

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-39921
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 12, 2013
County: Wayne (76)

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 August 12, 2013, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] appeared and testified as Claimant's authorized hearing representative. 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]/12, Claimant applied for MA benefits (see Exhibits 7-8), including retroactive MA benefits from 7/2012 (see Exhibits 9-10).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 13-14).

4. On [REDACTED]/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED]/13, Claimant's AHR 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 203.18.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A39) 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]/13, an Interim Order Extending the Record was mailed to Claimant to allow 60 days from the date of hearing to submit treating physician documents and a consultative examination report.
12. On [REDACTED]/13, Claimant submitted additional documents (Exhibits B1-B15).
13. On [REDACTED]/13, an updated hearing packet was forwarded to SHRT.
14. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by determining that Claimant can perform past relevant work.
15. On [REDACTED]/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
16. As of the date of the administrative hearing, Claimant was a 56-year-old female with a height of 5'1" and weight of 165 pounds.
17. Claimant has no known relevant history of alcohol or illegal substance abuse.
18. Claimant's highest education year completed was the 11th grade.
19. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since approximately 6/2013.
20. Claimant alleged disability based on impairments and issues including anxiety, depression, lower back pain, diverticulitis and diabetes.

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.

Hospital documents (Exhibits 36-66) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant presented with complaints of chest pain. The hospital noted that Claimant's lab results were normal. The hospital noted that Claimant was recently diagnosed with GERD. The hospital noted that a stress test was normal though Claimant might benefit from a catheterization. A discharge of [REDACTED]/12 was noted.

Hospital documents (Exhibits 27-35) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant presented with complaints of back pain radiating to her chest. The hospital noted that a nuclear stress test was negative and revealed no signs of ischemia. The hospital noted that left heart catheterization was performed.

Hospital documents (Exhibits A1-A34) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant presented with complaints of abdominal pain, ongoing for one week. The hospital noted that Claimant's pain was controlled by

pain medication. The hospital noted that an EKG was performed and showed normal sinus rhythm. A diagnosis of diverticulitis was noted following a CT of the pelvis; a kidney stone was also found by radiology. A discharge date of 1 [REDACTED]/12 was noted.

Medical clinic documents (Exhibits 67-70) dated [REDACTED]/13 were presented. The treating physician noted that Claimant reported abdominal pain, ongoing for the prior three weeks, which worsened without Zantac. The treating physician noted that Claimant reported many stressors. The treating physician assessed Claimant with major depression and prescribed Xanax. Claimant's hypertension was described as not well controlled. The treating physician noted that Claimant did not have neuropathy though a history of DM was noted.

Physician documents (Exhibits A35-A39) from an appointment dated [REDACTED] 13 were presented. Claimant's physician noted that Claimant presented for a routine follow-up. Claimant's physician noted that Claimant's blood pressure increased after Claimant stopped taking medication. Claimant's physician noted that Claimant's anxiety and acid reflux were well controlled. It was noted that Claimant denied chest pain and headaches.

Physician documents (Exhibits B6-B10) from an appointment dated [REDACTED]/13 were presented. Claimant's physician noted that Claimant presented for a follow-up of diabetes, hypertension, anxiety and GERD. A complaint of intermittent anxiety was noted. A physical examination was noted as normal in all tested areas.

Physician documents (Exhibits B1-B5, B11) from an appointment dated [REDACTED]/13 were presented. Claimant's physician noted that Claimant presented with complaints of back pain radiating to her chest. A physical examination was noted as normal in all tested areas. Claimant's physician noted that anxiety was not well controlled and a second medication was prescribed with Xanax. Claimant's depression was noted as well controlled. Claimant was advised to begin diabetes medication.

An Operative Report (Exhibits B14-B15) dated [REDACTED]/13 was presented. The report noted that Claimant underwent an EGD and colonoscopy. The report noted mild and chronic gastritis. The report noted multiple fragments of colonic mucosa with no significant pathological finding.

Claimant alleged disability, in part, due to back pain. No radiology of Claimant's spine was presented. Claimant's medical history involved back pain complaints, but the back pain appeared to be related to chest pain. It is found that Claimant failed to establish any restrictions related to a spinal problem.

Claimant alleged disability, in part, due to anxiety and depression. The presented evidence established that Claimant takes medication for anxiety and depression. The evidence verified various complaints of anxiety. As of 8/2013, Claimant's depression was noted to be well controlled, though anxiety was not. Claimant has the ability to receive prescribed medication through AMP; the ability to receive free medication tends

to make it more likely that Claimant is not impaired by anxiety or depression. Presented medical evidence did not verify details of reported anxiety though Claimant testified that she has daily panic attacks. Based on a de minimus standard, the evidence verified that Claimant has a low-stress threshold, which would be a significant impairment to performing basic work activities.

Claimant alleged disability, in part, due to cardiac problems, high blood pressure, diabetes and diverticulitis. Diagnoses for each were verified. The diagnoses are sufficient to presume some degree of lifting restriction.

The medical evidence tended to establish that Claimant's impairment have and will continue for 12 months or longer. 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 (Listing 12.06) was considered based on Claimant's claim of panic attacks. 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 or that Claimant had repeated episodes of decompensation for an extended duration.

Listings for digestive system disorders (Listings 5.00) and endocrine disorders (Listings 9.00) were considered. All of these listings were rejected due to Claimant's failure to present sufficient evidence to meet any of the listings.

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 testified that she was last employed full-time when she worked as a machinist in 2001. Claimant testified that she would feel too overwhelmed to perform her past employment. Claimant's testimony was neither verified nor refuted. Deference will be given to Claimant's testimony as she has the most knowledge of what her past employment required. It is found that Claimant cannot perform her past relevant employment and the analysis may proceed to step five.

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

At step two of the disability analysis, it was determined that diabetes, hypertension, diverticulitis and cardiac problems would limit Claimant's lifting abilities. Physician statements of Claimant's restrictions were not presented. Presented evidence did not suggest notable restrictions. For example, Claimant verified one short hospitalization involving cardiac problems which were presumably lessened following a catheterization; all cardiac tests were negative. A subsequent hospitalization for diverticulitis occurred, but Claimant was not hospitalized again. The presented evidence tended to suggest that Claimant is capable of performing a medium level of exertional employment.

At step two, it was found that Claimant had severe impairments related to anxiety; that finding was based on a de minimus standard. At step five, a de minimus standard does not apply.

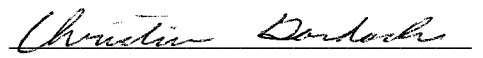
Claimant did not verify any ongoing psychological therapy. As noted in step three, Claimant has access to medication and there is no history of psychological hospitalizations. Though Claimant reported difficulty with anxiety, there is little evidence supporting a notable restriction of employment. Medical documents did not verify social, concentration or daily activity impairments. Claimant would have obstacles in dealing

with job stress, but this is not an unusual impairment. Claimant's anxiety does not significantly restrict her employment opportunities.

Based on Claimant's exertional work level (medium), age (advanced age), education (less than high school), employment history (unskilled), Medical-Vocational Rule 203.03 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 [REDACTED]/12, including retroactive MA benefits from 7/2012, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 1/3/2014

Date Mailed: 1/3/2014

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.

2013-39921/CG

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:

