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

IN THE MATTER OF:

Reg. No.:	2014-22781
Issue No.:	2009
Case No.:	
Hearing Date:	June 18, 2014
County:	Macomb (12)

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 June 18, 2014, from Clinton Township, Michigan. Participants included the above-named Claimant. testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included Specialist.

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 , Claimant applied for MA benefits, including retroactive MA benefits from .

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On , the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 148-147).

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, based on a Disability Determination Explanation and application of Medical-Vocational Rule 202.20.

7. As of the date of the administrative hearing, Claimant was a 53 year old female with a height of 5'0'' and weight of 239 pounds.

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

9. Claimant's highest education year completed was the 12th grade.

10. As of the date of the administrative hearing, Claimant was a Healthy Michigan Plan recipient since [redacted], and an Adult Medical Plan recipient from 2004-2014.

11. Claimant alleged disability based on impairments and issues including left shoulder pain, COPD, vertigo, dyspnea, and carpal-tunnel 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).

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 117-78) from [redacted] were presented. It was noted that Claimant presented with heavy post-menopausal vaginal bleeding.

Hospital documents (Exhibits 57-12) from [redacted] and [redacted] were presented. It was noted that Claimant presented with complaints of dyspnea and fatigue. A CT report dated [redacted] noted 10 bilateral lung nodules (see Exhibit 44). It was noted that the nodules likely related to metastatic disease.

A Medical Examination Report (Exhibits 74-73) dated [redacted] was presented. The form was authored by a pulmonary/critical care physician with no listed history of treating Claimant. Diagnoses of COPD and dyspnea were noted. It was noted that Claimant was restricted to less than 10 pounds of lifting. It was noted that Claimant was restricted to walking/standing of less than 2 hours in an 8 hour day.

A Medical Examination Report (Exhibits 72-71) dated [redacted] was presented. The form was authored by an endocrinologist with an approximate two-year history of treating Claimant. It was noted that Claimant's DM was poorly controlled. Vision problems were noted. Physical examination observations included weakness when walking, use of cane, and shortness of breath.

A radiology report (Exhibits 11-9) dated [redacted] was presented. It was noted that a CT was taken of Claimant's thorax and abdomen. An impression noted numerous bilateral pulmonary nodules.

A surgical oncology report (Exhibits 146-145) dated [redacted] was presented. It was noted that Claimant received treatment for endometrial cancer, ongoing for three months. It was noted that Claimant was scheduled for surgery to remove her uterus.

A Medical Examination Report (Exhibits 77-75) dated [redacted] was presented. The form was authored by a family practice physician with an approximate eight-year history of treating Claimant. Noted diagnoses included the following: pulmonary nodules, vertigo, DM, CTS, and HTN. Noted physical examination findings included morbid obesity, staggering gait, and uses walker. It was noted that Claimant was "totally disabled".

A surgical oncology report (Exhibits 141-139) dated [redacted] was presented. It was noted that a CT scan of Claimant's chest and abdomen revealed multiple bilateral pulmonary nodules. A plan to take a biopsy was noted.

An Operative Note (Exhibits 131-129) dated [redacted] was presented. It was noted that a colon mass consistent with colon cancer was found on CT. Final impressions of endometrial cancer and transverse colon carcinoma were noted.

An Operative Note (Exhibits 144-143; 120-118) dated [redacted] was presented. A diagnosis of mediastinal adenopathy was noted. It was noted that a biopsy was taken from Claimant's lungs. No evidence of tumor was found (see Exhibit 138).

A surgical oncology report (Exhibits 125) dated [redacted] was presented. It was noted that Claimant had multiple small lung nodules. A biopsy showed that the nodules were not cancerous (see Exhibits 123-121) but a physician noted concern and a need for follow-up. A 6-12 week follow-up was noted.

A Medical Examination Report (Exhibits 128-126) dated [redacted] was presented. The form was authored by an ob/gyn with an approximate 14 month history of treating Claimant. Diagnoses of colon cancer and endometrial cancer were noted. Physical examination findings noted fatigue and muscle weakness. It was noted that Claimant would have surgery on [redacted] and will require 8 weeks of recovery time. It was noted that Claimant was restricted from performing any repetitive actions with her arms or legs. It was noted that Claimant was restricted to lifting of less than 10 pounds. It was noted that Claimant cannot meet household needs and will be staying with her sister.

Claimant testified that she underwent a hysterectomy in [redacted]. There was no evidence of ongoing uterus cancer as medical records after Claimant's hysterectomy were not presented. The status of Claimant's colon cancer was not verified.

Claimant testified that she has extreme lifting and walking restrictions due to her various problems. Presented medical records established diagnoses of COPD, DM, and HTN; all of these diagnoses could reasonably cause lifting and ambulation restrictions. It is found that Claimant has significant impairments. The medical evidence also established that Claimant's walking and lifting restrictions have lasted since [redacted], the first month that Claimant seeks MA benefits. It is found that Claimant has a severe impairment and the analysis may proceed 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 concerning impairment concerns colon and endometrial cancer.

> ***13.23 Cancers of the female genital tract*** -carcinoma or sarcoma***.***
> A. Uterus (corpus), as described in 1, 2, or 3:
> 1. Invading adjoining organs.
> 2. With metastases to or beyond the regional lymph nodes.

3. Persistent or recurrent following initial antineoplastic therapy.

OR

B. Uterine cervix, as described in 1 or 2:

1. Extending to the pelvic wall, lower portion of the vagina, or adjacent or distant organs.
2. Persistent or recurrent following initial antineoplastic therapy.

OR

C. Vulva or vagina, as described in 1, 2, or 3:

1. Invading adjoining organs.
2. With metastases to or beyond the regional lymph nodes.
3. Persistent or recurrent following initial antineoplastic therapy.

OR

D. Fallopian tubes, as described in 1 or 2:

1. Extending to the serosa or beyond.
2. Persistent or recurrent following initial antineoplastic therapy.

OR

E. Ovaries, as described in 1 or 2:

1. All tumors except germ-cell tumors, with at least one of the following:
   a. Tumor extension beyond the pelvis; for example, tumor implants on peritoneal, omental, or bowel surfaces.
   b. Metastases to or beyond the regional lymph nodes.
   c. Recurrent following initial antineoplastic therapy.
2. Germ-cell tumors--progressive or recurrent following initial antineoplastic therapy.

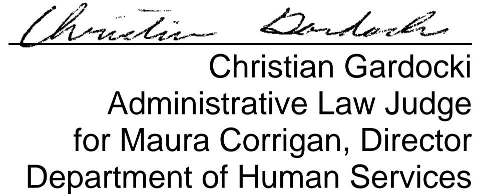
Claimant's lung nodules were not verified as malignant, but Claimant's cancer physician clearly expressed concern. It was specifically noted that the nodules were likely relate to Claimant's uterine cancer. It was not disputed that Claimant was diagnosed with colon cancer. Based on the presented evidence, it is found that Claimant meets Listing 13.23 (1) and 13.23 (2). Accordingly, Claimant is a disabled individual 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 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: 7/10/2014

Date Mailed: 7/11/2014

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: