

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-14610
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: March 26, 2014
County: Washtenaw (20)

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 March 26, 2014, from Ypsilanti, Michigan. Participants included the above-named Claimant. [REDACTED]

[REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Manager.

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 33-34).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 5-6) informing Claimant of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A58) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
11. On [REDACTED], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record an additional 90 days.
12. On [REDACTED], SHRT determined that Claimant was not disabled, in part, by determining that Claimant can perform past relevant work.
13. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
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 195 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was an ongoing recipient of a county-issued health plan.
18. Claimant alleged disability based on impairments and issues including chest pains, diabetes mellitus (DM), IBS, hyperlipidemia, hypertension, and an autoimmune disease.

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. "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 testified that she is employed as a full-time caretaker for her quadriplegic son. Claimant testified that she receives \$990/month in gross income for his care. Claimant's testimony was credible but unverified. DHS presented no evidence to contradict Claimant. Claimant's testimony will be accepted as fact.

Claimant's income is close to, but under the presumptive SGA limit. 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 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 a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 87-92) from an admission dated [REDACTED] were presented. It was noted that Claimant presented for pre-op evaluation.

Hospital documents (Exhibits 44-46) dated [REDACTED] were presented. It was noted that Claimant complained of chest pain. It was noted that Claimant underwent a selective coronary arteriography. It was noted that Claimant's right coronary artery showed 80% distal stenosis, 70% mid stenosis, 40% distal stenosis, and 30% proximal stenosis. It was noted that Claimant was scheduled for surgical consultation.

Hospital documents (Exhibits 47- 67; 70-74) from an admission dated [REDACTED] were presented. It was noted that Claimant's ejection fraction was 60%. Multiple heart valve

insufficiencies were noted. It was noted that Claimant underwent a quadruple bypass (CABG x4). A discharge date of [REDACTED] was noted.

A letter (Exhibits 68-69) from Claimant's treating heart surgeon, dated [REDACTED] was presented. It was noted that Claimant was "progressing nicely" following heart surgery.

Hospital documents (Exhibits 75-78; 93-100) dated [REDACTED] were presented. It was noted that Claimant reported ongoing fevers and dyspnea since her heart surgery. Erythema around Claimant's leg incision was noted. A principal diagnosis of cellulitis was noted. It was noted that Claimant's condition dramatically improved following IV vancomycin. A discharge date of [REDACTED] was noted. It was noted that Claimant was prescribed a 10 day prescription of Keflex upon discharge.

A Progress Note (Exhibits A1-A2) dated [REDACTED] was presented. It was noted that Claimant reported ongoing mild shortness of breath, likely to Claimant's sternum incision. It was noted that Claimant walked 30 minutes, twice per day. Trace lower bilateral edema was noted. It was noted that cellulitis was improving. Triglycerides were noted as 359.

A Progress Note (Exhibits A3-A4) dated [REDACTED] was presented. It was noted that Claimant may resume driving. A 10 pound lifting restriction, for three months, was noted. Minimal edema of lower extremities was noted. Faint erythema was noted.

A Progress Note (Exhibits A7-A9) dated [REDACTED] was presented. It was noted that a stress test was scheduled. It was noted that cardiac rehabilitation began on [REDACTED].

A Progress Note (Exhibits A16-A17) dated [REDACTED] was presented. It was noted that Claimant had left ankle swelling. It was noted that there were no signs of infection.

Cardiac and strength rehabilitation notes (Exhibits A10-A15; A18-A28; A35-A36; A47-A49; A51-A54) from [REDACTED] were presented. On [REDACTED], it was noted that Claimant had mild chest pain when walking 2 mph and that chest pain resolved when walking 1.5 mph. On [REDACTED] it was noted that Claimant reported chest pain while exercising. It was noted that Claimant reported increased stress caring for quadriplegic son. On [REDACTED], it was noted that Claimant was encouraged to not shovel snow.

A Progress Note (Exhibits A29-34) dated [REDACTED] was presented. It was noted that Claimant reported neck pain and headaches, possibly from "sleeping funny". Right-sided neck tenderness and lower lumbar tenderness was noted. It was noted that Claimant was encourage to take Ibuprofen.

A Progress Note (Exhibits A37-A40) dated [REDACTED] was presented. It was noted that Claimant reported chronic diarrhea and mild abdominal cramping. A recommendation of taking Imodium with dinner was noted.

A Progress Note (Exhibits A42-A44) dated [REDACTED] was presented. It was noted that Claimant reported chest pain, ongoing for 2 weeks. Reported chest pain episodes were noted as occurring 3 times per day, and lasting 30 minutes each. It was noted that Claimant was asymptomatic upon re-examination and that labs and radiology were normal.

A Progress Note (Exhibits A50) dated [REDACTED] was presented. It was noted that Claimant was doing well in cardiac rehabilitation and that she has not shown symptoms with exertion. A recent negative stress test was noted.

A Progress Note (Exhibits A55-A56) dated [REDACTED] was presented. It was noted that Claimant was only able to complete 26 of 36 cardiac rehabilitation sessions due to a lack of insurance and family obligations. It was noted that Claimant met a rehab goal of increase METs to 3-6.

A Progress Note (Exhibit A58) dated [REDACTED] was presented. An assessment of uncontrolled DM was noted.

Claimant reported that her lifting and walking is restricted due to dyspnea. Claimant's testimony was consistent with Claimant's diagnoses and medical history. Presented records also established that Claimant's symptoms have likely lasted since [REDACTED] the earliest month from which Claimant seeks MA benefits. It is found that Claimant established having a severe impairment and the 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 failed to allege to have any impairments which meet a SSA listing. Accordingly, the analysis may proceed 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.

As noted in step one, Claimant receives income as a caretaker for her disabled child. It was also noted in step one that Claimant's income does not amount to SGA. Because Claimant's job is to tend to her adult child, the income is not considered to be of a type that would transfer into full-time employment amounting to SGA. Thus, an evaluation of whether Claimant can perform caretaker-type employment will not be undertaken.

Claimant testified that her only other employment from the past 15 years was as a teaching assistant for disabled students. Claimant testified that her duties included assisting students with their schoolwork, supervising students on the playground, and assisting teachers. Claimant estimated that she could not stand more than 1.5 hours out of 6.5 hours. Claimant testified that her job required more standing and walking than she currently perform. Claimant's testimony was consistent with presented records. It is found that Claimant cannot perform past relevant 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.*

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 medium 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. Medium work is understood to require the same, but with higher lifting limits.

Claimant testified that she could only walk for a half-block before losing her breath. Claimant's testimony appeared to be exaggerated. Claimant is a full-time caretaker to a quadriplegic; Claimant's testimony seems improbable that Claimant could undertake such a demanding responsibility if she was so easily winded. Presented medical records though established various heart difficulties for Claimant. Though Claimant's heart function appears to be increasing, it is improbable that Claimant could perform the duties of medium-level employment.

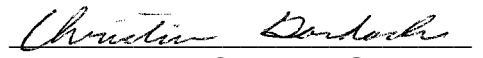
Based on Claimant's exertional work level (light), age (advanced age), education (high school- no direct entry into skilled employment), employment history (unskilled), Medical-Vocational Rule 202.04 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly 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 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 one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

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


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

Date Signed: 6/20/2014

Date Mailed: 6/20/2014

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:

