

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-59625  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: February 19, 2014  
County: Oakland (03)

**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 February 19, 2014, from Walled Lake, Michigan. Participants included the above-named Claimant, [REDACTED], Claimant's daughter, testified on behalf of Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the 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 reason 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], Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED].
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 9-10).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT 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 58-year-old female with a height of 5'7" and weight of 128 pounds.
8. Claimant has a history of alcohol abuse.
9. Claimant's highest education year completed was the 12<sup>th</sup> grade.
10. As of the date of the administrative hearing, Claimant had no medical coverage.
11. Claimant alleged disability based on impairments and issues including depression, bipolar disorder, ADHD and a distant history of seizures.

### **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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's request was granted and the hearing was conducted accordingly.

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 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 background testimony and a summary of relevant medical documentation.

Claimant testified that she has psychological symptoms of paranoia, agoraphobia, depression and anxiety. Claimant testified that her anxiety increased dramatically after both of her parents died in, or close to, [REDACTED]. Claimant testified that the deaths affected her on multiple levels because she served as a caretaker for her parents. Claimant testified that before her parents died, she paid out-of-pocket for needed psychiatrist sessions and medications due to a lack of health insurance. Claimant testified that she stopped seeing her psychiatrist in [REDACTED] because she could no longer afford the sessions. Claimant testified that she stopped taking medications in [REDACTED] but not due to an inability to afford the medications. Claimant testified that her alcohol rehabilitation, which started in [REDACTED], recommended disuse of her psychological medications because they serve as triggers for her alcohol use.

Claimant testified that she has a distant history of seizures. Claimant testified that she takes Dilantin as a precaution though Claimant stated that she has not had a seizure since her 20s.

Hospital documents (Exhibits 20-54) from an admission on [REDACTED]. It was noted that Claimant presented with complaints of dizziness, fatigue and left-sided facial numbness. It was noted that an MRI of Claimant's brain revealed no acute process. It was noted that carotid artery stenosis of 50-69% was discovered following carotid duplex. An impression of moderate plaque formation was noted. It was noted that Claimant drank alcohol and smoked tobacco daily. A past medical history noted that depression and ADHD were resolved (see Exhibit 30). Diagnoses of trigeminal neuropathy and carotid stenosis were noted. Trigeminal neuropathy was noted as managed. It was noted that Claimant was counseled on risk factor modification concerning artery stenosis.

A Psychiatrist/Psychological Examination Report dated [REDACTED] was presented. The report was completed by Claimant's psychiatrist who noted an approximate three-year history with Claimant. It was noted that Claimant tends to isolate herself. Claimant's concentration was noted as impaired. Claimant's memory was noted as good. Axis I diagnoses of major depression (recurrent, severe and without psychotic factors), ADHD and a history of alcohol abuse were noted. A GAF was not provided.

Claimant's psychiatrist completed a Mental Residual Functional Capacity Assessment (MRFCA) (Exhibits 57-58) dated [REDACTED]. Claimant's psychiatrist found Claimant markedly limited in 4 of 4 adaptability abilities, 3 of 3 understanding and memory abilities and 9 of 13 concentration abilities.

Claimant's diagnosis of artery stenosis is consistent with some degree of restriction, as it appears that Claimant did not receive treatment, only counseling. Generally, if a hospital does not treat a heart problem, the concern is likely minimal. There was no evidence of subsequent treatment for the problem, which tends to establish a probability of little or no restrictions. Claimant conceded that she has no exertional restrictions. Claimant's distant history of seizures and lack of heart treatment is consistent with Claimant's testimony.

Based on the presented evidence, it is found that Claimant does not have severe exertional impairments. Claimant also alleged disability based on psychological impairments.

Claimant's psychiatrist certainly found Claimant to have severe impairments by finding Claimant to be markedly limited in 16 different work-related abilities. The assessment appears to be inconsistent. For example on a psychological examination, Claimant's memory was described as "good". On the MRFCA, Claimant was found markedly limited in understanding and remembering 1-2 step instructions. This inconsistency raises doubts about the psychiatrist's findings.

The assessment is also thought to be not representative of Claimant's ongoing condition. At the time of assessment, Claimant was a daily alcohol user; the problem was sufficiently problematic that the psychiatrist noted alcohol abuse as a diagnosis. Claimant's alcohol abuse was enough of a problem that she began attending rehabilitation and quit taking medications for fear of returning to alcohol. This consideration is relevant to determining the materiality of alcohol abuse as a factor.

The assessment of Claimant's restrictions was also made shortly after the death of Claimant's parents. It is natural for a person to be more adversely affected by family deaths for a relatively short period following death; the adverse effects are not typically permanent. This is a relevant factor in determining whether Claimant's restrictions are likely to last 12 months or longer.

Claimant's claim of disability is further complicated by her lack of medication. Claimant conceded that she stopped taking anxiety medication after beginning drug rehabilitation. Though it is appreciated that Claimant is stuck between two difficult choices, there was reason to believe that Claimant's agoraphobia and anxiety would decrease if she became medication compliant. The consideration is relevant in determining Claimant's compliance with treatment.

Claimant's psychological symptoms were found to be exaggerated by her psychiatrist. The symptoms were also found to be exacerbated by alcohol abuse, traumatic life events and treatment noncompliance. Despite these findings, it is probable that Claimant would still have psychological problems with medication and the passage of

time. It is found that Claimant has some degree of chronic psychological problems. The evidence also established a continuity of problems since [REDACTED], the first month where Claimant seeks Medicaid.

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.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's testimony. 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 had a complete inability to function outside of the home. As noted in the step two analysis, marked restrictions found by Claimant's psychiatrist were deemed exaggerated and affected by alcohol abuse, life events and medication noncompliance.

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.

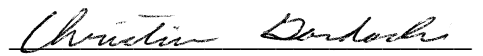
Claimant has past employment as a bartender. Given Claimant's alcohol rehabilitation, bartending is not an ideal future profession for Claimant. The step four analysis may factor Claimant's impairments and whether she is capable of performing her past employment.

Claimant testified that agoraphobia and anxiety prevents her from performing any employment. Claimant's anxiety may have been immense in 2013. However, there is

insufficient evidence that Claimant's anxiety would prevent a return to her former employment if treated by medication and after completing alcohol rehabilitation. Based on the presented evidence, it is found that Claimant can perform her past employment. Accordingly, it is found that Claimant is not disabled and that DHS properly denied her MA application.

### **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], including retroactive MA benefits from [REDACTED], 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: 3/11/2014

Date Mailed: 3/11/2014

**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:

