

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

IN THE MATTER OF:



Reg. No.: 2013-61176
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 29, 2014
County: Wayne (49)

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 January 29, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). 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, including retroactive MA benefits from 8/2012.
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 6-7).

4. On an unspecified date, 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 determining that Claimant did not have a severe impairment.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A3) 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 90 days from the date of hearing.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 201.28.
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet, additional medical documents (Exhibits 2-1 – 2-11) and updated SHRT decision (Exhibits 2-12 – 2-13).
14. As of the date of the administrative hearing, Claimant was a 40-year-old female with a height of 5'3" and weight of 196 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant obtained an Associate's Degree in Human Resources Management.
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 multiple sclerosis, diabetes, hypertension, and memory problems.

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 2013 monthly income limit considered SGA for non-blind individuals is \$1,040.

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 69-76) from a [REDACTED] hospital encounter were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant was diagnosed with a brain lesion, which required an MRI follow-up. It was noted that Claimant does not take medications. A history of peripheral neuropathy was noted. A diagnosis of urinary tract infection was noted. It was noted that Claimant's condition improved and that she was discharged on her date of presentation.

An internal medicine report (Exhibits 16-23) dated [REDACTED] was presented. The report was completed by a physician with no history of treating Claimant. It was noted that Claimant reported paresthesia in her hands, a history of diabetes and a brain defect which was being evaluated for MS. A history of depression was noted. It was noted that Claimant was able to slowly get off the examination table and that Claimant required no walking assistance device. All tested ranges of motion were noted as normal. No neurological abnormalities were noted. A medical source statement noted that Claimant has medical problems for which she will need long-term and ongoing care. It was noted that Claimant could perform, with pain, activities such as standing, bending, and carrying.

Hospital documents (Exhibits 24-55) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dizziness and gait imbalance, ongoing for 6 weeks. It was noted that the day of admission, Claimant was confused and had displayed impaired speech. Two recent falls, including one down a flight of stairs, were noted as reported. It was noted that a CT of Claimant's head demonstrated multiple foci of hypodensity. It was noted that a MRI of Claimant's brain revealed extensive white matter disease with a few enhancing lesions. A diagnosis of MS was noted. It was noted that Claimant received Neurontin to treat neuropathic pain. Follow-up with a neurology clinic was noted as scheduled. It was noted that a neurological examination showed that Claimant did not have weakness but that Claimant was unsteady. Diagnoses of uncontrolled hypertension, diabetes, depression and anxiety were noted to be treated with medications.

Hospital progress Notes (Exhibits 56-60) were presented. The notes appeared to concern inpatient rehabilitation through [REDACTED], presumably an extension from Claimant's 2/25/13 discharge. It was noted that Claimant had done very well during her short admission. A treatment plan of 1.5 hours/week of physical and occupational therapy were noted. Goals of independently performing household levels of mobility and self-care were noted.

A Medical Examination Report (Exhibits A1-A3) dated [REDACTED] from Claimant's physician was presented. Claimant's physician noted an approximate 2-day history of treating Claimant. The physician provided diagnoses of MS, gait impairment, and right hemiparesis. It was noted that Claimant required a rolling walker for ambulation. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant requires assistance with basic hygiene, meals and housework.

A physician progress noted (Exhibit 2-1 – 2-2) dated [REDACTED] was presented. It was noted that Claimant had not taken blood pressure or diabetes medicine since her 2/2013 hospitalization. A complaint of memory problems was noted. It was noted that Claimant would be prescribed blood pressure and diabetes meds.

A physician progress noted (Exhibit 2-3 – 2-5) dated [REDACTED] was presented. It was noted that Claimant reported ongoing dizziness. A plan for thyroid disorder assessment was noted.

A physician progress note (Exhibit 2-6 – 2-7) dated [REDACTED] was presented. It was noted that Claimant reported fecal incontinence despite compliance with MS medications. Claimant also reported complaints of hand numbness and memory lapses. A discussion of the need for Claimant to check blood sugars was noted.

A physician progress noted (Exhibit 2-8 – 2-9) dated [REDACTED] was presented. It was noted that Claimant presented for a gynecological examination. An assessment of vaginosis was noted.

The presented evidence established that Claimant experienced MS symptoms at least as far back as 3/2013, the earliest month from which Claimant seeks MA eligibility. Claimant apparently ambulated independently as of 1/2013, as records from that time noted that Claimant required no walking assistance devices. By 10/2013, Claimant's physician noted that Claimant required use of a walker. Use of a walker is a clear restriction to Claimant's ability to ambulate, stand and lift/carry. There is little evidence to suggest improvement in Claimant's condition as her physician noted a deteriorating condition.

It is found that Claimant established significant impairment to performing basic work abilities. Accordingly, Claimant has a severe impairment and the disability analysis may proceed 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 most prominent impairment is MS and related symptoms. MS is covered by Listing 11.09 which states that disability is established by the following:

Multiple sclerosis. With:

- A. Disorganization of motor function as described in 11.04B; or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or
- C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

As noted above, the MS listing is met if it is established that a claimant suffers disorganization of motor function. Listing 11.04(b) requires significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station.

It was established that Claimant requires use of a walker. Use of a walker is compelling evidence that Claimant's legs experience disorganization of motor function.

Claimant testified that she experiences frequent memory lapses. The testimony was consistent with what Claimant reported to her physicians. Claimant testified that she recalls one time when she was lost in her home city and began crying. The evidence is not necessarily evidence of motor dysfunction but is consistent with having very problematic MS symptoms.

Claimant testified that she sometimes falls when using her walker, particularly when maneuvering through snow-covered sidewalks. The testimony was consistent with presented records and supports finding that Claimant experiences sustained disturbance in her legs.

Claimant's physician opined that Claimant is restricted from performing any lifting or carrying. Claimant's physician restricted Claimant from performing any standing and walking for purposes of employment. Claimant's physician also restricted Claimant from performing several repetitive arm or leg movements. The physician's statements were consistent with finding that Claimant has disorganization of motor function, possibly in all extremities.

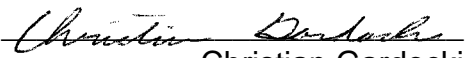
Based on the presented evidence, it is found that Claimant meets the listing for multiple sclerosis. Accordingly, it is found that Claimant is a disabled individual and that DHS erred in denying Claimant's MA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from 2/2013;
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are **REVERSED**.


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

Date Signed: 4/30/2014

Date Mailed: 4/30/2014

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:

