

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-65765
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 27, 2014
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 January 27, 2014, from Inkster, Michigan. Participants included the above-named 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.

ISSUES

The first issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

The second issue is whether DHS properly failed to consider Claimant's eligibility for MA through a FIP-related category based on Claimant's status as a caretaker.

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 10/2012.
2. Claimant's application alleged a disability but also noted that Claimant was a grandparent to minor children in the home.

3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial (see Exhibits 58-59).
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 202.21.
7. On [REDACTED] an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A8) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
11. On [REDACTED], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.21.
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 49-year-old female with a height of 5'3" and weight of 226 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant had no health insurance.
18. Claimant alleged disability based on impairments and issues including arthritis in knees, arthritis in the neck and ulcerative colitis.

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 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 Prescription Medication List (Exhibit 14) was presented. The medication list noted that claimant took various medications including the following: Metformin, Lipitor, Mobic, Lisinopril among others.

Ophthalmology documents (Exhibits 15-16) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of blurry vision. An assessment of type II diabetes (uncontrolled) was noted.

Various medical clinic documents (Exhibits 18-26) were presented. The documents ranged in date from [REDACTED] through [REDACTED]. On [REDACTED], a physician noted that

Claimant presented with leg swelling and pain. The clinic physician recommended that Claimant lose weight and use her pool.

A physician letter (Exhibits 29-30; 39-40) dated [REDACTED] was presented. The physician noted that Claimant previously presented with complaints of 30-40 bowel movements per day. An impression of ulcerative colitis was noted. A plan noted prescribing various medications and a recommendation to limit NSAIDs among other ideas.

Hospital documents (Exhibits 48-53) from an admission dated [REDACTED] was presented. It was noted that Claimant presented with complaints of rectal bleeding. It was noted that Claimant underwent a colonoscopy and that the biopsy verified ulcerative colitis. It was noted that Claimant received steroids and Asacol and that Claimant began feeling better.

Various medical clinic documents (Exhibits 60-68) were presented. The documents verified various treatments for diabetes, blurry vision, and left knee pain.

A Medical Examination Report (Exhibits A1-A8) dated [REDACTED] was presented. The report was completed by a physician with an approximate one-month history with Claimant. The physician noted the following Claimant diagnoses: Type II DM, GERD, hypothyroidism, arthritis, hypertension, ulcerative colitis, asthma and depression. Claimant's physician noted that Claimant could frequently lift 20 pounds of weight. Claimant's noted that Claimant could stand and/or walk less than 2 hours in an 8-hour workday. The physician noted that Claimant could sit less than 6 hours in an eight-hour workday. The physician noted that Claimant could perform repetitive actions with her arms and legs. The physician noted that Claimant had no mental limitations and that Claimant could meet her needs in the home. Claimant's condition was noted to be stable.

Presented medical documents verified that Claimant has arthritis in her left knee. Claimant's physician noted ambulation, lifting and sitting restrictions for Claimant. It is found that Claimant established significant impairment to perform basic work activities. Due to the degenerative nature of arthritis and Claimant's lack of insurance, it is probable that Claimant's impairments have and will last for 12 months or longer.

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 joint pain (Listing 1.02) was considered. The listing was rejected due to a failure to verify that Claimant has an inability to ambulate effectively.

A listing for visual acuity (Listing 2.02) and loss of visual efficiency (Listing 2.04) were considered. The listings were rejected due to a failure to establish that Claimant's vision was poor enough to meet listing requirements.

Digestive order listings (Listings 5.00) were considered based on Claimant's diagnosis of ulcerative colitis. Each listing was rejected as Claimant does not meet any listing requirement.

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 stated that her only employment amounting to SGA in the last 15 years was dog grooming. Claimant testified that her employment required lifting up to 50 pounds. Claimant testified that she is unable to perform the lifting necessary of her former employment. Claimant's testimony was consistent with presented medical records. It is found that Claimant cannot perform her past 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, 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.

Claimant's physician noted that Claimant was limited to sitting less than six hours in an eight-hour workday. 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*. It is not known how or why Claimant's physician restricted Claimant's sitting. Diagnoses for arthritis and ulcerative colitis would not seem to impact Claimant's ability to sit. Other diagnoses provided by the physician would not seem to impact Claimant's ability to sit either. Claimant conceded that she could sit for 3-4 hour periods. Claimant's testimony is consistent with being able to sit for 6 hours or more in an 8-hour workday. It is worth noting that Claimant displayed no particular discomfort during while sitting during the administrative hearing. It is found that Claimant is able to perform the sitting necessary for sedentary employment.

Claimant's physician also noted that Claimant was restricted to less than two hours of standing and/or walking. Again, the physician statement appeared to be unsupported. Claimant testified that she was restricted to one block of walking though she conceded that she could stand for 20-30 minute periods. Standing for a 20-30 minute is consistent with being able to perform two hours of standing and/or walking over an eight-hour workday.

Claimant expressed concern over how her ulcerative colitis diagnosis would affect her ability to work. Claimant stated that she typically has seven bowel movements per day. Though Claimant's bowel movements are more frequent relative to others, the amount should not significantly preclude Claimant's ability to perform sedentary employment.

There was evidence of vision problems for Claimant. The problems were not well detailed to justify a finding that Claimant's employment opportunities are restricted. Based on the presented evidence, it is found that Claimant can perform sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (limited), employment history (no transferrable skills), Medical-Vocational Rule 201.19 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.

Despite the above finding, Claimant has a potential second basis for MA eligibility. Clients may qualify under more than one MA category. BEM 105 (10/2010), p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility or the least amount of excess income. *Id.* As a non-disabled grandparent caretaker to minor children, Claimant is potentially eligible for Medicaid through the Group Two Caretaker (G2C) program.

A caretaker relative is a person who meets all of the following requirements:

- Except for temporary absences, the person lives with a dependent child. Dependent child is defined later in this item.
- The person is the parent of the dependent child or the specified relative (other than a parent) who acts as parent for the dependent child. Specified relatives defined later in this item. Acts as parent means provides physical care and/or supervision.
- The person is not participating in a strike; and, if the person lives with his spouse, the spouse is not participating in a strike. Use the FIP striker policy in BEM 227.
- The MA eligibility factors in the following items must be met: BEM 220, Residence, BEM 221, Identity, BEM 223, Social Security Numbers, BEM 225, Citizenship/Alien Status, BEM 255, Child Support, BEM 256, Spousal/Parental Support, BEM 257, Third Party Resource Liability, BEM 265, Institutional Status and BEM 270, Pursuit of Benefits.
BEM 135 (7/2013), p. 3.

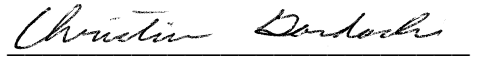
DHS contended that Claimant was ineligible for caretaker status, in part, because Claimant did not apply for MA benefits for her grandchildren. It was not disputed that Claimant's application only requested MA benefits for herself. Whether a child receives or applies for MA benefits seems to be an irrational way to define a caretaker; nevertheless, the DHS contention is partially supported by DHS policy. Among the requirements for a dependent child is that the child be one of the following: FIP recipient, SSI recipient, MA applicant, active MA deductible, MA recipient or a MICHild recipient. *Id.*, pp. 2-3.

There was no evidence that any of Claimant's grandchildren met any of the conditions that would qualify any as a "dependent child". Accordingly, Claimant is not eligible for Medicaid as a caretaker. 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 Claimant's MA benefit application dated [REDACTED] based on determinations that Claimant is neither disabled nor a caretaker of minor children.

The actions taken by DHS are **AFFIRMED**.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/14/2014

Date Mailed: 4/14/2014

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:

