

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-003541
Issue No.: MEDICAID - DISABILITY
Case No.: [REDACTED]
Hearing Date: September 18, 2014
County: JACKSON

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 September 18, 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] 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 (see Exhibits 11-36).
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 166-167).
4. On [REDACTED] DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 2-5; 168-173) informing Claimant of the denial.
5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 2).

6. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant can perform past relevant employment.
7. On [REDACTED], an administrative hearing was held.
8. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
9. During the hearing, the record was extended 60 days for DHS to schedule and pay for intelligence testing for Claimant; an Interim Order Extending the Record was subsequently mailed to both parties.
10. Per Claimant's AHR's subsequent request, the record was extended an additional 30 days for Claimant's AHR to receive additional testing.
11. On [REDACTED], DHS submitted a mental status examination (2-1 – 2-12).
12. On [REDACTED], DHS forwarded correspondence that Claimant failed to attend an appointment for intelligence testing (see Exhibit 3-1).
13. As of the date of the administrative hearing, Claimant was a 30 year old female with a height of 5'5" and weight of 125 pounds.
14. Claimant's highest education year completed was the 12th grade.
15. Claimant alleged disability based on impairments and issues including low cognitive ability and fatigue.

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 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 a summary of the relevant submitted medical documentation.

A Psychiatric/Psychological Medical Report (Exhibits B1-B6) dated [REDACTED] was presented. The form was completed by a consultative licensed psychologist and limited-licensed psychologist. It was noted that Claimant reported a learning disability causing her to be in special education classes. It was noted that Claimant reported depression anxiety, racing thoughts, hopelessness, low energy, low motivation, and sleep disturbance. Noted observations of Claimant included the following: in contact with reality, low self-esteem, normal motor activity, steady gait, limited insight, spontaneous stream of mental activity, low but normal pressure of speech, slow processing speed, adequate social skills, and adequately organized responses. Diagnoses of adjustment disorder, major depressive disorder, and learning disability were noted. Claimant's GAF was noted to be 50. The examiner opined that Claimant had clear attention and concentration difficulties affecting her ability to stay on task.

Physician office visit documents (Exhibits 161-164) dated [REDACTED] were presented. It was noted that Claimant presented for treatment of an ear ache.

Hospital documents (Exhibits 45-51) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of lower back pain, stomach pain, nausea, coughing, and dyspnea. A physical examination noted no abnormalities. It was noted that lab testing was performed and that results were consistent with anemia and mild thrombocytopenia. It was noted that a chest x-ray was consistent with pneumonia. It was noted that Claimant admitted using meth and that other drug use was suspected. It was noted that Claimant received various medications and was discharged.

Hospital documents (Exhibits 62-108; A12-A27) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with septic shock. It was noted that Claimant was noncompliant with previously prescribed antibiotics to treat pneumonia. A history of IV drug abuse was noted. It was noted that CAT scan revealed pulmonary

emboli suspicious for endocarditis and septic emboli. An echocardiogram revealed large tricuspid valve endocarditis and an ejection fraction of 20-25%. It was noted that Claimant underwent tricuspid valve replacement surgery on [REDACTED]. Post-operatively, Claimant's EF improved to 45%. It was noted that a PICC line was placed (presumably due to infectious disease problems). Noted discharge diagnoses included MRSA endocarditis, septic emboli secondary to tricuspid valve endocarditis, acute hepatitis C infection, severe malnutrition, hypokalemia, and anemia (secondary to surgery). A discharge date of [REDACTED] was noted.

Physician office visit documents (Exhibits 52-56; 121-123) dated [REDACTED] were presented. It was noted that Claimant presented for follow-up of sepsis and pulmonary embolisms. An impression of tricuspid MRSA endocarditis and resolved severe sepsis was noted. It was noted that Claimant was deconditioned and that physical therapy was recommended.

A chest x-ray report (Exhibits 57-58; 139-140) dated [REDACTED] was presented. An impression of mild-to-moderate improvement of pleural effusions from [REDACTED] was noted.

Handwritten physician progress notes (Exhibits 124-138) were presented. The notes reflected daily physician visits from [REDACTED] through [REDACTED]. Various lab test results (Exhibits 141-150) and physical and occupational therapy notes (Exhibits 151-160) for the same period were also presented. On [REDACTED], it was noted that Claimant could perform all treatments independently. On [REDACTED], it was noted that Claimant was "pretty good". No abnormal physical examination findings were noted.

A radiology report (Exhibits A5-A6) dated [REDACTED] was presented. An impression of interval resolution of bilateral pleural effusions and near complete resolution of infiltrates with minimal scarring was noted.

Physician office visit documents (Exhibits A7-A11) dated [REDACTED] were presented. It was noted that Claimant was scheduled to complete inpatient antibiotic treatment on 2/4/14 but that Claimant left against medical advice on [REDACTED]. It was noted that Claimant had not been taking medications since leaving the hospital. It was noted that Claimant reported fatigue. Physical examination findings noted edema. It was noted that Claimant was instructed to restart medications.

A Transthoracic Echocardiography Report (Exhibits A3-A4) dated [REDACTED] was presented. Mild-to-moderate tricuspid valve regurgitation was noted.

Following the hearing, DHS submitted a mental status examination report. Technically, the report should be disregarded because neither party agreed to the acceptance of such an examination. DHS submitted the report, thus presumably, DHS wants the report to be admitted as an exhibit. Claimant's AHR cited the report in a post-hearing document submission; thus, it is presumed that Claimant's AHR also wants the report

admitted. As both parties appear to prefer that the report be considered, the report was admitted into evidence.

A mental status examination report (Exhibits 2-1 – 2-12) dated [REDACTED] was presented. The report was completed by a consultative licensed psychologist. It was noted that Claimant was previously referred for learning disability evaluation in 2012, but Claimant failed to attend the appointment. It was noted that Claimant complained of racing thoughts, nightmares, poor memory and poor concentration since heart surgery, hallucinations, and fear of being alone. It was noted that Claimant was a drug abuser, reportedly clean for 10 months. It was noted that Claimant's 4 minor children were taken due to Claimant's neglect. It was noted that Claimant began using drugs after her children were removed. It was noted that Claimant reported losing fast-food employment for "being too slow". Notable impressions of Claimant included the following: weak contact with reality, low self-esteem, mildly nervous, normal stream of mental activity, below average verbal expression quantity, and normal thought organization. Diagnoses of adjustment disorder with anxiety, dependent personality disorder, and other psychotic disorder were noted. A poor prognosis was noted.

The psychological examiner tested Claimant's attention by testing her ability to repeat numbers; Claimant's attention was opined to be sub-normal. It was noted that Claimant could not recall 1 of 3 items after a 3 minutes lapse. It was noted that Claimant was unable to name any of the following: 4 presidents from past 50 years, five large cities, a current event, the capital of Michigan, states surrounding Michigan, three famous people, or the location of Egypt. The examiner stated that it was unknown if Claimant was in special education classes because of low cognitive functioning or due to a learning disability. A diagnosis of borderline intellectual functioning was noted. The examiner also noted that Claimant's writing displayed such poor spelling that the statements could not be understood.

Presented documents verified that Claimant underwent valve replacement surgery in 12/2014. It was verified that Claimant's recovery was complicated by infectious diseases such as endocarditis (see Exhibits 124-138) and sepsis. Bacterial complications were not verified after 1/2014. This evidence is consistent with finding that Claimant does not have restrictions related to recurrent infections. This finding is further supported by evidence suggesting that Claimant's failure to take prescribed medication and leaving against medical advice were contributors to any infection problems following surgery.

Some breathing difficulties were verified shortly following Claimant's heart surgery. Radiology dated [REDACTED] tended to confirm that Claimant's pulmonary embolisms and pleural effusions were absent. This evidence supports finding that Claimant does not have an ongoing severe respiratory impairment.

It was verified that Claimant experienced mild-to-moderate tricuspid valve regurgitation despite valve replacement surgery. This ongoing problem could be causing Claimant's reported fatigue.

Claimant testified that she had no health insurance. Claimant's testimony was surprising given that DHS began offering Healthy Michigan Plan benefits to financially eligible applicants beginning 4/2014. Claimant's failure to pursue follow-up treatment makes it difficult to infer that Claimant has continuing exertional impairments related to fatigue. Based on mild-to-moderate regurgitation, it can be reasonably found that Claimant experiences comparable levels of fatigue. Mild-to-moderate fatigue would likely preclude Claimant from performing heavy lifting/carrying and highly skilled employment requiring significant thought process.

Claimant's AHR contended that Claimant also has cognitive and psychological impairments. A consultative examiner noted that Claimant previously underwent psychological counseling (see Exhibit 2-12), though treatment records were not presented. The absence of records is notable because of Claimant's drug abuse history. Psychological counseling records may have provided insight on whether Claimant continued to use drugs despite her statements that she stopped after 12/2013.

Presented records sufficiently verified some degree of psychological and/or cognitive deficits. The evidence was sufficient to find that Claimant's impairments have lasted longer than 12 months. It is found that Claimant has severe impairments 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.

Claimant's most prominent impairment appears to be intellectual ability deficits. The SSA listing pertaining to intellectually-based disabilities reads as follows:

12.05 Intellectual disability. Intellectual disability refers to significantly subaverage general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;

OR

B. A valid verbal, performance, or full scale I.Q. of 59 or less;

OR

C. A valid verbal, performance, or full scale I.Q. of 60 through 70 and a physical or other mental impairment imposing an additional and significant work-related limitation of function;

OR

D. A valid verbal, performance, or full scale I.Q. of 60 through 70, resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

During the hearing, Claimant's AHR requested that Claimant undergo intelligence testing, based on previous SSA psychological documentation suggesting the need for I.Q. testing. The record was extended 90 days for DHS to schedule intelligence testing. DHS provided documentation that Claimant failed to attend an appointment for intelligence testing.

Though a consultative psychologist implied that Claimant has sub-normal cognitive function (see Exhibits 2-1 2-12), Claimant's failure to attend cognitive testing is more compelling. Speculation will not be undertaken concerning Claimant's I.Q. Without I.Q. testing, Claimant cannot meet Listing 12.05.

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

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 performed past relevant employment as a runner (one who takes orders to cars), a dishwasher, and hotel housekeeper. Claimant testified that cleaning hotel rooms and mopping were her primary housekeeping duties. Claimant's testimony implied that she lacks the energy to perform any employment; such an argument was rejected in step 2. Hotel housekeeping should be within Claimant's capabilities. The employment is also not deemed to be beyond Claimant's intellectual ability. This finding is consistent with a mental examination report citing that Claimant held the job for 5-6 months before she was fired for napping in a hotel room (see Exhibit 2-3).

It is found that Claimant can perform past relevant employment. Accordingly, Claimant is not a disabled individual 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] 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:

