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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-001819
Issue No.: 2009
Case No.: [redacted]
Hearing Date: August 20, 2014
County: Wayne (17)

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 August 20, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted]s, 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 [redacted], Claimant applied for MA benefits, including retroactive MA benefits from 8/2013 (see Exhibits 37-38).

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 3-4).

4. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 5-6) 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 (Exhibits 47-57) which determined that Clamant can perform past relevant employment.

7. As of the date of the administrative hearing, Claimant was a 57 year old female with a height of 5'3'' and weight of 145 pounds.

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

9. Claimant's highest education year completed was the 11th grade.

10. Claimant alleged disability based on impairments and issues including a heel spur, lower back pain, leg cramping, and hammer-toe.

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, a three-way telephone 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. The 2014 monthly income limit considered SGA for non-blind individuals is $1,070.

Claimant testified that she performs ongoing employment as a home help care aide. Claimant testified that she only works 2 hours per week, for $9/hour. Claimant testified that her largest check for her employment was $233 for one month of employment. 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 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.

Emergency room documents (Exhibits A34-A37) dated [redacted] were presented. It was noted that Claimant was treated for a skin rash.

Hospital documents (Exhibits 29-36) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of increased thirst, increased urination, and blurry vision. An impression of mild diabetic ketoacidosis was newly diagnosed DM was noted. Severe hyperglycemia was noted. Discharge documents were not presented but a discharge date of 8/16/13 was apparent.

Physician office visit documents (Exhibits A1-A2) dated [redacted] were presented. It was noted that Claimant presented for a follow-up on diabetes. It was noted that Claimant's blood sugar averaged 135 mg/dl and that Claimant complained of blurry vision.

Hospital documents (Exhibits 25-28) dated [redacted] were presented. It was noted that Claimant was admitted to the hospital with severe hyperglycemia and ketosis, and dehydration. It was noted that Claimant's symptoms resolved with IV fluids and insulin drip.

A physical examination report (Exhibits 19-24) dated [redacted] was presented. The report was completed by a consultative physician (and law school graduate). It was noted that Claimant complained of recurrent bilateral thigh spasms, ongoing for 1 year; it was noted that Claimant had not sought treatment for the problem. Notable observations of Claimant included the following: sat with mild discomfort, demonstrated pain mitigating movements when standing and walking, and discomfort when getting on and off examination table. It was noted that Claimant had normal ranges of motion though moderate discomfort was noted when performing knee, ankle, shoulder, and elbow motions. Crepitus was noted in Claimant's right knee. It was noted that Claimant was unable to perform heel-knee testing. A slight limp was noted in Claimant's gait. Seated and supine straight-leg tests were noted to be positive on the right. A diagnosis of right-sided muscle spasms was noted.

Gynecological treatment documents (Exhibits A9-A33) from 3/2014-5/2014 (Exhibits A11-A18) were presented. Assessments of microscopic hematuria, post-menopausal bleeding, and external hemorrhoids were noted. It was noted that Claimant was treated for urinary tract infection.

Physician office visit documents (Exhibits A5) dated [redacted] were presented. It was noted that Claimant complained of left big toe pain. It was noted that Claimant received an injection to relieve joint pain.

Physician office visit documents (Exhibit A4) dated [redacted] were presented. It was noted that Claimant complained of left baby toe pain. Diagnoses of hammer toe and bunion were noted. Treatment was not apparent and/or illegible.

Physician treatment documents (Exhibit A3) dated [redacted] were presented. It was noted that Claimant's bunion and hammer toes were better though still painful. It was noted that Claimant complained of a left foot bunion and right 5th toe pain. A diagnosis of hammer toe bursitis was noted. It was noted that dressing was used to cover Claimant's toe. It was noted that Claimant received an injection to relieve joint pain.

Evidence of skin rash treatment was presented. The two year old treatment was insufficient to establish ongoing impairments.

It was established that Claimant was recently treated for hammer toe. Claimant testified that she gets pain injections every two weeks. Claimant testified she gets pain relief for 2 days before the pain returns. Claimant also testified that she wears a soft cushion in her shoe to alleviate the pain. Due to the recency of the diagnosis, Claimant's medical history cannot be examined for a prognosis. Hammer toe treatment is understood to range from surgery to gentle stretching. Claimant's testimony was somewhat indicative of a severe impairment, but it is only based on a 2 month history. It is also troubling that Claimant refused surgery as a correctable option (see Exhibit A4). It is found that presented evidence failed to establish that Claimant has severe impairments related to hammer toe.

Medical records established recent gynecological treatment. Claimant did not testify to any ongoing impairments related to gynecological problems. Presented records were not suggestive of ongoing impairments.

Treatment for diabetes was verified, including a hospitalization in which Claimant had ketoacidosis. Though ketoacidosis is known to be a serious complication of diabetes, medical records were not particular persuasive in establishing that Claimant's diabetes creates a severe impairment. Claimant became aware of diabetes only the month before hospitalization. Claimant's hospitalization for DKA was relatively uneventful when Claimant received proper diabetic medication. The evidence was suggestive that Claimant was medically non-compliant, presumably due to her lack of history in treating diabetes. It is notable that Claimant, since 4/2014, has state-issued health insurance and should have access to diabetes medication. It is also notable that no diabetes complications occurred following Claimant's hospitalization.

Claimant alleged that she is restricted in walking due to leg pain and back pain. A consultative examiner noted Claimant had full ranges of motion, though discomfort while performing them. The examiner also noted that Claimant had lifting/carrying restrictions.

Based on the presented evidence, it is found that Claimant has severe impairments related to leg pain. The medical evidence also established that Claimant's walking and manipulating restrictions have likely lasted since 8/2013, 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.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain and hammer toe. 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.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id*.

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

A Medical-Social Questionnaire (Exhibits 10-12) dated [redacted] was presented. The form was noted as completed by a Medicaid Advocate. Zero employment history was noted. Claimant testified that she has an extensive work history.

Claimant testified that she worked for 21 years as an office cleaner. Claimant described her duties as cleaning offices, buffing floors, and stripping floors.

Claimant also testified that she works part-time as a home help care aide. Claimant testified that she has to be selective about her patients due to her limited strength abilities.

Claimant testified that she could not perform either of her past jobs due to strength restrictions. Claimant's testimony was credible and consistent with presented records. It is found that Claimant is unable to perform past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id*.

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform medium employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Medium employment requires comparable standing and walking standards, but with a heavier lifting requirement than light employment.

Treating physician statements of specific restrictions were not presented. The only physician evidence of restrictions was provided by a consultative examiner.

The consultative physician opined that Claimant had no sitting restrictions. The examiner opined that Claimant should be able to walk frequently throughout an 8 hour workday. The examiner opined that Claimant should be capable of frequent 10 pound lifting/carrying, and occasional 15 pounds of lifting/carrying. It was noted that an assistive device was recommended. The need for a cane and the listing restrictions were suggestive that Claimant is unable to perform medium employment.

A consultative examiner noted that Claimant had right-side spams, and a positive straight leg raising test. Both findings are consistent with back pain which would impact Claimant's ability to ambulate. A consultative examine also found that Claimant had right knee crepitus. Crepitus is suggestive of cartilage erosion which would increase the difficulty of ambulation.

Zero radiography evidence was presented. It would appear that Claimant did not seek any treatment for leg or back pain at any time, even after health insurance was available to her. Presumably, Claimant's restrictions would diminish with medical treatment.

There was also evidence that Claimant had foot problems involving hammer toe, a bunion, and bursitis. Claimant managed to verify some treatment for these problems.

It was tempting to find that Claimant was capable of medium employment based on her lack of treatment records for back pain and leg pain. Despite the absence of treatment records, it is doubtful that Claimant would be capable of performing medium employment when factoring all of her conditions.

Based on Claimant's exertional work level (light), age (advanced age), education (less than high school), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 202.02 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA 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 benefits. It is ordered that DHS:

(1) reinstate Claimant's MA benefit application dated [redacted], including retroactive MA benefits from 8/2013;
(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: 9/12/2014

Date Mailed: 9/12/2014

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]