

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-17132
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: May 14, 2014
County: Wayne (19)

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 May 14, 2014, from Inkster, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 and SDA benefits.
2. Claimant's only basis for MA and SDA 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 and SDA benefits and mailed a Notice of Case Action (Exhibits 68-71) informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.21.
7. On [REDACTED] an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A38) 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 additional 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 202.21 (see Exhibits 2-1 - 2-2).
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 35 year old female with a height of 5'5" and weight of 165 pounds.
15. Claimant has a relevant history of 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 Healthy Michigan Plan recipient.
18. Claimant alleged disability based on impairments and issues including fibromyalgia, headaches, light and temperature sensitivity, IBS, pinched nerve in neck, and cervical myofascial syndrome.

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).

It should be noted that Claimant's hearing requested listed an authorized hearing representative (AHR). Claimant's AHR did not appear for the hearing. Claimant waived her right to representation and Claimant proceeded with the hearing without representation.

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 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 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.

Claimant testified that she suffers excruciating back pain throughout her spine. Claimant's back pain started while at work when she was adjusting shelves and she felt a pain between her shoulder blades, neck, and back (see Exhibit 26). Claimant testified that she has received treatment for the pain but that her pain has not sufficiently wavered to allow her return to employment.

A Functional Capacity Evaluation (Exhibits A24-A35) dated [REDACTED] was presented. The evaluation was noted as completed by Claimant's pain management physician. Claimant's physician concluded that Claimant was capable of sedentary employment, including occasional lifting of 10 pounds.

A medical report (Exhibit 25) dated [REDACTED] was presented. It was noted that Claimant reported shoulder pain, neck pain (6/10), and lower back pain (9/10).

A medical report (Exhibits 23-24) dated [REDACTED] was presented. The report noted that Claimant complained of continuing back pain.

A medical report (Exhibits 21-22) dated [REDACTED] was presented. The report noted that Claimant complained of continuing back pain.

A medical report (Exhibits 19-20) dated [REDACTED] from Claimant's pain management physician was presented. It was noted that Claimant complained of radiating pain from the neck to bilateral arms. A reported pain level of 8/10 was noted. It was noted that Claimant reported headaches, mid-back pain, and lower back pain which radiated to bilateral legs; a 9/10 pain level was noted as reported. It was noted that prolonged sitting exacerbated Claimant's LBP. It was noted that Claimant attempted to return to work as a retail store manager on [REDACTED] and lasted only 2 hours before having to go to a medical clinic due to pain. Limited extension, flexion, side bending and bilateral side bending were each noted as restricted. An impression of cervical myofascitis, L-S myofascitis, bilateral sacroiliitis, and cervicogenic cephalgia were noted. Noted treatment included issuing pain meds, issuing pain cream, and providing work disability documentation.

A medical report (Exhibits 17-18) dated [REDACTED] from Claimant's pain management physician was presented. It was noted that Claimant reported continuing radiating back and neck pain. It was noted that an EMG revealed mild chronic bilateral C7 radiculopathies, worse on the right. An abnormal EEG was noted. Reduced cervical curvature with moderate to severe palpable spasms of cervicodorsal, upper dorsal, and scapular musculature. Palpable severe spasms of lumbar musculature were noted. It was noted that provocative maneuvers were positive for bilateral hip pain, Tenderness of sacroiliac joints with provocative maneuvers were noted as positive bilaterally.

An Update Assessment (Exhibits 29-45) dated [REDACTED] was presented. The assessment was completed by an unknown staff member of Claimant's treating mental health agency. It was noted that Claimant reported depression symptoms, in part due to chronic physical pain. Notable observations of Claimant included: intact memory, normal concentration, fair judgment, unremarkable thought process, normal stream of activity, unremarkable speech characteristics, and apathetic emotional speech. Some suicidal ideation was noted as reported though it was noted no previous suicide attempts were made.

An Adult Health Assessment (Exhibits 46-52) dated [REDACTED] was presented. The assessment was completed by an unknown staff person who completed Claimant's Update Assessment. The assessment was only notable for being consistent with the Update Assessment.

A Psychiatric Evaluation (Exhibits 59-62) dated [REDACTED] was presented. The evaluation was completed by a psychiatrist from Claimant's treating mental health agency. A past history of substance abuse was noted; it was noted that it had been one year since

Claimant's last use. Axis I diagnoses of anxiety disorder, alcohol abuse, and cocaine abuse were noted. Claimant's GAF was noted to be 55 as of [REDACTED].

A Medical Examination Report (Exhibits 13-15) dated [REDACTED] was presented. The form was authored by a nurse practitioner with no history of treating Claimant. Noted diagnoses included fibromyalgia and a pinched nerve in the upper back. Noted current medications were Tramadol and Flexeril. An impression was given that Claimant's condition was stable. It was noted that Claimant could never lift 10 pounds or more but could occasionally lift less than 10 pounds. It was opined that Claimant could stand/walk less than 2 hours per 8 hour workday. It was opined that Claimant could sit approximately 6 hours in an 8 hour workday. It was noted that Claimant could not perform repetitive reaching, pushing or pulling. It was noted that Claimant would require household assistance with yard work, sweeping, and mopping.

A mental status examination report (Exhibits 26-28) dated [REDACTED] was presented. The report was completed by a psychiatrist with no treatment history with Claimant. It was noted that Claimant reported the following: a history of depression, crying spells, loneliness, helplessness, hopelessness, poor sleep, and social withdrawal. Noted observations of Claimant included the following: good contact with reality, low self-esteem, goal directed speech, normal reaction time, good verbal productivity, no unusual motor activity, constricted affect, and predominately depressed mood. Axis I diagnoses of recurrent major depression, mood disorder, and anxiety disorder were noted. Claimant's GAF was 45. A guarded prognosis was noted.

A Mental Impairment Questionnaire (Exhibits A18-A23) dated [REDACTED] was presented. The report was completed by an LLSW from Claimant's treating mental health agency. It was noted that Claimant reported daily problems with social interactions and impulse control. It was noted that Claimant had serious limitations in the following work abilities: maintaining regular attendance and punctuality, working on coordination and proximity with others, and dealing with normal work stress. It was noted that Claimant was unable to meet competitive standards in the following work abilities: maintaining attention for 2 hour periods, completing a normal workday without psychological interruption, and accepting instructions. It was noted that Claimant had three or more episodes of decompensation in the last 12 months, each lasting at least 2 weeks or longer.

A medical report (Exhibits A10-A13) dated [REDACTED] was presented. The report was completed by Claimant's pain management physician. It was noted that Claimant complained of ongoing pain in bilateral hips, upper back radiating to arms, and lower back radiating to legs. It was noted that Claimant's pain as worsened by movement. It was noted that Claimant reported some pain relief from medication. It was noted that Claimant could not handle even sedentary employment. A physical examination noted back muscle tenderness, restricted range of motion, mid-back spasms, and lower back spasms. A follow-up in 8 weeks was noted as scheduled.

An Attending Physician's statement (Exhibits A6-A9) dated [REDACTED] was presented. The report was completed by Claimant's pain management physician. Claimant's physician

opined that a 20 minute rest period every hour would be an unsatisfactory accommodation of Claimant's condition. It was noted that Claimant could not perform reaching, handling, or fingering.

Claimant alleged walking and lifting restrictions, in part based on multiple back problems. Claimant's allegations were consistent with presented evidence.

Claimant also alleged psychological-related difficulties with concentration, social interactions, and stress. Claimant's allegations were consistent with presented medical evidence.

Claimant's physical and psychological restrictions were both verified to have lasted consistently since at least [REDACTED], the first month from which Claimant seeks disability. It is found that Claimant established having a severe impairment and 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 back pain. Spinal disorders are covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As of [REDACTED], Claimant's physician concluded that Claimant was capable of performing sedentary employment. The conclusion was offered several months before Claimant applied for MA benefits. The medical opinion is not compelling evidence of Claimant's abilities as of [REDACTED]. Claimant's physician provided many opinions closer in time to 8/2013 which are deemed to be more relevant.

A Medical Examination Report (Exhibits 10-12) dated [REDACTED] was presented. The form was completed by a pain management physician with an approximate 14 month history of treating Claimant. The physician provided diagnoses of fibromyalgia and cervical myofascial release with C7 radiculopathy. An impression was given that Claimant's condition was guarded. It was noted that Claimant was restricted to occasional lifting of 10 pounds. It was noted that Claimant could stand and/or walk approximately 2 hours in an 8 hour workday. It was noted that Claimant was restricted from performing repetitive reaching, pushing, pulling, and operative foot/leg controls. It was noted that Claimant required assistance performing physically demanding chores.

A Fibromyalgia Source Statement (Exhibits A1-A5) dated [REDACTED] was presented. The statement was completed by Claimant's pain management physician who noted an approximate 2 year history of treating Claimant. Noted symptoms included the following: widespread body pain for longer than 3 months, 11 of 18 (minimally) tender points, cognitive dysfunction, IBS, muscle pain, muscle weakness, frequent severe headaches, dizziness, fatigue, frequent urination, depression, anxiety, tingling, nausea, sun sensitivity, and easy bruising. It was noted that Claimant's pain was constant and daily. It was noted that fibromyalgia lasted or will last for 12 months or longer. It was opined that Claimant would not have the stamina to complete a 40 hour work week. It was opined that if Claimant worked, she would require unscheduled hourly breaks of 10-15 minutes; the need for breaks was noted to be muscle weakness, chronic fatigue, and pain. It was opined that Claimant would be off-task 25% or more of her day, even to perform simple work tasks.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*. Claimant's restrictions provided on the Fibromyalgia Source Statement were credible and consistent with presented evidence. The restrictions are consistent with finding that Claimant is unable to ambulate effectively and cannot perform any type of employment due to back pain. It is found that Claimant meets the SSA Listing 1.04, effective [REDACTED].

Consideration was given to finding that Claimant's impairments were less severe as of [REDACTED], the month that Claimant's physician completed a Medical Examination Report. A restriction of being able to walk two hours in an eight hour workday is generally consistent with finding that Claimant is not unable to ambulate effectively. Such a finding would require further analysis to determine the issue of disability from [REDACTED]-[REDACTED]; the issue is however found to be moot.

Even if it was found that Claimant was physically capable of performing employment from [REDACTED], Claimant's psychological symptoms and physical pain would make such employment improbable. The combination of impairments would justify a finding of disability.

Based on the presented evidence, it is found that Claimant meets the SSA listing for spinal disorders, effective [REDACTED]. Accordingly, it is found that Claimant is a disabled individual as of [REDACTED], and that DHS improperly denied Claimant's MA application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet SSA listing 1.04. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

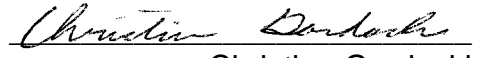
DECISION AND ORDER

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 and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for MA and SDA 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 receipt of future benefits.

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


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

Date Signed: 7/14/2014

Date Mailed: 7/14/2014

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:

