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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-62641
Issue No.: 2009
Case No.: [redacted]
Hearing Date: December 2, 2013
County: Wayne (18)

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 2, 2013, from Taylor, 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 (see Exhibits 5-6), including retroactive MA benefits from [redacted]

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 11-12).

4. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant and Claimant's AHR of the denial.

5. On [redacted] Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 2).

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

7. On [redacted], an administrative hearing was held.

8. Claimant presented new medical documents (Exhibits A1-A223) 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 additional documents considered and forwarded by SHRT.

11. On an unspecified date, an Updated Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit Claimant's hospital records from [redacted].

12. On [redacted], following a Claimant request for an extension, an Updated Interim Order Extending the Record was mailed to Claimant to allow 60 days from the date of hearing to submit Claimant's hospital records from [redacted].

13. On [redacted], Claimant submitted additional documents (Exhibits B1-B11)

14. 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.

15. On [redacted], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 201.27.

16. On [redacted], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

17. As of the date of the administrative hearing, Claimant was a 34 year old female with a height of 5'8'' and weight of 310 pounds.

18. Claimant has a relevant history of heroin and tobacco abuse.

19. Claimant's highest education year completed was the 12th grade, via general equivalency degree.

20. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since approximately [redacted].

21. Claimant alleged disability based on impairments and issues including cellulitis, asthma and leg wounds.

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 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. "Current" work activity is interpreted to include all time since the date of application. The 2012 monthly income limit considered SGA for non-blind individuals is $1,010.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not

performed SGA since the date of MA application. 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 background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant testified that she has a disorder called Factor V. Claimant testified that the disorder causes increased blood clotting and makes her vulnerable to problems such as deep vein thrombosis and/or aneurysms.

Hospital documents (Exhibits 22-23; 49-51; 59-61) related to an encounter dated [redacted] were presented. It was noted that Claimant presented following an overdose of Seroquel and Topamax. It was noted that Claimant reported being upset after a recent heroin and cocaine relapse. A previous suicide attempt from [redacted] was noted. A plan of inpatient psychiatric treatment was noted. A discharge date of [redacted] was noted.

Hospital documents (Exhibits 24-33; 52-53; 62-64) from an admission dated [redacted] were presented. It was noted that Claimant presented after falling in her bathroom. It was noted that Claimant has a history of seizures. It was noted that Claimant had a distal tibia fracture. It was noted that an open reduction internal fixation was performed on Claimant's left leg.

Hospital documents (Exhibits 34-48; 54-58; 65-73) from an admission dated [redacted] were presented. It was noted that Claimant reported swelling and pain in her left leg. It was noted that a cast was removed from Claimant's left leg on [redacted]. It was noted that a venous Doppler study verified DVT and venous thrombosis in Claimant's leg. The hospital noted that that Claimant's leg was very swollen and tender. It was noted that Claimant was treated with warfarin and heparin. It was noted that a mechanical thrombectomy had limited success. Diagnoses of seizure disorder, GERD, mood disorder, and tobacco abuse were noted. A discharge date of [redacted] was noted.

Hospital documents (Exhibits A31-46) from an admission dated [redacted] were presented. It was noted that Claimant reported left lower leg soreness. It was noted that radiology verified an absence of DVT. It was noted that Claimant responded well to Teflaro. A discharge diagnosis of bilateral leg cellulitis was noted.

Hospital documents (Exhibits A13-A30) from an admission dated [redacted] were presented. It was noted that Claimant reported 10/10 pain in her left leg. It was also noted that Claimant reported that her leg was swollen, ongoing for one week, and released an unspecified discharge. An assessment of left leg minimal cellulitis was noted. It was noted that Claimant's medications were changed from Zyvox and Unasyn to Teflaro. A diagnosis of failed outpatient management of cellulitis was noted.

Hospital documents (Exhibits A1-A12; A47-A62) from an admission dated [redacted] were presented. It was noted that Claimant reported pain and an apparent infection in her left leg. It was noted that Claimant was emotional and tearfully stated, "If this is how my life is going to be, I wanted to be cut-off". Diagnoses for cellulitis and DVT were noted. It was noted that Claimant received various medications upon discharge; the medications included: doxycycline, fluconazole, hydrocodone-acetaminophen, and warfarin. A discharge date of [redacted] was noted.

Various treatment documents (Exhibits A90-A223) were presented. The documents verify ongoing wound treatment of Claimant's left leg from [redacted] through [redacted]. The documents generally demonstrate a gradual improvement of Claimant's left leg ulcer, particularly from [redacted] through [redacted]

Physician progress notes (Exhibits A63-A64; A67-A77; A82-A83) dated [redacted] were presented. It was noted that Claimant's ulcers had no change in size though edema was noted as improved. It was noted that Claimant refused debridement. It was noted that Claimant's ulcer was ongoing for 4 months. The wound was noted as "healed" though ongoing care products were arranged for Claimant. Edema of 2+ was noted as ongoing for 4 months. A follow-up in one week was noted.

Hospital documents (Exhibits B1-B11) dated [redacted] were presented. It was noted that Claimant presented with pain and swelling in her left leg. A diagnosis of DVT was noted. It was noted that Claimant was supposed to be on Coumadin but that her medication ran out. It was noted that Claimant used cocaine "once prior to admission"; it was not clear whether the admission was the one dated [redacted].

Claimant testified that she is limited in walking due to leg pain. Presumably, Claimant would also claim to be restricted in lifting and carrying for the same reason.

The presented records established that Claimant has recurring leg ulcers, with at least one chronic ulcer on her left leg. Though Claimant's left leg ulcer was determined to be "healed as of [redacted], it was also established that the wound had not disappeared. Ongoing edema was noted in the same appointment that Claimant's ulcer was deemed to be healed. Thus, it is probable that Claimant has ongoing left leg restrictions despite significant improvement in a left leg ulcer. Claimant's left leg problems existed since at least [redacted] when Claimant broke her shin. Claimant established significant impairment to performing basic work activities for at least 12 months.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, Claimant established having a severe impairment and 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 a tibia fracture (Listing 1.06) was considered. The listing was rejected because it was not established that Claimant has an inability ambulate ineffectively due to an unhealed broken tibia. More consideration would have been given to the listing had Claimant established a musculoskeletal problem. Claimant's failure to heal well following a broken bone appeared to be related to infection.

A listing for chronic skin lesions (Listing 8.04) was considered based on the presented evidence. This listing reads as follows:

> **8.04** ***Chronic infections of the skin or mucous membranes,*** with extensive fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing treatment as prescribed.

The above SSA listing was presumably intended to cover persons who suffer ulcers, lesions, abscesses or other skin conditions that are so severe that medication and treatment do not resolve the conditions. Those circumstances are not on-point with Claimant's disability claim. Presented evidence established that Claimant had one major ulcer which took months to heal. Claimant conceded noncompliance in treatment when she testified that she could not afford gauze, tape and bandages to clean her wound. Claimant's testimony is somewhat dubious because it was not disputed that Claimant had a form of health insurance since approximately [redacted]. It would also seem likely that Claimant would have received medical supplies following any one of her numerous hospitalizations.

The most current evidence established that Claimant's wound was "healed". A healed wound is fairly compelling evidence that Claimant's skin problems are not chronic.

Claimant testified that she was restricted to 1 block of walking due to leg pain. Claimant also testified that she required use of a walker. Claimant testified that she must elevate her legs for 30 minutes every 2 hours or her legs swell. Claimant's testimony was somewhat consistent with evidence that showed continuing edema of 2+ in her left leg despite the "healed" ulcer.

The presented evidence made it unclear if Claimant's wound was permanently healed. It also appears reasonably possible that the wound may become infected in the near future.

Claimant testified that she worked full-time consistently through [redacted]. Claimant's submitted work history was consistent with Claimant's testimony. Claimant's strong work history tended to establish that Claimant would likely return to work, if medically capable. This consideration supports a finding of disability.

There was also evidence that Claimant suffered serious problems other than leg ulcers. A suicide attempt was compelling evidence of some degree of psychiatric problem. It was also established that Claimant has some concern about seizures considering that appears to be how she initially broke her shin.

Based on the presented evidence, Claimant sufficiently meets the listing for 8.04 to be considered disabled form [redacted]. Accordingly, it is found that Claimant is a disabled individual and that DHS improperly denied Claimant's MA application.

It is highly plausible that Claimant is not permanently disabled. Due to recent improvement in Claimant's conditions, a medical review shall be scheduled in 6 months rather than in 1 year.

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 [redacted];
(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 6 MONTHS 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: 5/16/2014

Date Mailed: 5/16/2014

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: [redacted]