

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-21435
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]

[REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Hearings 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 Exhibits 3-4).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 157-158) informing Claimant of the denial.
5. On [REDACTED] Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 2).
6. On [REDACTED] SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 201.25.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A28-A100) at the hearing; there were no Exhibits A1-A27.
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 90 days from the date of hearing.
12. On [REDACTED] SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 201.25.
13. On [REDACTED], the Michigan Administrative Hearings System received the updated hearing packet and SHRT decision.
14. As of the date of the administrative hearing, Claimant was a 35-year-old female with a height of 5'8" and weight of 110 pounds.
15. Claimant has no known relevant history of substance abuse.
16. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
17. As of the date of the administrative hearing, Claimant was an ongoing Adult Medical Program recipient since 2013, which was likely converted to Healthy Michigan plan in [REDACTED].

18. Claimant alleged disability based on impairments and issues including multiple sclerosis.

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 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

Claimant started full-time employment as of [REDACTED]. Claimant conceded that her employment income exceeded presumptive SGA income limits. It is found that Claimant is not disabled effective 10/2013.

Claimant's AHR conceded that Claimant was not disabled after [REDACTED]. Claimant's AHR seeks a closed period of disability, for the period of [REDACTED]. Based on the concessions by Claimant's AHR, the period of [REDACTED] will be the disability period considered in this decision.

Claimant testified that she was also employed for a two week period in [REDACTED]. Claimant testified that her employment was probationary and that she was not retained for continued employment. Claimant also credibly testified that her employment stint did not amount to SGA.

Based on the presented evidence, it is found that Claimant did not perform SGA during the alleged period of disability. 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 background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 30-56; 130-134) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of neurological disturbances, ongoing for 2 months. It was noted that Claimant had difficulty performing all activities of daily living. It was noted that an admitting physician observed Claimant as "very unsteady with her gait". It was noted that MRIs revealed normal brain activity but a hyperintensity in her cervical cord from T2 through C6. A history of drug and tobacco abuse was noted. Motor strength was noted as 5/5. Proprioception was noted as bilaterally diminished. Final diagnoses of transverse myelitis, hypothyroidism, severe protein malnutrition, and leukocytosis were noted.

Hospital documents (Exhibits 16-29; 95-129; A66-A100) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of gait instability and paresthesia, ongoing for 6 weeks. It was noted that Claimant returned to baseline two months following hospitalization, other than mild distal fingertip and toe paresthesia, before the recent 6 week setback. It was noted that Claimant reported having to hold onto things to support her gait. It was noted that Claimant was admitted due to gait disturbance and prominent decreased vibration sense. It was noted that Claimant's presentation raised concern for MS versus a neuromyelitis diagnosis. It was noted that Claimant reported improvement after receiving steroid treatments. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 57-94; A28-A65) from an admission date [REDACTED] were presented. It was noted that Claimant presented with complaints of a worsening ataxic gait. It was noted that initial radiography demonstrated a new enhancing brain lesion, worsening spinal cord expansion, and increased patchy lesions. An impression of increased FLAIR signal abnormalities was noted following an MRI of Claimant's brain. An MRI of Claimant's spine noted multifocal T2/FLAIR cord signal abnormalities. It was noted that Claimant tolerated steroid treatment well and that improved balance and gait stability resulted, though with a walker (see Exhibit 69). On [REDACTED], physical therapy notes indicated that Claimant requires supervision for gait and that climbing stairs required minimal assistance. A principal diagnosis of MS was noted; noted secondary diagnoses included hypothyroidism, yeast infection, upper respiratory infection, and ataxia. A discharge date of [REDACTED] was noted.

As noted in the step one analysis, Claimant seeks a disability determination beginning [REDACTED]. Presented medical records established that Claimant was hospitalized in [REDACTED]. Claimant's reported MS symptoms were credibly documented to have been ongoing for 2 months- since [REDACTED].

Presented documents verified that Claimant was hospitalized three times within a 12 month period, each time involving MS complications. On each occasion, Claimant's ability to ambulate was noted as ataxic. A relative symptom-free two month period (approximately [REDACTED]) was established. An evaluation must be undertaken to determine if the months of [REDACTED] and [REDACTED] interrupt Claimant's alleged period of disability.

It is plausible that Claimant could have worked for two months. Had Claimant found employment during her brief period of stability, she could not have continued employment once her MS symptoms returned. If Claimant was capable of holding onto a job for only two months, it is not tempting to deny Claimant's claim of disability solely because of a brief period where employment was theoretically possible. The thought process is similar to other disability cases where clients allege impairments involving "good days" and "bad days". Simply because a person may have a day when symptoms are minimized does not make the person capable of maintaining employment. Claimant had good months and bad months; the bad months far outweighed Claimant's good months throughout [REDACTED] and [REDACTED].

Claimant testified that she attempted to work in [REDACTED]. Claimant stated that she was a probationary employee and not retained by her employer. For the same reasons cited above, it is even less tempting to interrupt Claimant's period of disability due to a 2 week period of reduced MS symptoms.

It should also be noted that Claimant demonstrated strong efforts in her attempts to return to work despite her MS diagnoses. Claimant's efforts justify a finding that it is probable if Claimant could have worked in [REDACTED] or [REDACTED], she would have.

Claimant seeks a period of disability through [REDACTED]. Medical records established that Claimant was hospitalized a few short weeks before [REDACTED]. Discharge instructions noted a recommendation of continued physical therapy; this is suggestive of continued MS symptoms beyond discharge. A two month period of gait instability and neurological disturbance is a reasonable time to expect Claimant to have been affected by MS symptoms.

Based on the presented evidence, it is found that Claimant established a severe impairment for the uninterrupted period of [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 is MS and related symptoms. MS is covered by Listing 11.09 which states that disability is established by the following:

Multiple sclerosis. With:

- A. Disorganization of motor function as described in 11.04B; or
- B. Visual or mental impairment as described under the criteria in 2.02, 2.03, 2.04, or 12.02; or

C. Significant, reproducible fatigue of motor function with substantial muscle weakness on repetitive activity, demonstrated on physical examination, resulting from neurological dysfunction in areas of the central nervous system known to be pathologically involved by the multiple sclerosis process.

Listing 11.04B requires "significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C).


Based on the presented records, it is found that Claimant experienced disorganization of motor function for the period of [REDACTED]. Accordingly, Claimant meets the MS listing for the period of [REDACTED] and it is found that DHS improperly 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 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 was a disabled individual for the period of [REDACTED]; and
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial.

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


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

Date Signed: 7/2/2014

Date Mailed: 7/2/2014

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:

