

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

IN THE MATTER OF:



Reg. No.: 2013-46997
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 14, 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 November 14, 2013, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared 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], Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by finding that Claimant did not have a significant impairment to performing basic work activities; SHRT further determined that the presence of drug and/or alcohol abuse was material to a disability finding.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A118) 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 an additional 90 days.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by determining that Claimant does not have a significant impairment to performing basic work abilities.
13. On [REDACTED], the Michigan Administrative Hearings System received a hearing packet including additional documents (Exhibits B1-B18) and updated SHRT decision (Exhibits B19-B20)
14. As of the date of the administrative hearing, Claimant was a 56 year old female with a height of 5'5 ½" and weight of 143 pounds.
15. Claimant has a relevant history of alcohol and tobacco abuse.
16. Claimant's highest education year completed was the 11th grade.
17. As of the date of the administrative hearing, Claimant was an ongoing Adult Medical Program recipient.
18. Claimant alleged disability based on impairments and issues including high blood pressure, pancreatitis and blurry vision.

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).

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 103-123) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with upper body pain. A history of high blood pressure and polysubstance abuse was noted. It was noted that an ultrasound of Claimant's abdomen was performed and no gallstones were found. Final diagnoses included acute alcohol induced pancreatitis and alcohol dependence. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 124-143) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of epigastric pain radiating to her back. It was noted that Claimant reported that her stomach pain began after she drank two liters of liquor. It was noted that Claimant each day smoked a pack of cigarettes and drank around 14 shots of liquor. Discharge diagnoses included acute pancreatitis, hypertension with hypertensive emergencies, hypokalemia and alcoholism. A discharge date of [REDACTED] was noted.

Hospital records (Exhibits 46-89) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with severe pain in her chest and epigastric region. The hospital noted that Claimant was admitted with an impression of acute pancreatitis and alcohol abuse; the hospital noted that Claimant was treated according to the admission diagnoses. Discharge diagnoses included acute pancreatitis, alcohol withdrawal, hypertension and GERD. A discharge date of [REDACTED] was noted.

Hospital records (Exhibits 7-42) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with a complaint of generalized abdominal pain. The hospital noted that Claimant's pain was associated with alcohol use. A diagnosis of acute pancreatitis related to alcohol was noted. A discharge date of [REDACTED] was noted.

Hospital records (Exhibits A1-A4) from an admission dated [REDACTED] were presented. It was noted that Claimant presented after waking up with abdominal pain. The hospital noted that gastrointestinal bleeding was present. It was noted that Claimant was treated with medication and showed improvement. Discharge diagnoses included gastrointestinal bleeding, acute pancreatitis, hypertension and alcohol abuse. A discharge date of [REDACTED] was noted.

Hospital records (Exhibits A5-A43) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, ongoing for two days. It was noted that the pain began after claimant drink a shot of liquor. Noted discharge diagnoses included acute pancreatitis, hypertension and alcohol abuse. A date of discharge of [REDACTED] was noted.

A consultative mental status examination report (Exhibits B1-B5) dated [REDACTED] was presented. It was noted that Claimant's teeth were in a bad state of repair. Claimant reported being "sick a lot". It was noted that Claimant drank every day. An Axis I diagnosis of alcohol dependence was noted. Claimant's GAF was 51. A fair prognosis was given. The examiner noted that Claimant demonstrated difficulty with concentration and slight problems with short-term memory. The examiner opined that Claimant could perform a multi-step repetitive procedure if no decision-making or independent judgment was required.

A consultative medical examination report (Exhibits B6-B14) dated [REDACTED] was presented. It was noted that Claimant reported only being able to walk 40-50 feet due to dyspnea. The examiner concluded that Claimant had full ranges of motion in all tested areas. Claimant was found to be capable of performing all 23 listed work-related abilities which included the following: sitting, standing, carrying, bending, pushing, pulling, and climbing stairs.

Hospital records (Exhibits A44-A66) from an admission dated [REDACTED] 3 were presented. It was noted that Claimant presented with complaints of abdominal pain. Discharge diagnoses included hiatal hernia, acute and chronic erosive gastritis, duodenitis, acute on chronic pancreatitis, acute abdominal pain, gastrointestinal bleeding, and alcoholism. A date of discharge of [REDACTED] was noted.

