

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-57715
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Wayne (41)

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 February 5, 2014, 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], Medical Contact Worker.

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 [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 8-9).

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 application of Medical-Vocational Rule 203.11.
7. During the hearing, Claimant waived the right to receive a timely hearing decision.
8. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
9. 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 and hospital records.
10. 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.
11. On [REDACTED], Claimant submitted additional documents (Exhibits B1-B13; C1; D1-D4).
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, based on a determination that Claimant can perform past relevant employment.
13. As of the date of the administrative hearing, Claimant was a 56-year-old female with a height of 5'6" and weight of 195 pounds.
14. Claimant has no known relevant history of alcohol or illegal substance abuse.
15. Claimant's highest education year completed was the 12th grade.
16. As of the date of the administrative hearing, Claimant had no medical coverage but obtained medications from a free medical clinic.
17. Claimant alleged disability based on impairments and issues including COPD, high blood pressure and hand 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 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 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. 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. A Disability Determination Explanation (DDE) noted that Claimant had a failed work attempt (see Exhibit 2-2). The DDE also noted that Claimant performed self-employment which was not SGA. Overall, the evidence tended to establish that Claimant has not performed SGA since the date of application. 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.

It should be noted that following the administrative hearing, the record was extended 30 days for Claimant to submit updated medical documents. Claimant submitted records, but after the 30 days deadline; nevertheless, Claimant's tardily submitted records will be factored in the disability analysis.

Claimant's medical history (Exhibits 29-31) was presented. The source and creation date of the documents were not noted. Noted active problems included the following: high body mass index (BMI), hypertension, asthma, hyperlipidemia and chronic respiratory obstruction. Claimant's surgical history noted left kidney removal (see Exhibit 54).

Medical appointment documents (Exhibits 38-40) dated [REDACTED] were presented. The documents were signed by a nurse practitioner. It was noted that Claimant presented with chest tightness and coughing up phlegm. Bronchitis was noted.

Documents from a check-up dated [REDACTED] were presented. The documents were signed by a certified nurse-midwife. It was noted that Claimant presented with vaginal bleeding, five years after menopause. An impression of post-menstrual vaginal bleeding was noted.

Medical appointment documents (Exhibits 34-35) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of back pain. It was noted that Claimant was an active smoker. Claimant's musculoskeletal system was noted as normal.

Hospital documents (Exhibits 18-28; 54-57; C1) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with shortness of breath, ongoing for one day. It was noted that activity exacerbated the reported dyspnea and that inhalers relieved the dyspnea. An impression of acute dyspnea secondary to congestive heart failure was noted. It was noted that chest x-rays demonstrated COPD and mild interstitial edema. It was noted that Claimant was started on antibiotics and fluid monitoring and that Claimant's breathing improved. On [REDACTED], it was noted that Claimant ambulated with a steady gait. On [REDACTED], it was noted that Claimant had no complaints of pain.

Hospital encounter documents (Exhibits D1-D4) dated [REDACTED] were presented. It was noted that Claimant complained of a cough and dyspnea. It was noted that Claimant was a 40-year smoker, one pack per day. An impression of no acute process was noted following x-rays of Claimant's chest

Hospital documents (Exhibits 44-53) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with left foot pain. An impression of a negative examination was noted following left foot x-rays. It was noted that Claimant's gait was steady.

A physical examination report (Exhibits 2-13 – 2-21) dated [REDACTED] was presented. The report was authored by a physician with no history of treating Claimant. It was noted that Claimant reported receiving medical treatment for COPD for the prior year. It was noted that Claimant was a pack per day smoker. The examiner noted that Claimant should avoid toxins, fumes, smoke and dust

Respiratory testing (Exhibits 2-16-2-20) was part of the consultative examination report dated [REDACTED]. Claimant's best post-bronchodilator FVC was noted as 2.11. Claimant's best post-bronchodilator FEV1 was noted as 1.35. An interpretation of "moderate obstruction and low vital capacity possibly due to restriction" was noted.

Hospital documents (Exhibits A1-A9) from a consultation dated [REDACTED] were presented. It was noted that Claimant reported feeling like she was getting a cold; dyspnea was

also reported. An impression of dyspnea, likely associated with acute exacerbation of COPD was noted. Radiology noted mild pulmonary vascular congestion. Radiology of Claimant's left arm was taken in response to signs of edema; a normal venous Doppler was noted.

Various treatment documents (Exhibits A10-A16; B1-B13) from 2012 and 2013 were presented. Various Claimant complaints were noted included the following: blurry vision, and dyspnea. It was regularly noted that the medications were prescribed for Claimant.

Claimant testified that she has hand pain. Claimant testified that she suspected she had a pinched nerve which caused the pain. Claimant's testimony was not supported with medical evidence. Claimant's alleged impairments related to hand pain will not be further considered.

Claimant testified that she had walking restrictions due to dyspnea. It was verified that Claimant has COPD and/or lung disease which adversely affects her breathing. Respiratory testing was consistent with breathing restrictions. The evidence established that Claimant's restrictions likely lasted since [REDACTED], the earliest month of MA benefits requested. Medical evidence also tended to verify that Claimant's restrictions have not substantially improved since [REDACTED].

It is found that Claimant established having a severe impairment since [REDACTED]. Accordingly, 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.

Claimant's most prominent impairment appears to be shortness of breath. A listing for chronic pulmonary insufficiency (Listing 3.02) was considered. The listing was rejected because Claimant's respiratory function exceeded listing requirements, given Claimant's height.

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 her jobs in the last 15 years include the following: a factory job, hi-lo driver, team leader, and inspecting auto parts. Claimant testified that her past jobs required lifting, climbing or bending which she can no longer perform due to dyspnea. Claimant's testimony was consistent with presented evidence. It is found that Claimant cannot perform past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday.

Claimant's only verified impairment involved breathing difficulties related to COPD and/or lung disease. Respiratory testing verified that Claimant has "moderate" obstruction. A moderate obstruction is interpreted as potentially being consistent with an impairment that would prevent the performance of light employment. Other evidence should be considered to give context to the moderate obstruction.

Multiple hospital and physician encounters were verified, including a 3 day hospital admission. Presented records tended to establish that Claimant's breathing improved when treated. This is indicative that Claimant can perform light employment.

A second hospital encounter noted an acute exacerbation of COPD. "Acute", as opposed to "chronic", implies that Claimant's condition is occasional, not constant. Occasional dyspnea is consistent with an ability to perform light employment.

Other medical records either had nothing to do with COPD or only verified negative radiology. Overall, this evidence was suggestive that Claimant's dyspnea is controllable and treatable with proper treatment.

It is of note that Claimant continues to be a smoker despite a diagnosis of COPD. Presumably, Claimant's breathing would significantly improve if she quit smoking.

The only direct evidence of employment restrictions came from a consultative physician who determined that Claimant should avoid toxins, fumes, smoke and dust. The restriction is not a compelling due to its failure to cite any limits on Claimant's ability to walk, lift or stand.

Based on the presented evidence, it is found that Claimant can perform light employment. Based on Claimant's exertional work level (light), age (closely approaching advanced age), education (less than high school; able to communicate in English), employment history (unskilled), Medical-Vocational Rule 202.10 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of 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 [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: 6/6/2014

Date Mailed: 6/6/2014

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:

