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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-64199
Issue No.: 2009
Case No.: [redacted]
Hearing Date: January 6, 2014
County: Monroe

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 6, 2014, from Monroe, Michigan. Participants included the above-named Claimant. [redacted], Claimant's spouse, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [redacted], Medical Contact Worker, and [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 10-11).

4. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 5-9) informing Claimant of the denial.

5. On [redacted], Claimant requested a hearing disputing the denial of MA benefits.

6. On [redacted], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 204.00.

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

8. Claimant presented new medical documents (Exhibits A1-A30) 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 Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit treating physician documents and a Medical Examination Report.

12. On [redacted] an updated hearing packet was forwarded to SHRT.

13. On [redacted], Claimant submitted documents which were not admitted as exhibits due to Claimant's and/or her former AHR's failure to submit the documents by the ordered deadline.

14. On [redacted] SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00 (see Exhibits 21 – 2-2).

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

16. As of the date of the administrative hearing, Claimant was a 35-year-old female with a height of 5'7'' and weight of 250 pounds.

17. Claimant has no known relevant history of alcohol or illegal substance abuse.

18. Following high school graduation, Claimant obtained an Associate's Degree in Criminal Justice.

19. As of the date of the administrative hearing, Claimant received an ongoing county-issued medical coverage.

20. Claimant alleged disability based on impairments and issues including panic disorder, bipolar disorder, agoraphobia, and lower back pain.

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, it should be noted that Claimant's hearing request listed that she had an authorized hearing representative (AHR). The AHR did not appear for the hearing. Claimant waived her right to representation and the hearing proceeded with Claimant as an unrepresented party.

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. 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 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.

A Mental Residual Functional Capacity Assessment (Exhibits 17-18) dated [redacted] was completed by a physician. Claimant's physician noted that Claimant was markedly limited in the following abilities: to work in proximity with others, to complete a normal workday without symptoms, to interact with the public, to respond to change and to travel in unfamiliar places.

A Medical Examination Report (Exhibits 25-26) dated [redacted] from Claimant's treating physician was presented. Claimant's physician noted an approximate one month history of treating Claimant. Claimant's physician noted diagnoses of respiratory failure, acute respiratory distress syndrome (ARDS), bipolar disorder and others. The physician noted Claimant's condition was improving. The physician noted that Claimant was

occasionally capable of lifting ten pounds and could frequently lift less than 10 pounds. The physician opined that Claimant could sit less than 6 hours in an 8-hour workday. It was noted that Claimant can meet household needs.

Psychiatric treatment documents (Exhibits 27-31) dated [redacted] were presented. The documents referenced diagnoses of major depressive disorder (recurrent and moderate), panic disorder with agoraphobia, PTSD and bipolar affective disorder. Claimant's GAF was noted to be 50 as of [redacted]. It was noted that Claimant reported the following symptoms: moodiness, anxiety, panic attacks, excessive fatigue, insomnia, difficulty focusing and concentrating, anhedonia, hopelessness and worthlessness. Claimant was described as having a logical thought process, cooperative manner, good eye contact and anxious mood.

Hospital documents (Exhibits 32-98; 100-106) from an encounter dated [redacted] were presented. It was noted that Claimant presented with pneumonia symptoms. An x-ray report noted a patchy density right mid chest likely developing atelectasis and/or infiltrate; follow-up was noted as recommended. It was noted that Claimant was a daily smoker. It was noted that Claimant was discharged on [redacted] and treated on outpatient basis which failed due to respiratory problems. It was noted that Claimant had to be intubated and admitted to ICU with ventillary support. A primary diagnosis of acute respiratory distress syndrome was noted. Morbid obesity was noted. On [redacted], it was noted that Claimant signed-out against medical advice (see Exhibit 105).

Physician encounter documents (A1-A2) dated [redacted] were presented. It was noted that Claimant felt better and reported no dyspnea. It was noted that Claimant left the hospital against medical advice because "she didn't feel she needed to stay another day". It was noted that Claimant received a requested vaccine for pneumonia. It was noted that Claimant had a body rash.

Various psychiatric treatment documents (Exhibits A11-A30) were presented. The documents ranged in date from [redacted] through [redacted]. On [redacted]3, it was noted that Claimant reported non-existent focus, moodiness, and panic attacks. On [redacted], it was noted that Claimant gets depressed and out-of-breath easily. On [redacted], it was noted that Claimant reported that her depression is a 3/10 on most days. On [redacted] it was noted that Claimant felt "okay" and that Claimant did not want to wait 2 weeks until her next appointment. On [redacted], it was noted that Claimant was making good progress towards goals but still lacked motivation. On [redacted], it was noted that Claimant reported feeling lonely. On [redacted] Claimant's GAF was noted to be 60.

Physician encounter documents (A1-A2) dated [redacted] were presented. It was noted that Claimant sought medications for weight loss. It was noted that Claimant reported interrupted sleep. It was noted that Claimant received extra Xanax to address panic attacks.

Lab results (Exhibits A7-A8) dated [redacted] were presented. Sodium and alkaline phosphatase were noted as out of normal range.

Claimant alleged that she has walking and standing restrictions due to shortness of breath. For purposes of this decision, Claimant's hospitalization, by itself, will be deemed sufficient to verify some degree of respiratory dysfunction.

It was verified that Claimant receives ongoing psychiatric treatment. Claimant testified that she has recurring anxiety, including panic attacks. Treatment documents tended to verify Claimant's testimony.

Based on the presented evidence, it is found that Claimant has severe physical and psychological impairments. Accordingly, the 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.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant had a complete inability to function outside of the home.

A listing for respiratory function (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id*.

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant testified that she performed past employment as a front desk clerk for a hotel. Claimant testified that her job required more standing than she can currently perform. Claimant also testified that she could not work in any place that was unfamiliar to her. Claimant's testimony was not verified by presented medical evidence.

Claimant's GAF was noted as 60, as of 7/2013. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. A claim to be unable to work anywhere unfamiliar is not consistent with moderate symptoms, particularly for those on the high-functioning spectrum of those with moderate symptoms.

Claimant conceded that an MRI of her spine from 2012 was normal. No evidence of any back treatment was verified.

Claimant also alleged problems with breathing. Though a week long hospitalization is suggestive of some breathing problems, Claimant's pack per day smoking habit is certainly a contributing problem. Claimant's testimony lost a degree of persuasiveness when Claimant left against medical advice in the one verified hospitalization. The one medical encounter occurring after Claimant's hospitalization noted no complaints of dyspnea.

Based on the presented evidence, it is found that Claimant can perform her past work as a front desk clerk. Accordingly, Claimant is not disabled and it is found that DHS properly denied 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 properly denied Claimant's MA benefit application dated [redacted] 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: 5/21/2014

Date Mailed: 5/21/2014

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]