

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-28633
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 23, 2014
County: Wayne (15)

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, a telephone hearing was held on June 23, 2014, from Detroit, Michigan. Participants included the above-named 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 [REDACTED].
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 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-A14) 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 determining that Claimant does not have a severe impairment.
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 40-year-old female with a height of 5'2" and weight of 147pounds.
15. Claimant's highest education year completed was an Associate's Degree in business.
16. As of the date of the administrative hearing, Claimant was an ongoing Medicaid recipient, since [REDACTED].
17. Claimant alleged disability based on impairments and issues including hand neuropathy, chemo side effects, and body pain.

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.*, 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 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 background information from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant testified that she owned and operated a cleaning business until [REDACTED]. Claimant testified that she was subsequently diagnosed with breast cancer and has not been able to work since. Claimant testified that chemotherapy has caused neuropathy in her hands and early menopause.

Breast center treatment documents (Exhibits 18-21) dated [REDACTED] were presented. It was noted that Claimant reported finding a breast lump two weeks earlier. It was noted that a mammogram discovered masses of 6 cm and 2.8 cm on Claimant's left breast (see Exhibits 27-31). It was noted that a biopsy revealed poorly differentiated invasive ductal carcinoma (see Exhibits 35-36); the carcinomas were noted to be ER, PR, and HER-2/neu negative. It was noted that an MRI would be performed and that chemotherapy would be scheduled.

A Chemotherapy Order (Exhibit 22) dated [REDACTED] was presented. The document indicated that Claimant received four doses of chemotherapy, every two weeks.

A bone imaging report (Exhibit 37) dated [REDACTED] was presented. An impression of a normal bone scan was noted.

An Echocardiogram Report (Exhibits 38-40) dated [REDACTED] was presented. All heart measurements and function were noted as normal.

A treating hematologist document (Exhibit 16) dated [REDACTED] was presented. It was noted that Claimant complained of body ache, headaches, constipation and hiccups.

A treating hematologist document (Exhibit 15) dated [REDACTED] was presented. It was noted that Claimant complained of body ache, headaches, and hiccups.

Hospital documents (Exhibits 57-82) from [REDACTED], [REDACTED], and [REDACTED] were presented. It was noted that Claimant completed 4 cycles of chemotherapy from [REDACTED]. It was noted that an injection of Neulasta was given to Claimant on [REDACTED]. Noted medications included Heparin and Vicodin. An impression of leukocytosis was noted. Claimant's breast cancer was noted as Stage 2B cancer. An impression of chest pain, likely secondary to Neulasta was noted; a similar diagnosis was noted on [REDACTED] (see Exhibits 62-63). It was noted that Neulasta was known to cause musculoskeletal pain. An impression of anemia was noted, likely a side effect to chemotherapy. It was noted that Claimant's hemoglobin would be monitored.

A Medical Examination Report (Exhibits 8-10) dated [REDACTED] was presented. The form was completed by a hematologist with an approximate 3 month history of treating Claimant. The physician provided a diagnosis of breast cancer and complaints of fatigue and bone pain. It was noted that Claimant was under chemotherapy. An impression was given that Claimant's condition was improving. It was noted that Claimant can meet household needs. It was noted that Claimant was never to lift less than 10 pounds of weight. The physician opined that Claimant was restricted as follows over an eight-hour workday, less than 6 hours of standing and/or walking, and less than six hours of sitting. Claimant's physician opined that Claimant was restricted from performing all listed repetitive actions which included: simple grasping, reaching, pushing/pulling, fine manipulating, and operating foot/leg controls.

A treating hematologist document (Exhibit A2) dated [REDACTED] was presented. It was noted that Claimant completed 4 cycles of chemotherapy, followed by 4 cycles of taxol therapy. It was noted that chemotherapy was completed with excellent clinical response. It was noted that Claimant's report of pain was likely due to Taxol and would improve over time. Lab testing results (Exhibits A3-A6) were attached.

A treating hematologist document (Exhibit A1) dated [REDACTED] was presented. It was noted that Claimant completed chemotherapy in [REDACTED]. It was noted that bilateral mastectomies were performed on [REDACTED] 4. It was noted that pathology revealed triple negative adenocarcinoma but 0 of 10 lymph nodes; it was noted there was no evidence of residual cancer. It was noted that Claimant would follow-up with radiation and final surgical reconstruction. It was noted that Claimant has several residual side effects from treatment, including hot flashes and body aches, and neuropathy.

A physical therapy document (Exhibit B1) dated [REDACTED] was presented. It was noted that Claimant needed physical therapy, three times per week, for left shoulder joint mobilization. The therapy was noted to last for 4 weeks.

Claimant's physician verified that Claimant suffers neuropathy and body aches from chemotherapy. Claimant's physician also specifically noted that the side effects are improving with medication (see Exhibit A1). The evidence was insufficient to verify that chemotherapy side effects will last for a 12 month period.

It was verified that Claimant requires physical therapy for a 4 week period, presumably through [REDACTED]. The evidence was insufficient to infer any long-term impairment related to left shoulder pain.

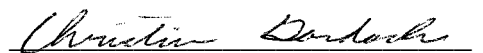
A MER dated [REDACTED] stated that Claimant had walking lifting, and repetitive arm restrictions. Presumably, the restrictions were specifically tied to Claimant's ongoing chemotherapy as little evidence of other restrictions was presented.

Claimant seeks a finding of disability from [REDACTED]. By the end of [REDACTED], Claimant will have completed chemotherapy, radiation, mastectomy surgery, and shoulder physical therapy. All appearances point to Claimant beating breast cancer, though Claimant will certainly require future monitoring. Fortunately, Claimant now has access to Medicaid which should allow her proper treatment.

Based on the presented evidence, it is found that Claimant does not have an impairment expected to last 12 months or longer. Accordingly, Claimant does not have a severe impairment and it is found that DHS properly 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 properly denied Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from [REDACTED], based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 8/6/2014

Date Mailed: 8/6/2014

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:

