

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-001820
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 20, 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, 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 representative (AHR). 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 9/2013.
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 reliance on a Disability Determination Explanation and application of Medical-Vocational Rule 202.19.
7. As of the date of the administrative hearing, Claimant was a 50 year old female with a height of 5'2" and weight of 160 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 9th grade.
10. As of the date of the administrative hearing, Claimant was a Healthy Michigan Plan recipient since 5/2014.
11. Claimant alleged disability based on impairments and issues including COPD, knee pain, neck arthritis, and symptoms related to post-heart attack status.

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 3-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 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 testified that she worked as a deli worker until an unspecified date in 12/2013. Claimant testified that her weekly hours ranged from 20-30 hours per week. Claimant testified that she earned \$8.50/hour. Presuming that Claimant worked her stated maximum of hours (30), Claimant's pays would still not amount to SGA unless Claimant received an extra pay (third check for biweekly pays or 5th check for weekly pays). Based on the presented evidence, it is improbable that Claimant has earnings that meet SGA requirements. Accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to

work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 25-37; 88-93; 112-117) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left-sided anginal chest pain. A history of CAD was noted to be "mild". An impression of a normal study was noted following chest x-rays. Assessments of chest pain and tobacco dependence were noted. It was noted that a CT angiogram revealed plaques involving distal left main coronary artery and mild left anterior descending coronary artery. It was noted that areas of plaque compromise arterial lumen less than 50%. It was noted that Claimant received beta-blockers and Imdur. It was noted that a Myoview perfusion myocardial scan was normal; an ejection fraction of 75% was noted. It was noted that Claimant was strongly advised to quit smoking. A discharge date of [REDACTED] was noted.

A prescription note (Exhibit 78) dated [REDACTED] was presented. Claimant's physician wrote that Claimant may return to work on [REDACTED].

Hospital documents (Exhibits 60-77) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain and dyspnea. It was noted that a cardiac catheterization from 1 month ago revealed mild-to-moderate disease in the circumflex and LAD, but no significant obstructive disease was found. It was noted that chest x-rays revealed a normal chest appearance. It was noted that Claimant complained of neck pain. It was noted that an MRI of Claimant's neck demonstrated mild disc bulging but no stenosis at any level.

Cardiologist documents (Exhibits 81-82; 105-106) dated [REDACTED] were presented. It was noted that Claimant presented for routine follow-up. It was noted that Claimant had a recently negative stress test.

Hospital documents (Exhibits 38-58; 94-102; 118) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of a moderate and radiating chest pain, ongoing for 1 month. It was noted that chest x-rays were performed; an impression of no acute cardiopulmonary process was noted. An active problem of unstable angina was noted. It was noted that Claimant was treated by cardiologists who noted an assessment that Claimant's status was post-PCI to the diagonal artery and circumflex artery drug-eluting stents. It was noted that Claimant

received Effent and would continue to receive medication samples. A discharge date was not apparent though [REDACTED] was the most recent treatment date noted.

Cardiologist documents (Exhibit 80; 83-85; 104) dated [REDACTED] were presented. It was noted that Claimant was doing very well following a recent hospitalization for unstable angina.

An internal medicine examination report (Exhibits 3-8) dated [REDACTED] was presented. The report was completed by a consultative physician. It was noted that Claimant complained of bilateral knee arthritis, HTN, and chest pain. It was noted that Claimant had full range of motion in all tested areas (including knee flexion and extension). The following difficulties were observed by the examiner: mild difficulty getting on and off the examination table, mild difficulty with heel-toe walking, moderate squatting difficulty, and moderate hopping difficulty. Claimant's gait was noted as normal. Cardiac and pulmonary examinations were noted as "essentially normal". Physical examination findings were noted as normal other than eyesight which was noted to require correction. The examiner noted that Claimant had bilateral knee osteoarthritis and would benefit from physical therapy; a referral to an orthopedist was a noted recommendation. An impression of CAD and HTN were noted; continuing heart medications was a noted recommendation.

Claimant alleged that she has severe COPD. The presented evidence failed to establish a diagnosis or treatment for COPD. No spirometry testing was presented and the problem was not noted by Claimant in a consultative examination. It is found that Claimant does not have a severe impairment related to COPD.

Claimant testified that she had walking and lifting restrictions. Claimant's testimony was consistent with medical documents which verified knee arthritis, neck pain, and recurring angina. The medical evidence sufficiently established that Claimant's walking and lifting restrictions have lasted since 9/2013, 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. 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 neck pain complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for chronic pulmonary insufficiency (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

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 inflammatory arthritis (Listing 14.09) was considered based on diagnoses for knee arthritis. The medical records failed to establish that Claimant is unable to ambulate effectively, was diagnosed with ankylosing spondylitis or other spondyloarthropathies, or suffers repeated manifestations of inflammatory arthritis.

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.

Claimant testified that she worked behind a deli counter and as a cashier in the last 15 years. Claimant testified that her past employment required long periods of standing which she can no longer perform. Claimant's testimony was consistent with presented evidence. It is found that Claimant cannot 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 sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Claimant testified that she has no sitting restrictions. Claimant's testimony was consistent with an ability to perform sedentary employment.

A New York Heart Classification (Exhibits 103; 119) dated [REDACTED] was presented. Claimant's functional capacity was Class II which is indicative of patients with cardiac disease resulting in slight limitation of physical activity. Such patients are comfortable at rest and ordinary physical activity results in fatigue, palpitation, dyspnea or anginal pain. Claimant's therapeutic capacity was Class B which is representative of patients with cardiac disease whose ordinary physical activity need not be restricted, but who should be advised against severe or competitive physical efforts. Claimant's heart classification is consistent with an ability perform sedentary employment.

Neck radiology verified "mild" disc bulging in C5-C7. "Mild" disc bulging will certainly create discomfort for Claimant, however, it is not likely to impair Claimant from performing sedentary employment.

Claimant's knee pain is problematic. Claimant's lack of treatment for knee pain is suggestive that her restrictions are not so severe to impede her daily activities. Some appreciation can be given to Claimant's lack of insurance, however, Claimant had access to health insurance since 5/2014. The lack of treatment is also suggestive that Claimant's ability to walk would improve with physical therapy (as suggested by the consultative examiner), steroid injections, or pain medication.

Based on the presented evidence, it is found that Claimant is capable of performing sedentary employment. Prior to application of the Medical-Vocational rules, Claimant's AHR contended that Claimant's 49 years of age could be construed to be of advancing

age. 20 CFR 416.963 (b) indicates that SSA has some flexibility in applying age to their vocational rules

We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case.

Claimant turned 50 years old in 7/2014. Claimant's AHR seeks a disability finding since 9/2013. As of 9/2013, Claimant was 10 months short of her 50th birthday. 10 months short of a 50th birthday is not a persuasive interpretation of "a few months" to justify application of an older age category.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (limited), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.19 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly 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 properly denied Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from 9/2013, 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: **9/12/2014**

Date Mailed: **9/12/2014**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc:



AH