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

IN THE MATTER OF:

Reg. No.: 2013-56446
Issue No.: 2009
Case No.:
Hearing Date: December 19, 2013
County: Wayne (17)

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 December 19, 2013, from Detroit, Michigan. Participants included as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included , 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 , Claimant applied for MA benefits, including retroactive MA benefits from 4/2012.

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On , the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibit 45).

4. On , DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action to Claimant's AHR.

5. On , Claimant's AHR requested a hearing disputing the denial of MA benefits.

6. On , SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant work.

7. On , Claimant died (see Exhibit A1).

8. Claimant's AHR seeks a determination of disability based on various problems including tuberculosis and diabetes mellitus (DM).

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, several procedural matters must be addressed. First, 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.

A second procedural dispute involved the timeliness of Claimant's AHR's Request for Hearing. DHS received Claimant's AHR's Request for Hearing on (see Exhibit 5). The request for Hearing submission date is relevant because it must be submitted within 90 calendar days of the DHS action in dispute, assuming DHS issued proper written notice (see BAM 600).

Claimant's AHR contended that a Request for Hearing was submitted to DHS on . Claimant's AHR supported the contention by presenting a signed statement from a person who allegedly submitted the Request for Hearing to DHS on . A DHS office date stamp of accompanied the statement.

The submitted statement was noted to be sworn and made subject to penalties of perjury; the statement was neither notarized nor subject to penalty of perjury. The submitted statement was hearsay and not supported by testimony from the person who allegedly submitted the documents to DHS. DHS did not rebut the evidence, though

realistically, it would be difficult for DHS to prove that the AHR did not submit a statement on [redacted]. Claimant's AHR's evidence was not particularly compelling but was persuasive enough to establish a probability of a [redacted] hearing request submission date.

A third procedural issue involved Claimant's AHR's representation. Claimant's death terminated the AHR's representation. Claimant's AHR submitted sufficient proof of authorization from Claimant's probate representative.

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

In the present case, Claimant died in 10/2013 (see Exhibit A1). Claimant's death establishes proof of disability for 10/2013. It must still be determined whether Claimant was disabled from 4/2012 through 9/2013. Accordingly, Claimant may not be considered for Medicaid eligibility for 4/2012 through 9/2013 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 CRF 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.

Generally, the best evidence of a lack of SGA is a client's testimony. Generally, when a client fails to testify concerning a lack of SGA, a client cannot overcome step one of the disability analysis. Claimant cannot present any SGA testimony because of her death. Applying the general rule to the present case would create an outcome that Claimant cannot be found disabled because she passed away awaiting the hearing; such an outcome would be extraordinarily unjust. Thus, other evidence will be considered to establish SGA.

Claimant's Assistance Application (Exhibits 15-37) dated [redacted] was presented. The application noted that Claimant had neither employment nor self-employment income. The same was listed on Claimant's Retroactive MA Application (Exhibits 38-39). Other medical records verified multiple hospitalizations for Claimant after she applied for MA benefits. None of the documents referenced that Claimant had employment income.

Documents presented from Claimant's AHR following the hearing tended to establish that Claimant was employed, but below SGA limits. The documents dated by Claimant on [redacted] noted Claimant was employed from 3/2012-12/2012. The documents were not considered in the decision because they were not entered as exhibits.

Based on the presented evidence, it is found that Claimant had not received SGA since the date of MA application or in requested retroactive MA months. Without employment since the month of application (or retroactive MA months), it can only be concluded that Claimant has not performed SGA. It is found that Claimant has not performed 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 F2d 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 50-63) from an encounter dated [redacted] were presented. The hospital noted that Claimant presented with complaints of coughing-up red blood. It was noted that Claimant denied other symptoms. A significant history of alcohol and heavy smoking was noted. It was noted that Claimant was an active smoker. A physical examination noted palpable pulses bilaterally and bunion deformities. The hospital noted that a CT of the thorax was suspicious for infections. The hospital noted that Claimant was twice treated for tuberculosis. The hospital noted that Claimant was admitted due to fear of tuberculosis. The hospital noted that Claimant was intubated during her stay. The hospital noted that Claimant had severe gastritis, likely due to anemia. The hospital noted that Claimant had an erosive esophagus. Noted discharge diagnoses included the following: acute hemoptysis with a history of tuberculosis, hypertension, asthma, and anemia secondary to hemoptysis. The acute hemoptysis with a history of tuberculosis was noted as resolved. A discharge date of [redacted] was noted.

Medical clinic documents (Exhibits A16-A17) dated [redacted] were presented. It was noted that Claimant reported disability because of poor vision and hand arthritis. Muscle spasms and some episodes of hyperglycemia were noted. Lab results from the appointment (Exhibits A18-A21) were presented but not considered because no additional analysis was provided.

Physician documents (Exhibits 79-80; A13-A14) from an appointment dated [redacted] were presented. It was noted that Claimant's glucose level was within normal range.

Physician documents (Exhibits 77-78; A11-A12) from an appointment dated [redacted] were presented. It was noted that Claimant presented for follow-up of chronic medical conditions (HTN and DM). It was noted that Claimant could not afford the scripts but that she had lost weight and was otherwise compliant. The physician noted that Claimant complained of a cold. An assessment included upper respiratory infection.

Physician documents (Exhibits 75-76; A9-A10) from an appointment dated [redacted] were presented. The physician noted that Claimant complained of shoulder pain. An assessment of DM, diarrhea, adverse effect of drug therapy and muscle spasm was noted.

Claimant's medical chart (Exhibit A8) was presented. The chart showed 6 dates ranging from [redacted]2 through [redacted] and blood sugar results. All noted blood sugars were normal except for the date of [redacted] which noted a 208 blood sugar level.

Hospital documents (Exhibits A2-A7) dated [redacted] were presented. It was noted that Claimant stopped drinking alcohol five years ago. A review of systems noted negative findings in all tested areas.

A radiology report (Exhibits A6-A7) dated [redacted] was presented A normal left hip was noted following views.

Claimant's Certificate of Death (Exhibit A1) was presented. A cause of death was noted as "pending". Claimant's date of death was [redacted].

It was established that Claimant had a lengthy hospitalization due to coughing up blood, which appeared to be related to tuberculosis. The diagnosis of acute hemoptysis is consistent with finding that the episode was a one-time problem rather than a recurring concern.

Subsequent medical documents verified that Claimant had HTN and DM. The diagnoses are relatively common and may be suggestive of disability, but not in the present case. Presented records did not verify long-term restrictions such as dyspnea or ambulation difficulties. A reference was made to hand arthritis but the presented evidence does not support a finding of any restrictions because of the diagnosis.

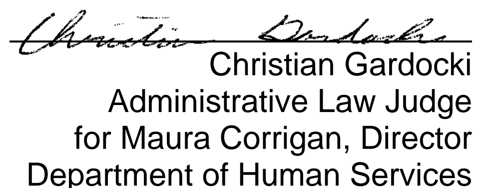
Other presented documents were not supportive of a finding of disability. One abnormally high blood sugar result over a six month period is not persuasive evidence of disability. The same is true for a hospital encounter for a cold.

Had Claimant's cause of death been identified and found to be related to any of her verified problems, a claim of disability is much stronger. Without such evidence, Claimant is left with little evidence of disability.

Based on the presented evidence, it is found that there is insufficient evidence that Claimant has a severe impairment. Accordingly, it is found that Claimant is not disabled and that DHS properly denied her application for MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated [redacted] including retroactive MA benefits from 4/2012 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: 3/7/2014

Date Mailed: 3/7/2014

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: