

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 14-017718
Issue No.: 2009
Case No.: ██████████
Hearing Date: January 15, 2015
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, a telephone hearing was held on January 15, 2015, from Detroit, Michigan. Participants included the above-named Claimant. ██████████ testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included ██████████ ██████████ hearings facilitator.

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 ██████████, 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 ██████████ the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 12-13).
4. On ██████████, DHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibit 87) informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. As of the date of the application denial, Claimant was a 49 year old female.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's highest education year completed was the 12th grade.
9. Claimant has a history of semi-skilled employment, with no known transferrable job skills.
10. Claimant alleged disability based on restrictions related to brain surgery.

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 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.* 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.

SGA means a person does the following: performs significant duties, 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 SGA. *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 presented medical documentation.

Hospital documents (Exhibits 63-72) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of severe headaches. It was noted that radiology revealed extensive arachnoid hemorrhaging. It was noted that Claimant underwent ventriculoperitoneal shunting to drain a ruptured brain aneurysm. Subsequent testing revealed an anterior communicating artery aneurysm requiring a chemical angioplasty. A discharge date of [REDACTED] was noted.

Neurosurgeon office visit documents (Exhibits 22-24; 32-34) dated [REDACTED] were presented. It was noted that Claimant presented for follow-up of brain aneurysm. A complaint of headaches was noted. Balance loss and dizziness were notably denied by Claimant. Musculoskeletal and neurological physical exam findings were all normal. Claimant's gait was noted to be normal. Claimant was described as "doing well".

Physician office visit documents (Exhibits 84-86) dated [REDACTED] were presented. It was noted that Claimant recently attended rehab and was now in a nursing facility. Complaints of snoring, gait disturbance, memory loss, and seizures were noted. A neurological examination was noted to be normal.

Physician office visit documents (Exhibits 74-77) dated [REDACTED] were presented. It was noted that Claimant was able to perform daily activities without imbalance issues or significant agitation. Short-term memory difficulties were noted. Claimant was described as "doing well physically and functionally".

Physician office visit documents (Exhibits 78-83) dated [REDACTED] were presented. It was noted that Claimant presented for sleep apnea evaluation. Assessments of snoring, obesity, and tobacco abuse were noted.

A Medical Examination Report (Exhibits 26-28; 59-61) dated [REDACTED] was presented. The form was completed by an internal medicine physician with an approximate 3 month history of treating Claimant. Claimant's physician listed diagnoses of traumatic brain injury, hypertension, and s/p brain aneurysm rupture. An impression was given that Claimant's condition was improving. It was noted that Claimant cannot meet household needs, specifically cooking and schedules. Physical examination findings noted sleep apnea and persistent coordination problems. Claimant's physician opined that Claimant was restricted to less than 2 hours of standing and/or walking over an eight-hour workday. Claimant was restricted from performing any lifting/carrying, even a weight of less than 10 pounds. Claimant's physician opined that Claimant was restricted from performing repetitive fine manipulating. A basis for restrictions was not provided. Claimant's physician listed that Claimant was restricted in comprehension, memory, and sustaining concentration. Claimant's physician stated that the basis for mental restrictions was that Claimant is unable to understand her medical and health care decisions.

Physician office visit documents (Exhibits A1-A3) dated [REDACTED] were presented. It was noted that Claimant presented for medication refills.

Neurosurgeon office visit documents (Exhibits 19-21; 29-31) dated [REDACTED] were presented. It was noted that Claimant presented for a 3 month aneurysm follow-up. Complaints of short-term memory loss and balance difficulties were noted. Musculoskeletal and neurological physical exam findings were all normal. Claimant was described as "doing well".

Physician office visit documents (Exhibits A5-A9) dated [REDACTED] were presented. Treatment for HTN, foot wart, and depression were noted. A short-course of Xanax was noted as prescribed.

A mental status examination report (Exhibits 14-18) dated [REDACTED] was presented. The report was signed by a consultative limited licensed psychologist and licensed psychologist. It was noted that Claimant reported memory loss, cognitive decline, personality changes, and mood swings. Noted examples of reported memory loss included Claimant forgetting whether her teeth were brushed, and leaving personal items in the wrong place. Claimant reported needing to be under 24 hour care. A diagnosis of neurocognitive disorder secondary to brain aneurysms was noted. The examiner opined that Claimant has difficulties with short-term concentration, memory, and word recall. It was opined that Claimant would have difficulty with any complicated instructions due to cognitive impairments. A fair-to-guarded prognosis was noted. The examiner noted that Claimant may have difficulty in managing funds.

Physician office visit documents (Exhibits A10-A24) dated [REDACTED] were presented. It was noted that Claimant was treated for HTN and a forehead bump. Complaints of headache and dizziness were noted. A complaint of sharp neck pain near a VP shunt was also noted. An EKG was noted to be normal. Claimant was advised to contact her neurosurgeon if headaches persisted.

Claimant testified that she has persistent problems with memory loss and concentration. Claimant testified that her memory loss and concentration are so severe that she requires a caretaker.

Presented documents did not definitively establish any impairments expected to last 12 months or longer. Approximately four months after brain surgery, Claimant's physician stated that Claimant had mental and physical restrictions while also noting that Claimant was improving. Only medical records within 6 months of Claimant's surgery were presented; thus, conjecture is required to determine if Claimant has a severe impairment.

It was established that Claimant underwent brain surgery to remove excess cerebrospinal fluid. Claimant testified that she required physical therapy after surgery, the purpose being to assist her with balance and motor function. Though therapy

records were not presented, Claimant's testimony was credible. Surgery to treat a ruptured aneurysm followed by physical therapy for balance is highly suggestive of some degree of memory and concentration loss. Concentration difficulties and memory loss was also consistent with statements made by Claimant's treating physician and a consultative psychologist.

It is found that Claimant has a severe impairment related to memory loss and concentration difficulty. It is further found that Claimant's impairments are expected to last 12 months or longer. Accordingly, Claimant has a severe impairment and the disability analysis may proceed to Step 3.

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 functioning difficulties following ruptured aneurysm surgery. Listing 12.02 covers organ brain disorders and reads:

12.02 Organic mental disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

1. Disorientation to time and place; or
2. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
3. Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
4. Change in personality; or
5. Disturbance in mood; or
6. Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
7. Loss of measured intellectual ability of at least 15 I.Q. points from premorbid levels or overall impairment index clearly within the severely impaired range on neuropsychological testing, e.g., Luria-Nebraska, Halstead-Reitan, etc.;

AND

B. 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;

OR

- C. Medically documented history of a chronic organic mental disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
1. Repeated episodes of decompensation, each of extended duration; or
 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
 3. Current history of one or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Starting with Part A of the above listing, multiple physicians found that Claimant had some degree of memory loss related to brain dysfunction. Claimant meets Part A of the above listing.

Claimant testified that her physician restricted her from driving. Claimant testified that she is unable to go places by herself. Claimant testified that she often forgets to take her medication. Claimant's testimony was highly suggestive of marked concentration and memory loss.

Claimant testified that she requires a 24 hour caretaker. A need for a 24 hour caretaker is highly consistent with disabling conditions that would meet the above listing. Presented records failed to sufficiently verify that Claimant has an ongoing need for a 24 hour caretaker.

It was established that Claimant reported ongoing headaches and dizziness, though Claimant conceded that she had not fallen since her brain surgery. Ongoing chronic treatment is mildly consistent with abnormal neurology causing concentration difficulties.

Observations of Claimant made by a consultative examiner included the following: attentive to grooming, slow gait, honest and forthright, slow speech, delayed response time, and mildly constricted affect. Claimant's mental activity was described as slow but logical and organized. Slow mental activity, slow gait, slow speech, and delayed response time are consistent with neurocognitive dysfunction which would likely cause marked concentration problems, memory loss, and difficulties in performing ADLs.

Overall, the evidence was slightly more suggestive than not that Claimant has ongoing marked difficulties in maintaining concentration and completing ADLs. It is found that Claimant meets SSA Listing 12.02 and that Claimant is a disabled individual.

Accordingly, it is found that DHS erred in denying Claimant's MA application for the reason that Claimant was not disabled.

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 1/2014;
- (2) evaluate Claimant's eligibility for 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 Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/6/2015**

Date Mailed: **2/6/2015**

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:

