

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-00689
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 21, 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 July 21, 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 7/2013.
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 4-5).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED] Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by reliance on a Disability Determination Explanation which determined that Claimant can perform past relevant work.
7. As of the date of the administrative hearing, Claimant was a 60-year-old female with a height of 5'7" and weight of 180 pounds.
8. Claimant's highest education year completed was a Bachelor of Arts in Business.
9. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient, since 4/2014.
10. Claimant alleged disability based on multiple sclerosis symptoms.

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.*, p. 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.*, p. 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 stated that she occasionally performs decorating employment, but nothing amounting to income worthy of reporting. Claimant's testimony was credible and unrefuted. 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.

Hospital documents (Exhibits 15-48) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain, fatigue and disequilibrium, ongoing for months but worse in the prior 2 weeks. It was noted that Claimant also reported foot numbness, hand tingling and finger cramping. Noted admission observation included a steady gait, reflexes 2+, and full strength. Claimant's medical history noted that she was previously diagnosed with multiple sclerosis, but the diagnosis was retracted after Claimant's lobbying (see Exhibit 27). A history of tobacco and alcohol abuse was noted; it was noted that Claimant was vague about the amount of alcohol that she currently drank. A previous incident of bowel incontinence was noted. It was noted that Claimant stopped taking thyroid medication after she lost her insurance, approximately one year prior. MS was considered as a diagnosis but "profound hyperthyroidism" (see Exhibit 21) was noted as the most likely cause for Claimant's complaints. The hypothyroidism was described as acute and attributable to Claimant's failure to receive medical treatment. It was noted that a neurological examination was normal. It was noted that a brain MRI was performed; increased white lesions were noted to possibly represent progressive MS. A discharge date of [REDACTED] was noted.

Physician treatment records, lab results and additional hospital admission documents (Exhibits 49-71) from 7/2013 were presented. It was noted that Claimant would require specialized neurological treatment.

Neurologist office visit documents (Exhibits A19-A48) dated [REDACTED] were presented. Claimant's medical history was detailed. Complaints of recurring incontinence were noted. It was noted that a urine culture revealed E. Coli; ciprofloxacin was noted as prescribed. A physical examination noted that Claimant had full muscle strength. An assessment noted likely relapsing-remitting MS (RRMS).

A "likely" diagnosis of RRMS was noted. RRMS is understood to be a form of MS which causes flare-ups of MS symptoms before periods of remission. RRMS is less concerning than a diagnosis of primary-progressive MS which only has progressively worse symptoms, with no remission periods.

Neurologist office visit documents (Exhibits A12-A14) dated [REDACTED] were presented. It was noted that a spinal MRI dated [REDACTED] (see Exhibits 16-18) revealed multiple foci along Claimant's spine.

Neurologist office visit documents (Exhibits A9-A11) dated [REDACTED] were presented. It was noted that Claimant quit smoking. A 6 month follow-up was noted.

Neurologist office visit documents (Exhibits A1-A8) dated [REDACTED] were presented. It was noted that Claimant reported fatigue and intermittent weakness, ongoing for 4 months. It was noted that Claimant did not report falls but had to hang onto things while walking. Urinary incontinence and MS were noted as active diagnoses. It was noted that Claimant's reported symptoms were suspected as caused by MS.

Presented records sufficiently verified that Claimant has MS. It was also verified that Claimant has chronic muscle fatigue which impairs her ability to lift and ambulate. It was verified that Claimant's impairments have lasted at least since 8/2013 the first month of disability benefits sought. 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 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.

Claimant testified that she has good days and bad days. Claimant testified that she typically has two good days followed by 1 bad day. Claimant testified that she has to pace her activities so as not to get too fatigued. Claimant testified that her muscle strength will vanish but will return after a 15 minute rest. Examples of Claimant's fatigue include that she cannot take baths because she could not lift herself up from a bathing position. Claimant suspected that she could do part-time work, but doubted that she was capable of mustering the energy of a full-time work week. Claimant testified that she performs daily activities including shopping, driving, and laundry.

Relative to other MS patients, Claimant's MS symptoms are mild. Flare-up periods are typical symptoms for RRMS patients; such periods are not definitive proof of meeting SSA listing requirements.

Claimant presented only one physician encounter in the seven month period before the hearing date; such a sparse recent history is not indicative of meeting SSA listing requirements. Claimant also appears capable of many activities which are not indicative of significant muscle fatigue.

A documented loss of muscle strength was not presented. The only documentation referring to strength noted that Claimant had full strength. It is worth noting that full strength was documented in 7/2013 and 8/2013. It is plausible that Claimant's strength diminished after 8/2013. It is also worth noting that "full strength" does not necessarily preclude a finding of reduced motor strength following repetitive activity, a requirement for the MS listing.

All of the above factors are not supportive in finding that Claimant's fatigue meets MS listing standards. Other factors are more supportive of a claim of disability.

Claimant did not present overwhelmingly persuasive MS treatment records. The lack of treatment appears to be attributable to Claimant's lack of insurance rather than a lack of symptoms.

Claimant testified that she is frequently incontinent and has to wear incontinence protection. Presented records also verified ongoing complaints of muscle fatigue. Claimant's testimony was consistent with presented records which verify that incontinence and fatigue were ongoing problems for several months.

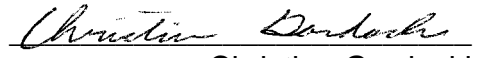
Based on Claimant's testimony and presented records, it is probable that Claimant has severe muscle fatigue which would prevent the performance of any type of employment. It is found that Claimant meets Listing 11.09(C) and is a disabled individual. Accordingly, it is found that DHS improperly denied 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 7/2013;
- (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: 8/13/2014

Date Mailed: 8/13/2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

[REDACTED]