

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-006302
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 4, 2014
County: Wayne (35)

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 August 4, 2014, from Redford, 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], Hearings Facilitator.

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 5-6).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a

Notice of Case Action (Exhibits 137-141) informing Claimant of the denial.

5. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant's AHR of the denial.
6. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
7. As of the date of administrative hearing, Claimant was a 35-year-old female.
8. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since approximately 4/2014.
9. Claimant alleged disability based on fibromyalgia and systemic lupus erythematosus symptoms.

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, an in-person hearing was requested. The hearing was conducted in accordance with Claimant's request.

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 performed phone sales for a "couple months" Claimant was not precise with her employment dates, but 9/2013 appeared to be a month when Claimant was employed. Evidence of Claimant's wages was not presented. The evidence was not strongly suggestive that Claimant made SGA wages in 9/2013 or thereafter. 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 from an admission dated [REDACTED] were not presented. The admission was summarized in subsequent hospital admission documents (see Exhibit 19). It was noted that Claimant presented with complaints of chest pain and tachycardia related to lupus pericarditis. It was noted that extensive testing was performed but that Claimant's heart rate remained high. It was noted that all chest radiology was negative. It was noted that Claimant was treated with high level steroid doses and Cellcept (see Exhibit A5). It was noted that Claimant reported a pain level 3-4 out of 10 at discharge. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 12-17; 19-) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of continuing chest pain (pain level 9/10) and tachycardia. A syncope episode was noted after Claimant walked a flight of stairs. A past medical history of fibromyalgia was noted. It was noted that it was not determined if Claimant had a true syncopal episode. It was noted that an EKG and biomarkers were negative (see Exhibit 92). It was noted that there was no evidence of a lupus exacerbation. It was noted that Claimant left against medical advice due to a family obligation. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 88-136) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of recurrent chest pain and tachycardia (130-140 bpm). It was noted that Claimant had multiple lesions on her neck; steroid ointment was noted as an ongoing treatment. It was noted that Claimant stopped opioid use on the day before admission. It was noted that there was no evidence of active lupus SLE. Anxiety or side effects of predinose were noted as possible explanations for Claimant's rapid heart rate. It was noted that Claimant received various medications. It was noted that Claimant's heart rate slowed and stabilized. Noted discharge diagnoses included lupus pericarditis and sinus tachycardia. A discharge date of [REDACTED] was noted.

Medical treatment documents (Exhibits A93-A97) dated [REDACTED] were presented. It was noted that Claimant reported ongoing chest pain, dizziness, and light-headedness.

Medical treatment documents (Exhibits A89-A92) dated [REDACTED] were presented. It was noted that Claimant complained of leg pain which makes her legs feel like cooked spaghetti noodles. It was noted that Claimant had difficulty standing. It was noted that her chest pain was improved (pain level 2/10).

Medical treatment document (Exhibits A77-A88) dated [REDACTED] were presented. It was noted that Claimant presented with a complaint of leg pain, ongoing since 8/2013. It was noted that etiology was unclear, though lupus or fibromyalgia could be causes. A referral to pain management was noted as a possible plan.

Medical treatment documents (Exhibits A70-A76) dated [REDACTED] were presented. It was noted that Claimant presented with facial swelling and leg pain. It was noted that Claimant's chest pain complaints resolved. It was noted that Claimant was off opiates. Recurrent leg pain was noted. It was noted that lupus was causing Claimant's puffy face and leg pain.

Hospital documents (Exhibits A1-A44) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain and bilateral leg swelling, and fatigue. Recurring headaches was also a noted problem. It was noted that Claimant was doing well until she was unable to receive medications due to insurance issues. It was noted that an MRI revealed osteonecrosis in the proximal tibia. It was noted that Claimant appeared to have a pulmonary embolism. It was noted that steroid treatment was necessary to control lupus; it was also noted that steroid treatment could cause problems with the embolism and osteonecrosis. Discharge diagnoses of SLE lupus pericarditis and PE were noted. A discharge date of [REDACTED] was noted.

Medical treatment documents (Exhibits A49-A58) dated [REDACTED] were presented. It was noted that Claimant was in the middle of a lupus flare and that her symptoms were improving. It was noted that Claimant would have to continue to take Coumadin for treatment of a small PE.

Claimant verified that she was diagnosed with fibromyalgia and lupus SLE. Both are known to be very serious ailments that can affect the entire body. Both are ailments that can be treated, though neither is curable.

Presented evidence established that Claimant had recurrent problems with chest pain, leg pain, pulmonary embolism due to one or both of her conditions. The evidence was sufficient to establish walking and lifting restrictions. The medical evidence also established that Claimant's walking and manipulating 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.

Claimant's most prominent impairment appears to be lupus SLE. Lupus SLE is covered by Listing 14.02 which reads as follows:

14.02 Systemic lupus erythematosus. As described in 14.00D1. With:

A. Involvement of two or more organs/body systems, with:

1. One of the organs/body systems involved to at least a moderate level of severity; and

2. At least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss).

OR

B. Repeated manifestations of SLE, with at least two of the constitutional symptoms or signs (severe fatigue, fever, malaise, or involuntary weight loss) and one of the following at the marked level:

1. Limitation of activities of daily living.
2. Limitation in maintaining social functioning.
3. Limitation in completing tasks in a timely manner due to deficiencies in concentration, persistence, or pace.

Hospital encounter documents (Exhibits A47-A48) dated [REDACTED] were presented. Noted current problems included chronic fatigue fibromyalgia syndrome. The diagnosis is consistent with severe fatigue and malaise.

Claimant presented a 12 month history involving multiple hospital admissions and multiple recurrent problems. The evidence was suggestive that lupus is attacking Claimant's circulatory system (PE and tachycardia), musculoskeletal (osteonecrosis), and respiratory system (pleural effusion). The evidence was suggestive that any one of these systems are affected to a moderate degree.

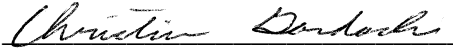
Based on the presented evidence, it is found that Claimant meets Listing 14.02(A). Accordingly, Claimant is a disabled individual and it is found that DHS improperly denied Claimant's MA application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS 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 9/2013;
- (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: 8/25/2014

Date Mailed: 8/25/2014

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:

