

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 2013 39316
Issue No.: 2009
Case No.: ██████████
Hearing Date: August 7, 2013
Wayne (18)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on August 7, 2013, from Taylor, Michigan. Participants on behalf of Claimant included the Claimant and the Claimant's Authorized Hearing Representative, ██████████. Participants on behalf of the Department of Human Services (Department) included ██████████ Medical Contact Worker.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On September 20, 2012, Claimant applied for MA benefits and retro MA-P benefits (June, 2012).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On January 24, 2013, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On January 29, 2013, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On April, 2. 2013, Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On June 25, 2013 the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female [REDACTED] with a height of 5'1" and weight of 150 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or substance abuse.
9. Claimant's highest education year completed was high school. Claimant's past relevant work history included general secretarial work, working as a nurse's assistant for a medical office, light industrial work sorting car parts, and cleaning airplane cabins and data entry.
10. The Claimant has alleged physical disabling impairments due to diarrhea, diabetes, poor vision. Claimant also has one leg shorter than other which causes her to have left leg pain when walking more than 15 minutes. The Claimant did not allege any mentally disabling impairment.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. Department policies are found in BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal SSI disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness automatically qualifies an individual as disabled for purposes of the SDA program.

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 current monthly income limit considered SGA for non-blind individuals is \$1,000.

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). Multiple 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).

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation. A summary of the medical evidence follows.

A Medical Examination Report was completed on [REDACTED] by an internal medicine doctor who had seen the Claimant since [REDACTED]. The Examiner did not give a diagnosis. All the examination areas were normal and the Claimant was evaluated as stable. The examining doctor imposed restrictions of no lifting of less than 10 pounds frequently and 10 pounds only occasionally. The Claimant could stand and/or walk at least 2 hours in an 8 hour workday and sit less than 6 hours in an 8 hour workday. No assistive devices were necessary. The examiner did not impose any limitations as regards repetitive action with hands/arms with regard to simple grasping, reaching, pushing, pulling, and fine manipulating and no restrictions were imposed with respect to use of feet or legs operating foot controls. The medical findings cited were body mass index and angina.

A general eye exam noted vision was corrected and was a normal examination, with no edema. Best corrected vision on [REDACTED] was 20/30 right eye and 20/25 for the left eye.

On [REDACTED] the Claimant was seen by her primary care physician due to chest pain caused by a catheter placed when she had kidney stones removed and kidney blockage. The chest pain did not reveal palpitations or congestion. The examination on that date was normal and diabetes was controlled.

The Claimant was seen by her doctor for follow up on [REDACTED] and was assessed as having nephrolithiasis.

The Claimant was hospitalized for a severe kidney infection caused by kidney stones from [REDACTED].

On [REDACTED] the Claimant was seen by her doctor for management of diabetes mellitus and about medications given for possible kidney stones and low magnesium levels. A CT showed no kidney stones and Claimant was given instructions to follow up with a urologist.

On [REDACTED] notes indicate that the Claimant had been in the hospital the past week passing kidney stones. No hospital records were available to support the note.

On [REDACTED] the Claimant was seen for pain at the hospital. The exam noted moderate right sided hydronephrosis and hydrouretan with the right kidney noted as mildly hypertrophied without evidence of obstruction stones. The medical records submitted were incomplete.

Claimant's restrictions from physical activities such as squatting, lifting items over 10 pounds, are significant impairments to the performance of basic work activities. A sitting less than 6 hours in an 8 hour work day restriction is further evidence of a significant impairment. Both these restrictions were imposed by the Claimant's internal medicine doctor.

However, the evidence was not supportive of a finding that Claimant was physically limited to the extent she now testified to. Claimant testified to ongoing restrictions, which included standing up to 3 hours, and sitting 4 hours, walking about 10 to 15 minutes, and no squatting. The Claimant can do laundry, shower and dress herself and drive a couple of hours. The Claimant testified that she had no pain and her only medication was metformin for her controlled diabetes. The Claimant is able to use her hands to play cards and play word search and she can cook for herself. Upon her discharge from her kidney stones and surgery the Claimant was vastly improved and has had no follow up hospitalization for kidney stone-related problems since [REDACTED] after her kidney stone removal. Under these circumstances, given the impairments listed and improvement on discharge after hospitalization with no further incidence of

treatment does not meet the severity or 12 month durational requirement needed to establish a severe impairment.

It must be noted that the Claimant's internal medicine doctor has limited the Claimant in her abilities to less than sedentary status; however, the DHS 49 completed does not support the doctor's imposed limitations. The examining doctor does not provide a current diagnosis and bases the restrictions imposed on alteration of body mass index and angina. The medications listed were Metformin, Lisinopril and Simvastatin. The latter two drugs are generally prescribed for hypertension and cholesterol control. The report also imposed no restrictions with use of the both hands for simple grasping, reaching, pushing/pulling and fine manipulations, and thus Claimant's alleged impairment of arthritis in her fingers is not supported by her doctor's evaluation. The Examination Areas reviewed during the exam are all listed within normal limits. No laboratory or x-ray findings were noted. Even though a treating doctor's opinion is to be given deference, in this instance based upon the lack of support for the restrictions imposed and a fully normal examination findings as regards all systems, the opinion is not supported by the weight of the medical evidence presented.

Even applying a de minimis standard, it is found that Claimant failed to establish an impairment that has or is expected to last 12 months. Thus, Claimant failed to establish having a severe impairment. Accordingly, it is found that DHS properly denied Claimant's application for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant not disabled for purposes of the MA-P and/or SDA benefit program.

Accordingly, the Department's determination is AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 5, 2014

Date Mailed: February 5, 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

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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

LMF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
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