

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

IN THE MATTER OF:

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██████████

Reg. No.: 2014-13122
Issue No.: 2009
Case No.: ██████████
Hearing Date: May 5, 2014
County: Wayne (18)

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 May 5, 2014, from Taylor, Michigan. Participants included the above-named Claimant. ██████████ testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included ██████████, Medical Contact Worker.

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 7/18/13, Claimant applied for MA benefits (see Exhibits 71-72), including retroactive MA benefits from 5/2013 (see Exhibit 69-70).
2. Claimant's only basis for MA benefits was as a disabled individual.

3. On 8/29/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On 9/3/13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 57-59) informing Claimant's AHR of the denial.
5. On 2/27/13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 60).
6. On 1/29/14, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 203.25 (see Exhibits 73-74).
7. On 5/5/14, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A77) at the hearing.
9. During the hearing, Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
11. On 5/6/14, an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.
12. On 6/5/14, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 203.25
13. On 6/11/14, the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
14. As of the date of the administrative hearing, Claimant was a ■-year-old female with a height of 5'7" and weight of 180 pounds.
15. Claimant's highest education year completed was the 8th grade.
16. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient.
17. Claimant alleged disability based on impairments and issues including asthma, anxiety, depression, post-traumatic stress disorder (PTSD), and low cognitive functioning.

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

Claimant testified that she distinctly remembers an incident where she was molested by relatives. Claimant testified that there was one incident when she was four years old. Claimant testified that the same relatives sexually abused her when she was 16 years old. Claimant testified that these incidents adversely affect her ability to socialize, form healthy relationships, and to concentrate.

Hospital documents (Exhibits 23-56) dated 4/1/13 were presented. It was noted that Claimant has a history of marijuana and alcohol abuse. It was noted that Claimant had breathing difficulties, ongoing for 1 day. It was noted that Claimant's inhaler offered no relief. It was noted that Claimant minimized her EtOH and marijuana abuse. A daily

marijuana habit as of 1 month prior, was noted. It was noted that Claimant was treated for psychological problems and that Axis I diagnoses of depression, alcohol abuse, and cannabis abuse were noted; Claimant's GAF was noted to be 50. Discharge diagnoses included: acute COPD exacerbation, chest pain, hypokalemia, and left thoracic pulmonary nodule.

A Comprehensive Biopsychosocial Assessment (Exhibits A11-A18) dated 5/13/13 was presented. The assessment was signed by an LLPC and psychiatrist from a newly treating mental health agency. It was noted that Claimant reported negative thinking, crying a lot, anxiety, and life disappointment. It was noted that Claimant had visual and audio hallucinations. It was noted that Claimant has no psychiatric treatment or hospitalization history. It was noted that Claimant has a marijuana and alcohol abuse history, with Claimant's last use being in 3/2013. Noted observations of Claimant included the following: normal speech, intact memory, impaired judgment, intact insight, normal attention, and abnormal thought processes. Axis I diagnoses of schizoaffective disorder, generalized anxiety disorder, alcohol dependence, and alcohol dependence were noted. Claimant's GAF was noted to be 41. It was noted that Claimant would be referred to substance abuse rehab.

Hospital documents (Exhibit 12-16) from an encounter dated 5/26/13 was presented. It was noted that Claimant presented with complaints of asthma. It was noted that Claimant's breathing was treated with Rocephin and Zithromax; it was noted that Claimant responded well to the medications. Discharge diagnoses of right upper lobe pneumonia and chronic COPD were noted. Prilosec and Singular were noted as daily discharge medications.

Claimant's tobacco history was unclear based on hospital records. It was noted that Claimant reported no smoking history (see Exhibit 12). It was noted that Claimant's records indicate that Claimant quit 3 years prior (see Exhibit 12). It was noted elsewhere that Claimant quit smoking 3 months prior (see Exhibit 15).

Various lab testing results (Exhibits A1-A4) and physician appointment documents (Exhibits A5-A10) dated 6/18/13 were presented. Various out-of-reference range results were noted, including high cholesterol (239 mg/dl), high cholesterol LDL (158 mg/dl), high glucose (109 mg/dl), low potassium (3.4 mmol/L), and low lymphs (.9 K/CUMM). Diagnoses of NMA, COPD, asthma, and sarcoidosis were noted.

A Psychiatric Evaluation (Exhibits A23-A26) dated 7/30/13. The report was unsigned but is presumed to have been completed by a psychiatrist with no history of treating Claimant. It was noted that Claimant has a history of social isolation. A history of "odd experiences" and victimization was noted. It was noted that Claimant has recurring nightmares of abuse she suffered since being sober. An Axis I diagnosis of PTSD was noted.

Various mental health treatment documents (Exhibits A21-A22; A27-A62) were presented. The documents ranged from 5/2013-10/2013. On 8/27/13, it was noted that Claimant's medications were changed to Seroquel to help with sleep and hallucinations. Progress notes throughout from 6/2014-8/2014 regularly noted discussions of Claimant's past and coping mechanisms. On 9/13/13, 9/23/13, 10/9/12, it was noted that Claimant failed to attend appointments. On 10/28/13, it was noted an appointment was cancelled.

Physician treatment documents (Exhibits A65-A66) dated 12/31/13 were presented. It was noted that Claimant presented for asthma medication. It was noted that Claimant had pruritic patches on her left leg. A review of systems noted all normal findings.

Physician treatment documents (Exhibits A63-A68) dated 2/12/14 were presented. It was noted that Claimant complained of right foot, right ankle pain, and an inability to taste food. It was noted that Claimant had a rash on both legs. A physical examination noted no abnormalities. A plan for a consultation with a neurologist was noted. Assessments of asthma, dermatitis, and high BMI were noted.

Physician treatment documents (Exhibits A69-A70) dated 2/20/14 were presented. It was noted that Claimant sought gynecological treatment. No notable findings were made.

Claimant alleged disability, in part, based on respiratory difficulties. It was verified that Claimant received medication for asthma. A hospital encounter for COPD was also verified. The evidence was sufficient to presume some degree of lifting and/or ambulation restrictions due to chronic pulmonary restrictions. Other diagnoses (e.g. eczema and right ankle pain) were insufficiently verified to presume ongoing restrictions.

Claimant alleged disability, in part, based on low cognitive function. Evidence of intelligence testing, literacy or cognitive difficulties was not presented. It is found that Claimant failed to establish cognitive difficulties.

Presented evidence satisfactorily established psychological impairments. Presented evidence also established that Claimant's impairments have consistently persisted since Claimant's childhood. It is found that Claimant established having severe psychological impairments and 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 AHR contended that Claimant meets the personality disorder listing. Listing 12.08 reads as follows:

12.08 Personality disorders: A personality disorder exists when personality traits are inflexible and maladaptive and cause either significant impairment in social or occupational functioning or subjective distress. Characteristic features are typical of the individual's long-term functioning and are not limited to discrete episodes of illness. The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Deeply ingrained, maladaptive patterns of behavior associated with one of the following:

1. Seclusiveness or autistic thinking; or
2. Pathologically inappropriate suspiciousness or hostility; or
3. Oddities of thought, perception, speech and behavior; or
4. Persistent disturbances of mood or affect; or
5. Pathological dependence, passivity, or aggressivity; or
6. Intense and unstable interpersonal relationships and impulsive and damaging behavior;

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.

There is evidence suggesting that Claimant has a lengthy history of psychological symptoms which markedly restrict Claimant's daily functioning. The evidence also tended to verify that Claimant has poor medical compliance.

SSA applicants must follow treatment prescribed by their physician in order to get benefits if the treatment can restore the ability to work. 20 C.F.R. 404.1530 (a). If the applicant does not follow the prescribed treatment without a good reason, SSA will not find the applicant disabled or, if already receiving benefits, SSA will stop paying benefits. 20 C.F.R. 404.1530 (b). Good reason may be factored into whether someone refuses treatment. The following are examples of a good reason for not following treatment:

- (1) The specific medical treatment is contrary to the established teaching and tenets of an applicant's religion.
- (2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.
- (3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
- (4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky; or
- (5) The treatment involves amputation of an extremity, or a major part of an extremity.

Claimant testified that she attended psychological treatment for 8 months. Presented records only verified treatment for less than 5 months. Presented records suggested that Claimant, for unspecified reasons, ceased psychological treatment in 10/2013. Presumably treatment records from 10/2013 and since were not submitted due to Claimant's treatment stoppage. Claimant also conceded that she stopped taking medications due to concern about side effects; Claimant did not provide details of her concerns.

Claimant's failure to pursue available psychological treatment is concerning. Claimant would likely continue experiencing psychological symptoms even if she was treatment compliant. The evidence was not persuasive in establishing that treatment was pointless. It is reasonable to presume that medication and counseling would reduce Claimant's symptoms to the degree of causing moderate restrictions. For this reason, it is found that Claimant does not meet any mental health listings.

A listing for respiratory function (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

It is found that Claimant failed to establish meeting an SSA listing. Accordingly, the analysis moves to step four.

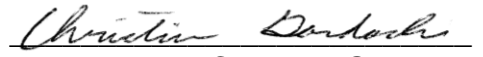
The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

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 has worked three different cashier jobs in the prior 15 years. With proper counseling and medication, it is reasonable to expect that Claimant can return to perform cashier employment. It is found that Claimant can perform past relevant employment and 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 7/18/13, including retroactive MA benefits, 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: July 3, 2014

Date Mailed: July 3, 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/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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