoker and that she was advised to stop smoking. It was noted that Claimant would receive ongoing vitamin B2 injections, iron supplements, treatment for diabetes, antiplatelet agents, statin agent ACE inhibitors, beta blockers and aspirin.

A consultative internal medicine examination report (Exhibits 42-44) dated ███/██/13 was presented. The examining physician noted that Claimant reported occasional shortness of breath with exertion though she denied angina symptoms. The examiner noted that

Claimant reported capably performing activities of daily living but with required periods of rest. The examiner noted that Claimant's blood pressure was markedly elevated despite medication; the examiner recommended that Claimant follow-up with a physician for medication adjustment. The examiner also concluded that Claimant had a history of diabetes, though Claimant denied any symptoms.

Claimant presented hospital documents (Exhibits A1-A18) from an admission dated [REDACTED]/13. It was noted that Claimant presented with complaints of heavy chest pain, fatigue and SOB. Following chest x-rays, an impression of no acute process was noted. An impression of angina pectoris was noted. It was noted that a stress test was ordered but the results were not presented. It was noted that Claimant's EF was 63% and that there was no focal perfusion abnormality.

Claimant presented a Medical Examination Report (Exhibits B1-B2) dated [REDACTED]/13 from her treating physician. Diagnoses of the following were noted: DM, CAD, smoker, HTN and stent. It was noted that Claimant's condition was stable. It was noted that Claimant had no physical limitations. It was noted that Claimant can meet her household needs.

Claimant testified that she is restricted to walking for 20-30 minute periods and that she loses her breath while walking the stairs. Claimant's testimony was generally consistent with the medical evidence, however, the restrictions are not deemed to be significant.

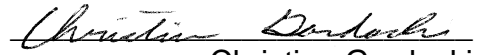
Presented records established that Claimant had a serious heart problem in [REDACTED]/2012. Following stent insertion, all signs point to Claimant doing well. Claimant's ejection fraction measured at a very functional level in [REDACTED]/2013. Ten months following Claimant's surgery, her PCP deemed her to have no physical restrictions. It is found that Claimant did not establish an exertional severe impairment.

Claimant also alleged a claim of disability based on depression symptoms. The only documentation of Claimant's symptoms came from a consultative examiner eight months prior to her disability application. No evidence was even presented of a diagnosis. Claimant testified that she attends therapy regularly, but treatment records were not presented. Based on the presented evidence, Claimant's alleged psychological symptoms could be related to ongoing alcohol abuse as much as any psychological diagnosis. Claimant failed to establish having a severe non-exertional impairment.

Based on the presented evidence, Claimant failed to establish that she suffers a severe impairment. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits based on a finding that Claimant is not disabled.

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 [REDACTED]/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: 11/22/2013

Date Mailed: 11/22/2013

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:

