

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

IN THE MATTER OF:



Reg. No.: 14-012931
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 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 November 20, 2014 from Detroit, Michigan. John Despelder of L&S Associates testified and appeared as Claimant's authorized hearing 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 Medical Assistance (MA) eligibility 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 1/2014.
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 2-3).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibits 41-42) informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On an unspecified date, Claimant was approved for Supplemental Security Income (SSI) benefits, based on a disability date of 4/2014.
7. On [REDACTED], an administrative hearing was held.
8. Claimant failed to attend the administrative hearing.
9. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
10. During the hearing, the record was extended 40 days to allow Claimant to submit additional medical documents and a statement of Claimant's income; an Interim Order Extending the Record was subsequently mailed to both parties.
11. On [REDACTED] Claimant submitted additional documents (Exhibits A1-A10, B1).

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

It was not disputed that Claimant was approved for SSI benefits, effective 4/2014. Claimant's AHR conceded that DHS processed Claimant's Medicaid eligibility beginning the benefit month of 4/2014. Benefit months of 1/2014-3/2014 remained in dispute.

There was no evidence that any of the above circumstances that qualify Claimant for Medicaid apply to Claimant for the months of 1/2014-3/2014. 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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

Claimant failed to participate in the administrative hearing. A claimant's testimony is considered the best evidence to determine if employment income was received since the date of MA application. Barring a compelling excuse, a claimant seeking MA benefits based on disability is expected to testify concerning SGA. No compelling reasons were provided to excuse Claimant's lack of testimony and evidence concerning SGA.

It should be noted that three telephone calls were made to Claimant during the hearing in an attempt to engage Claimant's participation. Each call was unsuccessful in contacting Claimant.

Claimant's AHR requested time following the hearing to submit a statement of employment income from Claimant. Claimant's AHR's request was granted for the purpose of giving consideration that documentary evidence could substitute for Claimant's testimony concerning employment.

A Medical-Social Questionnaire (Exhibits 11-13) was presented. The form was dated [REDACTED] by a self-described Medicaid Advocate. It was noted that Claimant had three different jobs lasting one year as a retail cashier. Dates of employment were not provided. Aside from the hearsay nature of the document, the document was also highly unpersuasive evidence of Claimant's earnings at or since applying for MA benefits.

Background information documents (Exhibits A1-A10) dated [REDACTED] were presented. The documents appear to be completed by an unspecified staff person from Claimant's AHR's agency. The documents appeared to be completed based on information provided by Claimant during a telephone Claimant. Claimant's AHR stated (via letter) that the documents were completed as part of the initial agency-Claimant relationship. It was stated that Claimant answered "no" to having employment or self-employment income in 2014.

A business record hearsay exception might justify admitting the document as an exhibit. The exception does not apply to Claimant's purported statement that she received no income in 2014.

The presented documents also fail to factor that Claimant's testimony is the best evidence of employment history. As noted above, Claimant's hearing absence was unexcused.

Claimant's AHR provided a statement (Exhibit B1) documenting his alleged attempts to contact Claimant. The statement indicated that Claimant's boyfriend reported that Claimant was hospitalized and not reachable. Based on Claimant's AHR's consistently honorable character, the statement likely accurately reflects what he was told. The credibility of the person making the statement is completely unknown. The statement was not highly persuasive in excusing Claimant's hearing absence or the absence of Claimant's testimony concerning SGA over the months of 1/2014-3/2014.

DHS policy states that retroactive MA coverage is available back to first day of the third calendar month prior to SSI entitlement. BAM 115 (1/2014), p. 11. Client advocates have argued that the DHS policy serves as automatic retroactive MA coverage for clients approved for SSI; such arguments are unpersuasive. As DHS policy allows, retroactive MA is available to Claimant, if disability is established. Claimant's failure to appear for the hearing and provide adequate proof of lack of SGA justifies a finding that Claimant is not disabled.

It is found that Claimant failed to establish not receiving employment income amounting to SGA. Accordingly, it is found that Claimant is not disabled and that DHS properly denied Claimant's application for MA benefits for the months of 1/2014-3/2014.

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 retroactive MA benefit eligibility for the months of 1/2014-3/2014 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: **12/26/2014**

Date Mailed: **12/26/2014**

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 48909-8139

cc:

