

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 20136734  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: February 4, 2013  
County: Macomb DHS (12)

**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 conducted on February 4, 2013, from Clinton Township, Michigan. Participants included the above-named claimant. [REDACTED], Claimant's brother, testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Specialist.

**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 8/16/12, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 10/4/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 28-27).
4. On 10/10/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 10/23/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 12/17/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 30-29), in part, by application of Medical-Vocational Rule 202.20.
7. On 2/4/13, an administrative hearing was held.
8. On 2/11/13, an Interim Order Extending the Record was issued allowing Claimant 60 additional days to present additional medical evidence.
9. The interim order dated 2/11/13 noted that no extensions shall be granted beyond 90 days from the date of the hearing.
10. On 4/5/13, Claimant's AHR requested a 30 day extension to submit medical records.
11. After 90 days following the hearing, Claimant failed to present any additional medical evidence.
12. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'1" and weight of 108 pounds.
13. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
14. Claimant's highest education year completed was the 12<sup>th</sup> grade.
15. As of the date of the administrative hearing, Claimant had no health coverage.
16. Claimant alleged that she is disabled based on impairments and issues including: congestive heart failure, seizures, chronic headaches and upper extremity weakness related to nerve damage.

### **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).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential

health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2011 monthly income limit considered SGA for non-blind individuals is \$1,000. 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 (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 the relevant submitted medical documentation. It should be noted that DHS inexplicably presented the documentation in numerical order, from high-low number. The exhibit will be cited accordingly.

Treatment documents (Exhibits 10-8) dated from Claimant's neurologist were presented. The documents noted monthly visits from Claimant between 3/2012-6/2012 concerning headaches and seizures.

Treatment documents (Exhibits 14-12) dated 7/5/12 from Claimant's neurologist were presented. It was noted that Claimant presented with complaints of headaches and memory loss. It was noted that Claimant reported multiple emergency room trips ("a few times per month"). Labs were taken and noted to be unremarkable. A report following an MRI of Claimant's brain noted no abnormalities other than a very few small white lesions which remain unchanged since a prior study from 10/2011. An impression of transient amnesic episodes was noted. It was noted that Depakote dosages would be increased in an attempt to reduce seizures and headaches.

A Psychological Evaluation (Exhibits 7-1) dated [REDACTED] was presented. It was noted that Claimant had a history of seizures and headaches following the removal of a brain tumor from three years prior. The examiner administered a Wechsler Adult Intelligence Scale IV (WAIS4) test to Claimant. The WAIS4 is an IQ test which measures verbal comprehension, perceptual reasoning, working memory and processing speed. Claimant's composite score ranked Claimant from average to superior in all categories except processing speed where Claimant tested to be low average. Claimant's full scale IQ was 102. Claimant's cognitive abilities were described to be in the broad average to superior. It was noted that testing did not suggest cognitive deficits that would interfere with employability. An Axis I diagnosis of Adjustment Disorder with anxious mood was provided. Claimant's GAF was determined to be 45-65, the variance due to Claimant's seizure frequency and severity.

A Medical Examination Report (Exhibits 21-20) was completed by Claimant's treating neurologist. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of cervical degenerative disc disease, transient amnesic episodes and headaches. An impression was given that Claimant's condition was stable. It was noted that Claimant's current medications included: Depakote, folic acid, Flexeril, Neurontin, Lisinopril and Tylenol. It was noted that Claimant can meet household needs. It was noted that Claimant had poor attentiveness and decreased recent memory. It was noted that Claimant had upper trapezius spasms. It was noted that Claimant had full muscle strength (5/5) except for right hip flex and right leg extension (4/5).

Claimant seeks MA benefits beginning 8/2012. The medical records established a recent history (as recently as 7/2012) of treatment for seizures and headaches. The seizures were verified by two different treating physicians. A treating physician also attributed Claimant's headaches to cervical spine DDD. The treatment and diagnoses could reasonably preclude Claimant from the performance of some basic work activities such as working around dangerous machinery and working from heights. Short-term memory loss was also verified by Claimant's treating physicians. Based on a de minimus standard, this is sufficient verification of basic work activity restrictions.

It is known that Claimant received neurologist treatment since 2008 and continued through 7/2012. The extended neurologist treatment is persuasive evidence of an impairment that has lasted longer than 12 months.

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 primary impairment appeared to be transient amnesic episodes. Listing 11.02 covers seizures which are part of the SSA listing for epilepsy. This listing reads:

**11.02 Epilepsy** - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

- A. Daytime episodes (loss of consciousness and convulsive seizures) or
- B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

The medical evidence verified that Claimant received ongoing treatment for seizures. The evidence failed to demonstrate the quantity or severity of Claimant's seizures. The evidence failed to demonstrate that Claimant meets the listing for 11.02.

Mental disorder listings (12.02- Organic Mental Disorders and 12.07 Somatoform Disorders) were considered based on presented psychological testing. Claimant's GAF was presented as a range (45-65). A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." A GAF score within the range of 61-70 is representative of a person with "Some mild symptoms OR some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships." Thus, Claimant's psychological functioning ranges from marked restrictions to mild restrictions, depending on the frequency of her seizures. Due to the lack of evidence of Claimant's seizure history, conclusions can not be made concerning Claimant's psychological capabilities. This finding is bolstered by Claimant's psychological testing, which showed average to superior cognitive functioning.

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's past relevant work history exclusively involved waitressing. Claimant testified that she is unable to perform her past employment because of seizures. Waitressing, which involves carrying heavy trays, is not employment that is compatible with one who suffers regular seizures. Claimant's testimony was credible and supported by the medical evidence. It is found that Claimant is unable to perform 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).

For purposes of this decision, only sedentary employment will be considered. In previous analysis, Claimant was found incapable of performing jobs that would be considered particularly dangerous for someone suffering seizures. Seizures are considerably less worrisome in the performance of sedentary employment. Perhaps if Claimant's seizures were so frequent, despite prescribed treatment, then sedentary employment would not be a reasonable expectation. The medical evidence does not suggest that Claimant is so restricted. The fact that Claimant's treating physician noted that her condition is stable and that Claimant can perform household duties is further support for this finding. It is found that Claimant can perform sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual, aged 18-44) education (high school), employment history (unskilled), Medical-Vocational Rule 201.27 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 8/16/12 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: 5/20/2013

Date Mailed: 5/20/2013

**NOTICE:** 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 was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at  
Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

CG/hw

cc:

