

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-005066
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 8, 2014
County: Oakland (02)

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, an in-person hearing was held on October 8, 2014 from Madison Heights, 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, 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 9-10).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Benefit Notice (Exhibits 4-5) informing Claimant and her AHR 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 (Exhibits 259-268) and a determination that Claimant does not have a severe impairment.
7. As of the date of the administrative hearing, Claimant was a 45 year old female with a height of 5'5 ½ " 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 12th grade.
10. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 4/2014.
11. Claimant alleged disability based on impairments and issues including body pain, hand and leg stiffness, blurry vision, depression, headaches and dizziness.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.*, p. 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.*, p. 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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.

Hospital documents (Exhibits 208-258) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of sudden chest pain and vomiting. Significant anemia was noted.

Hospital documents (Exhibits 152-207) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain, anemia, and tachycardia, ongoing for 30 minutes. It was noted that Claimant received fluids and meds which decreased heart rate. A chest x-ray was noted as negative. A plan of outpatient colonoscopy was noted.

Various treatment documents (Exhibits 140-151) from 6/2013 were presented. It was noted that Claimant reported abnormal vaginal bleeding and dyspnea. A chest x-ray was noted as negative. A history of blood transfusions was noted.

Hospital documents (Exhibits 92-96) from an admission dated [REDACTED] were presented. A pathology report noted grade-1 malignancy endometrioid adenocarcinoma.

Hospital documents (Exhibits 34-91) from an admission dated 10/7/13 were presented. It was noted that Claimant presented with complaints of dizziness and vaginal bleeding, ongoing for 6-7 days. A history of fibroids was noted. An impression of an endometrial mass concerning for carcinoma was noted following pelvic ultrasound. It was noted that Claimant underwent a blood transfusion. Noted discharge diagnoses included endometrial cancer. It was noted that a hysterectomy during the hospital stay was recommended but that Claimant wanted to schedule for a later date. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 97-139) from an admission dated [REDACTED] were presented. It was noted that Claimant underwent a total abdominal hysterectomy with pelvic lymph node dissection. A usual post-op course was noted. Discharge instructions noted light lifting for 8 weeks. A discharge date of [REDACTED] was noted.

A pathology report (Exhibits 28-31) dated [REDACTED] was presented. A grade 1 tumor was found in Claimant's uterus. It was noted that other organs were not involved.

A Medical Examination Report (Exhibits 26-27) dated [REDACTED] was presented. The form was completed by a gynecologist with an approximate one month history of treating Claimant. A diagnosis of grade 1 endometrial cancer was noted. It was noted that Claimant can meet household needs.

Physician office visit documents (Exhibits 32-33) dated [REDACTED] were presented. It was noted that Claimant's incisional pain was improving. A follow-up in 3-4 months was noted.

Hospital documents (Exhibits 11-18) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left-sided chest pain while defending a court eviction. It was noted that Claimant reported that she was homeless. Elevated troponin was noted after lab testing. It was noted that a recent stress test was normal. It was noted that chest x-rays were taken; findings of normal heart size and no evidence of vascular congestion were noted. A complaint of post-menopausal bleeding was also noted. A history of endometrial cancer and fibroid treatment was noted. It was noted that Claimant's condition improved while in the emergency room. A 3 month follow-up was recommended concerning bleeding. A generic discharge of atypical chest pain was noted.

Hospital documents (Exhibits A1-A12) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of left arm pain, numbness, and swelling. It was noted that Claimant was positive for chronic back pain. Muscle strength was noted as 5/5. Pain to palpitation of entire spine was noted. A final impression of hand swelling with unknown etymology was noted. Tramadol was noted as prescribed.

Presented medical records verified gynecological treatment and problems. The records verified that Claimant has a history of vaginal bleeding and endometrial cancer. The records failed to establish any problems following a hysterectomy. Claimant failed to establish any severe impairments related to gynecology.

A hospital encounter for chest pain was verified. Radiology was negative. The documents suggested that the pain was stress-related. Evidence of a 12 month restriction was not persuasive.

A recent hospital encounter for arm and back pain was verified. Again, radiology was not presented. It is unknown what is causing Claimant's pain. The absence of muscle strength loss or range of motion loss is consistent with a finding that Claimant does not have a long-term restriction. Though Claimant may have pain or arm problems which restrict her lifting and/or concentration, the evidence was too insufficient to infer such restrictions.

Claimant's testimony suggested ongoing back pain, leg stiffness, headaches, and blurry vision. Presented documents were insufficient to infer any related 12 month restrictions to performing basic work activities.

It is found that Claimant failed to establish a severe impairment. Accordingly, the denial of Claimant's MA application was proper.

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 1/2014, based on a determination that Claimant is not disabled.

The actions taken by DHS are **AFFIRMED**.

Christian Gardocki

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

Date Signed: **10/31/2014**

Date Mailed: **10/31/2014**

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:

