

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-12723
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: March 10, 2014
County: Wayne (57)

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 March 10, 2014, from Detroit, Michigan. Participants included the above-named Claimant, [REDACTED] and [REDACTED], Claimant's friends, testified on behalf of Claimant. 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) and State Disability Assistance (SDA) 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 and SDA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED] the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

4. On 1 [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On [REDACTED], Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On [REDACTED] SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 201.28.
7. As of the date of the administrative hearing, Claimant was a 26-year-old female with a height of 5'5 ½ " and weight of 167 pounds.
8. Claimant has no known relevant history of alcohol or illegal substance abuse.
9. Claimant's highest education year completed was a Bachelor of Arts degree in Psychology.
10. As of the date of the administrative hearing, Claimant was an ongoing Adult Medical Program recipient.
11. Claimant alleged disability based on impairments and issues including unspecified problems with balance.

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.* at 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.* at 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. 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 medical background gleaned from Claimant's testimony and a summary of the relevant submitted medical documentation.

Claimant testified that she had relatively few health problems until 10/2012. Claimant stated that suddenly she began feeling nauseous and dizzy on a daily basis. Claimant testified that she lost 40 pounds over the next several weeks due to an inability to hold down food. Claimant stated that she got some reprieve in 2/2013 when the dizziness and nausea suddenly stopped. Claimant testified that despite the partial stoppage in symptoms, she still has severe balance problems.

A Discharge Summary (Exhibits A2-A7) dated [REDACTED] was presented. A diagnosis of major depression was noted.

A Final Report (Exhibits 17-19) dated [REDACTED] was presented. It was noted that Claimant presented to a neurology clinic for evaluation of gait imbalance. It was noted that Claimant was undergoing physical therapy which improved her imbalance problems. It was noted that a neurologist from another hospital was unable to diagnose Claimant. It was noted that smoking marijuana hurt Claimant's imbalance.

A Final Report (Exhibits 14-16) dated [REDACTED] was presented. It was noted that Claimant returned for a neurology clinic appointment. A brain MRI was noted as unremarkable (see Exhibits 26-27). It was noted that Claimant reported many near stumbles. Examination of Claimant revealed gait ataxia and positive Romberg sign.

A letter (Exhibit A1) dated [REDACTED] from Claimant's primary care physician was presented. It was noted that Claimant was unemployable for an indefinite period of time due to gait imbalance.

A Final Report (Exhibits 11-13) dated [REDACTED] was presented. It was noted that Claimant appeared to a neurology clinic complaining of balance dysfunction. It was noted that an MRI of Claimant's cervical spine revealed C5-C6 disc protrusion, but no cord compression. A similar finding was made on the thoracic spine. It was noted that Claimant completed two months of physical therapy, which was reported by Claimant as beneficial. It was noted that Claimant saw an eye doctor and ear doctor and neither found significant problems. It was noted that Claimant's blood work was normal. A neurological exam was noted as significant for postural reflexes, loss of arm swing and wide-based gait. Multiple sclerosis was noted as a ruled out diagnosis. A plan to follow-up with Claimant in 3 months was noted.

A Medical Examination Report (Exhibits 8-10) dated [REDACTED]. The physician failed to note a treating history with Claimant but Claimant testified that the doctor has been her primary care physician since her childhood. The physician provided a diagnosis of imbalance. The physician noted that Claimant uses a cane for imbalance. The physician noted that Claimant could never lift or carry or perform the repetitive arm or leg actions

listed on the form. An impression was given that Claimant's condition was deteriorating. Mental limitations of comprehension, memory and concentration were noted. It was noted that Claimant cannot meet her household needs.

Claimant testified that she is unable to walk with balance. As an example, Claimant testified that she fell down the day before the hearing and that she had to telephone her friends to help her get up. Claimant testified that she has seen several doctors, none of which diagnosed the cause of Claimant's balance difficulties. Claimant also stated that the lack of diagnosis is affecting her psyche, as indicated by a suicide attempt in 4/2013. Claimant's testimony was credible and consistent with the history noted in medical documents. It is found that Claimant has ambulation restrictions which have lasted for 12 months or longer.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move 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 is balance while ambulation. Though the cause of imbalance is undiagnosed, presented records tended to verify some neurological dysfunction. The problem is best addressed by Listing 11.17, which reads

- 11.17 Degenerative disease not listed elsewhere, such as Huntington's Chorea, Friedreich's ataxia, and spino-cerebellar degeneration.** With:
- A. Disorganization of motor function as described in 11.04B; or
 - B. Chronic brain syndrome.

Listing 11.04B describes disorganization of motor function as significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C). Listing 11.00C describes *persistent disorganization of motor function* in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment.

The presented evidence verified that Claimant has an ataxic gait. Claimant's PCP noted that Claimant was disabled and further noted a positive Romberg test. A positive Romberg test is consistent with neural dysfunction. Medical document references to multiple falls, a suicide attempt and weight loss were consistent with a finding that Claimant has a disorganization of motor function.

Claimant presented evidence of her work history. The work history verified that Claimant consistently held full-time employment until her neurological deficits prevented further employment. Claimant's work history was representative of someone who was not a malingerer and bolstered the credibility of Claimant.

Based on the presented evidence, Claimant is found to meet Listing 11.17 and is therefore a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's MA benefit application.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
 - resides in a qualified Special Living Arrangement facility, or
 - is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's impairments meet SSA Listing 11.17. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

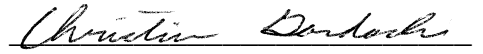
DECISION AND ORDER

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 and SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for MA and SDA 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 MA and SDA benefits.

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


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

Date Signed: 3/27/2014

Date Mailed: 3/27/2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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

CG/hw

cc:

