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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-11074
Issue No.: 2009
Case No.: [redacted]
Hearing Date: April 9, 2014
County: Wayne (35)

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 April 9, 2014, from Redford, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's legal counsel/authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted], Hearing Facilitator.

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 Exhibit 2).

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 reliance on a Disability Determination Explanation (see Exhibits 51-56).

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

8. Claimant presented new medical documents (Exhibits A1-A171) 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 a yet to be written SHRT decision.

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 determining that Claimant does not have a severe impairment.

13. On [redacted], the Michigan Administrative Hearings System received the updated hearing packet and SHRT decision (Exhibits 2-1 – 2-2).

14. As of the date of the administrative hearing, Claimant was a 58-year-old female with a height of 5'1'' and weight of 118 pounds.

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

16. Claimant obtained an Associate's Degree of science.

17. As of the date of the administrative hearing, Claimant had no medical health insurance.

18. Claimant alleged disability based on impairments and issues including hypertension (HTN), anxiety, depression and a pinched nerve.

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

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 a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 26-27) from an encounter dated [redacted] were presented. An assessment of hypertension was noted. It was noted that Claimant's use of narcotics was a large factor in persistent vomiting. It was noted that Claimant's blood pressure was erratic. A prescription of Lisinopril was noted. It was noted that it was reasonable for Claimant to work. Claimant's weight was noted to be 110 pounds.

Hospital documents (Exhibits 30-40) from an encounter dated [redacted] were presented. It was noted that Claimant complained of left wrist weakness, ongoing for one day. Weak left grip strength was noted. It was noted that a CT of Claimant's cervical spine was performed; uncovertebral and facet arthropathy were noted throughout Claimant's spine though neural foraminal narrowing was considered mild. Effacement of the ventral thecal sac was noted at C5-C6 though without significant cord indentation or stenosis. Diagnosis of neuropathy and alcoholic myopathy were noted. A follow-up with neurology was noted.

Hospital documents (Exhibits 18-25; A72-A73) dated [redacted] were presented. It was noted that Claimant vomited 32 times in the past two days. It was noted that Claimant refused to answer questions and wanted pain medications. An assessment of abdominal pain was noted.

Hospital documents (Exhibits A1-A33; A74-A106) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of nausea, ongoing for 2 days. No evidence of obstruction or pneumoperitoneum was noted following views of Claimant's abdomen (see Exhibits A32-A33). A physical examination noted normal ranges of motion and no motor or sensory deficits. A history of pancreatitis was noted. An impression of no acute disease was noted following views of Claimant's chest. It was noted that 3 CTs over the past 2 months showed no acute process. It was noted that Claimant received IV fluids and that her condition improved. A prescription for Norco was noted. A diagnosis was not apparent.

Hospital documents (Exhibits A34-A59) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of multiple vomiting episodes in the last few hours; complaints of dizziness and abdominal pain, ongoing for 3 days, was also reported. It was noted that Claimant appeared well-nourished. It was noted that Claimant reported needing an EGD but that she could not obtain one due to a lack of insurance. Prescriptions for Norco, Zantac, and Zofran were noted. It was noted that Claimant's condition improved and that she was discharged on her date of presentation. Generic diagnoses of nausea and vomiting were noted.

Various psychological treatment documents (Exhibits A60-A71; A140-A169) were presented. On [redacted] it was noted that Claimant appeared to have no impairment in concentration; a recommendation of short-term counseling to teach coping skills was noted. A weight of 67 pounds was noted (see Exhibit 168), though this weight is inconsistent with Claimant's testimony and physician records. On [redacted], a social worker diagnosed Claimant with major depressive disorder and a GAF of 48. On [redacted] it was noted that Claimant reported depression from losing her job in [redacted]; ongoing anxiety and moderate concentration difficulties were noted. On [redacted]3, a diagnosis of major depressive disorder, mild, was noted; a recent hospitalization due to colon infection was noted. On [redacted], it was noted that Claimant expressed concern over undiagnosed gastro-intestinal problems; it was noted that Claimant reported weighing only 92 pounds. On [redacted], it was noted that Claimant would daily practice anxiety reducing techniques.

Claimant testified that her standing and walking are restricted due to feelings of dizziness with exertion. Claimant stated that she has to sit down in the shower and cannot walk 1 block before getting dizzy. Numerous records from hospital encounters were presented though little evidence of dyspnea and/or dizziness was verified. Claimant's testimony was insufficiently document to justify a finding of a severe impairment.

Presented radiology verified that Claimant had neck abnormalities. It would be reasonable to conclude that Claimant has resulting neck pain and some degree of listing restrictions. Claimant testified that she is in great need of gastrointestinal treatment due to a weight loss. Claimant testified that her weight dropped to 91 pounds. Claimant's weight loss was consistent with notes in psychological treatment records. Presented records suggested that Claimant's symptoms may have occurred because of a reaction to medication.

Hospital documents (Exhibits A107-A139) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of dizziness, ongoing since Claimant began taking Trazadone. A physical examination noted normal ranges of motion and 5/5 in all extremities. It was noted that a CT of Claimant's brain was unremarkable. It was noted that Claimant requested pain medication for chronic abdominal pain. It was noted that Claimant received rehydrating fluids and that her condition improved. It was noted that use of Trazadone appeared to cause Claimant's dizziness and that Claimant should follow-up with her psychiatrist.

Claimant testified she weighs 118 pounds at the time of hearing. Claimant's weight gain is suggestive that Claimant's GI-related symptoms are resolved.

It is worth noting that medical documents since [redacted] were not presented. This is consistent in finding that Claimant's condition has since improved. It is found that Claimant does not have significant gastro-intestinal impairments.

Claimant alleged that she had a pinched nerve causing her pain. Presented records failed to cite any pinched nerve problems.

Psychological treatment records were presented. Minimally, a diagnosis of depression and various symptoms were verified. Based on a de minimus standard, it is found that Claimant has psychological impairments, likely to last 12 months or longer.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. 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.

A listing for affective disorder (Listing 12.04) was considered based on a diagnosis of depression. 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 required a highly supportive living arrangement, suffered

repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's neck pain complaints. This listing was rejected due to a failure to establish a compromised nerve root.

A listing for weight loss (Listing 5.08) was considered based on Claimant's complaints of weight loss. The listing was rejected due to a lack of evidence that Claimant's BMI fell below listing standards despite prescribed treatment.

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 worked for 10 years as a certified nursing assistant. Claimant also testified that she worked as a custodian for approximately 2 years. Claimant stated that she is unable to perform her past employment due to anxiety and depression.

Very little of presented treatment records noted psychiatrist or psychologist statements. Moderate concentration and motivation impairments were noted. Noted treatments such as anxiety coping techniques were not indicative of restrictions that would preclude the performance of employment.

A diagnosis (from a social worker) of depression was noted. The diagnosis was described as "single episode, mild" (see Exhibit 166). The diagnosis is not suggestive of impairments that would preclude the performance of janitorial employment.

Treatment records noted a recommendation of "short-term" counseling. This is indicative of impairments which would not preclude the performance of employment.

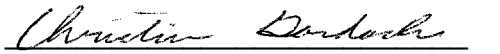
Claimant testified that she is unable to stand long enough to take a shower and requires use of a shower chair. Claimant testified that she requires a scooter in order to go shopping. Claimant's testimony was indicative of a person in chronic pain and immense difficulties in performing daily activities. During the hearing, Claimant's appearance and testimony was consistent with someone who was not likely capable of performing employment. Claimant's testimony and appearance was simply not consistent with presented documents.

Claimant's neck pain may affect Claimant's ability to lift which might prevent certified nursing care employment. The restrictions do not appear to prevent the performance of janitorial employment.

Based on the presented evidence, it is found that Claimant can perform past relevant employment. Accordingly, it is found that Claimant is not disabled and 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: 6/13/2014

Date Mailed: 6/13/2014

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]