Hospital records (Exhibits A67-A75) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, nausea and vomiting. It was noted that Claimant drank the night before hospital admission. Discharge diagnoses included acute alcoholic pancreatitis and alcoholic abuse. A date of discharge of [REDACTED] 3 was noted.

Hospital records (Exhibits A76-A118) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with improved abdominal pain and bloody diarrhea after a transfer from a different hospital. It was noted that Claimant had difficulties with eating. It was noted that Claimant had not drunk for one month. It was noted that a stent was inserted to address a pancreatic pseudoaneurysm; a 4-6 week outpatient follow-up was recommended so Claimant could be examined after acute issues resolved. Complete alcohol cessation was recommended. Discharge diagnoses included chronic pancreatitis and pseudoaneurysm.

Claimant alleged disability in part due to pancreatitis. The medical records established that Claimant was hospitalized 8 times due to pancreatitis. The 8 hospitalizations are sufficient to establish a significant impairment to performing basic work activities, however, Claimant's problems were alcohol induced.

When alcohol and/or drug abuse is relevant to an impairment then an additional analysis must be performed. SSA provides guidance on disability findings that may be impacted by substance abuse. Social Security Rule 82-60 states:

Where the definition of disability is met in a title XVI claim, and there is evidence of drug addiction or alcoholism, a determination must also be made as to whether the drug addiction or alcoholism was a factor material to the finding of disability for purposes of applying the treatment and representative payee provisions. In making this decision the key issue is whether the individual would continue to meet the definition of disability even if drug and/or alcohol use were to stop. If he or she would still meet the definition, drug addiction or alcoholism is not material to the finding of disability and the treatment and representative payee provisions do not apply. The drug addiction and alcoholism requirements are imposed only where (1) the individual's impairment(s) is found disabling and drug addiction and/or alcoholism is a contributing factor material to the determination of disability, and (2) the same impairment(s) would no longer be found disabling if the individual's drug addiction or alcoholism were eliminated, as, for example, through rehabilitation treatment.

All of Claimant's verified hospitalizations noted recent alcohol use except for the final one which was from 10/2013. In the hospitalization from 10/2013, Claimant reportedly had not drunk alcohol in the last 30 days. Claimant's statement is highly dubious after hospital documents from [REDACTED] indicated that Claimant drank the night before hospital admission. Claimant's testimony was also inconsistent as she stated on [REDACTED] that she last drank 4-5 months ago. The lack of hospitalizations when Claimant is sober is suggestive that Claimant is functional if she can obtain sobriety. It is found that Claimant's alcohol usage is material to a disability finding based on pancreatitis-related impairments; thus, Claimant cannot be disabled based on abdominal pain complaints.

Claimant alleged that she had blurry vision because of high blood pressure. Hypertension was noted in Claimant's medical history. There was no evidence of any

treatment for blurry vision. Claimant's allegation is summarily rejected due to a lack of evidence.

Claimant also alleged disability, in part, based on COPD and/or shortness of breath. Treatment records were not presented but pulmonary function results (Exhibits B14-B16) dated [REDACTED] were presented. It was noted that Claimant's best FVC was 2.40 and her best FEV1 was 1.54.

Claimant testified that she had walking and lifting restrictions due to shortness of breath. Claimant's pulmonary function testing results were consistent with having some degree of restrictions. A consultative examiner restricted Claimant from performing work involving dust, fumes and pulmonary irritants (see Exhibit B8). Claimant did not gain any sympathy after conceding that she was a half of a pack per day smoker. Presented records noted that Claimant was a pack per day smoker as recently as [REDACTED] (see Exhibit 79). The restrictions placed on Claimant by the examiner are not found to be significant restrictions.

A consultative examiner determined that Claimant's GAF was 51, which is consistent with moderate restrictions. That Claimant's only Axis I diagnosis was alcohol dependence is consistent with not having long-term psychological problems. This conclusion is also consistent with Claimant's failure to pursue any alcohol or psychological treatment. Any psychological impairments of Claimant are deemed to be primarily based on Claimant's alcohol use.

Based on the presented evidence, Claimant's alcohol abuse is found material to be any of her claimed disabilities and that any unaffected impairments are not severe. Accordingly, Claimant is not a disabled individual and it is found that DHS properly denied Claimant's MA application dated [REDACTED].

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 6/21/12 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: 2/28/2014

Date Mailed: 2/28/2014

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:

