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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-17931
Issue No.: 2009
Case No.: [redacted]
Hearing Date: May 19, 2014
County: Wayne (18)

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 19, 2014, from Taylor, Michigan. Participants included the above-named Claimant. Sherry [redacted] testified and appeared as Claimant's authorized hearing representative. [redacted], Claimant's spouse, testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [redacted] Medical Contact Worker.

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 6/2013.

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 1-2).

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 determining that Claimant does not have a severe impairment.

7. On [redacted], an administrative hearing was held.

8. Claimant presented new medical documents (Exhibits A1-A272) 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.

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 44-year-old female with a height of 5'3'' and weight of 252 pounds.

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

16. Claimant's highest level of education completed was an Associate's Degree in health administration.

17. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 5/2014.

18. Claimant alleged disability based on impairments and issues including bilateral knee pain, tachycardia, diabetes mellitus, anxiety, fibromyalgia, and Lupus.

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 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.

Various medical documents (Exhibits 103-145) from 2012 were presented. It was noted that Claimant was treated for knee pain related to a fall, pulmonary embolism, muscle and joint pain consistent with fibromyalgia, acute gastroenteritis, and depression.

A summary of Claimant's 2012 and 2013 medical treatment was provided in medical documents (Exhibits A110). Claimant was diagnosed with a pulmonary embolism in 2012. Claimant reported never being diagnosed with deep vein thrombosis. It was noted that Claimant had leg surgery in 4/2012 leaving her with limited mobility; Claimant testified that she's had three leg surgeries on her left knee. Claimant was placed on Coumadin in 7/2012. Claimant had sub therapeutic INR levels throughout 2012. Claimant ran out of Coumadin sometime around 8/2013 and has been therapeutic since 12/2013. Numerous chest radiology reports verified no new thrombosis though lab results have showed consistently elevated platelets since 2012.

Hospital documents (Exhibits 69-94) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal pain, nausea, and diarrhea. It was noted that a CT of Claimant's abdomen was performed; an impression noted unremarkable findings other than fatty infiltration. A discharge date of [redacted] was noted.

Hospital documents (Exhibits 18-35) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal pain, ongoing for several weeks. Complaints of ongoing nausea, vomiting, and diarrhea were also noted. It was noted that a hospital encounter from [redacted] was suggestive of a mild pancreatitis diagnosis. It was noted that Claimant received fluids and Dilaudid. It was noted that Claimant reported taking the following medications: Abilify, Norco, Metformin, Metolazone, Metoprolol, Prilosec, Bactrim, Effexor, Warfarin, and Reglan. It was noted that Claimant had bowel obstructions and asymmetric loops of dilate bowel were present. Generic diagnoses of abdominal pain and chronic diarrhea were noted.

Hospital documents (Exhibits 36-43) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of chronic nausea and vomiting. It was noted that Claimant had extensive previous workups which were all unremarkable other than "just for fatty liver". It was noted that Claimant should undergo a gastric emptying study. It was noted that lab results indicated a possible worsening of diabetes. It was noted that Claimant was referred to pain clinic for management of rib pain. It was noted that Claimant's heart rate was chronically fast. Other noted problems included hypertension, status post knee repair, anxiety, and a history of pulmonary embolism.

Hospital documents (Exhibits A1-A40) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of nausea, diarrhea, and abdominal pain. It was noted that Claimant reported a recent diagnosis of slipped rib. It was noted that Claimant received morphine and Phenergan. It was noted that Claimant reported a 17 pound weight loss over the last month due to GI problems. Generic diagnoses of abdominal pain and diarrhea were noted.

A physical examination report (Exhibits 4-10) dated [redacted] was presented. The report was completed by a consultative physician with no history of treating Claimant. It was noted that Claimant presented with complaints of bilateral knee pain. It was noted that Claimant reported a recent diagnosis for diabetes. It was also noted that Claimant reported blood clotting and psychiatric problems. The examining physician determined that Claimant could sit, stand, and walk for a total of 8 hours per day. The examiner restricted Claimant from kneeling, squatting or use of stairs. Claimant's knee flexion was noted as limited.

Various hospital treatment documents (Exhibits A194-A272) from 9/2013-11/2013) were presented. The documents verified numerous encounters for various problems including the following: headaches, sleep difficulties, fatigue, dyspnea on exertion, and tachycardia.

Treatment documents for back pain (Exhibits A190-A193) dated [redacted] were presented. It was noted that an MRI of Claimant's thoracic spine was performed. An impression of mild degenerative changes at T7-T8 was noted. No significant spinal stenosis was noted.

Echo testing results (Exhibits AA182-A85) dated [redacted] was presented. The study was noted to be a very technically difficult study. A conclusion of grossly normal left ventricular function was noted. It was noted that Claimant had sinus tachycardia throughout the study.

Eye testing documents (Exhibits A178-A181) dated [redacted] were presented. An assessment of diabetes with no retinopathy was noted.

Physician office visit documents (Exhibits A171-A177) dated [redacted] were presented. It was noted that Claimant complained of nausea and recurring diarrhea. Claimant's medical history included the following: GERD, DM, hepatic steatosis, anxiety, fibromyalgia, tachycardia, PE, factor II deficiency, cholecystectomy, slipped rib, chronic diarrhea, nausea, and vomiting. It was noted that recent EGD showed mild gastritis. It was noted that a colonoscopy was negative while labs were "relatively unremarkable". It was noted that Claimant's medications were adjusted and that Claimant needed better diabetic control.

Cardiology documents (Exhibits A167-A170) dated [redacted] were presented. It was noted that a recent echo that showed Claimant had a structurally normal heart and a holter which showed sinus tachycardia. It was noted that Claimant complained of leg pain. Trace edema was noted in Claimant's ankles. Claimant's gait was noted to be normal. Sinus tachycardia was noted to be likely secondary to other comorbidities. It was noted that Claimant reported needing to be on Coumadin therapy for the rest of her life due to a history of PE and factor II deficiency; the treating physician noted that the diagnosis is rare and unverified.

Bilateral lower extremity arterial Doppler testing results (Exhibits A162-A166) dated 12/16/13 were presented. It was noted that the testing was performed in response to complaints of leg pain. It was noted that results were "within normal limits".

Physician office visit documents (Exhibits A148-A152) dated [redacted] were presented. It was noted that Claimant complained of burning with urination. A diagnosis of urinary tract infection was noted. Medications were noted as prescribed.

Gynecologist treatment documents (A129-A130) dated [redacted] were presented. It was noted that Claimant had vaginal bleeding secondary to scratching. A diagnosis of yeast infection was noted.

Physician office visit documents (Exhibits A125-A128) dated [redacted] were presented. It was noted that Claimant presented with complaints of rectal bleeding and diarrhea. It

was noted that Claimant was thought to be bleeding from an anal fissure. A cream was noted as prescribed.

Cardiology treatment documents (Exhibits A102-A105) dated [redacted] were presented. It was noted that Claimant presented after an episode of light-headedness. It was noted that Claimant had uncontrolled diabetes. It was noted that Claimant was under some stress and that she saw a psychiatrist every six weeks. It was noted that an EKG was normal.

Physician office visit documents (Exhibits A89-A93) dated [redacted] were presented. It was noted that claimant complained of dizziness, ongoing for 1 week. A recommendation of head radiology was noted. Additional medication was prescribed to combat dizziness.

Hospital encounter documents (Exhibits A82-A84) dated [redacted] were presented. It was noted that Clamant complained of dizziness. It was noted that a CT of Claimant's brain was performed; an unremarkable impression was noted.

Hospital documents (Exhibits A50-A81) from an admission dated [redacted] were presented. It was noted that Claimant presented after reportedly fainting twice in the last 2 days. Chest pain and dyspnea were also noted as complaints. It was noted that EKG showed no signs of myocardial infarction, It was noted that Claimant was sent home with an event monitor and advised to follow-up as previously scheduled. It was noted that there was no evidence of pulmonary embolism. Noted discharge diagnoses included chest pain and syncope. A discharge date of [redacted] was noted.

Anticoagulation service notes (Exhibits A41-A42; A84-A88; A94-A101; A108-A109; A121-A124; A133-A147; A153-A161) dated [redacted] were presented. On [redacted], Claimant's prescribed medications were noted as warfarin, venlafaxine, glipizide, fluconazole, diltiazem, aripiprazole, benztropine, and butalbital.

Claimant testified that she is restricted in walking due to leg swelling and pain. Claimant's testimony was consistent with presented documents.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, 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.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

Cardiac-related listings (Listing 4.00) were considered based on Claimant's cardiac treatment history. Claimant failed to meet any cardiac listings.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant had a complete inability to function outside of the home.

Claimant presented a very complicated medical history. None of Claimant's problems individually were particularly disabling; when Claimant's health problems are taken together, Claimant's outlook becomes more serious. For example, it was verified that Claimant required regular INR testing due to her history of pulmonary embolisms and factor II deficiency diagnoses. Claimant credibly stated that the testing occurred two times per week and that she would need testing for the rest of her life. Such a medical obligation is not known to be covered by a SSA listing but is a significant obligation.

Claimant's employment obstacles include the following: biweekly blood testing obligation, knee pain, leg swelling, diabetes, anxiety, fibromyalgia, tachycardia, digestive problems, and psychological problems. Some of the problems were poorly verified. For example, psychological treatment records were not presented. Radiology of Claimant's knees was not presented. Nevertheless, the combination of problems would make any employment to be an unreasonable obligation. It is found that Claimant is a disabled individual and 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 6/2013;
(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 benefits.

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

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

Date Signed: 8/27/2014

Date Mailed: 8/27/2014

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]