

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-22996
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 5, 2014
County: Macomb (20)

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 June 5, 2014, from Warren, 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 3/2013.
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 1-2).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant 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 application of Medical-Vocational Rule 202.20.
7. On [REDACTED], an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A4) 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 [REDACTED] 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 [REDACTED], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.11.
13. On [REDACTED], 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 52-year-old female with a height of 5'2" and weight of 115 pounds.
15. Claimant's highest education year completed was the 11th grade.
16. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient; prior to 4/2014, Claimant received an unspecified county-issued health insurance.
17. Claimant alleged disability based on impairments and issues including muscle weakness, fibromyalgia, and headaches.

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 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 a summary of the relevant submitted medical documentation.

Part of an undated radiology report (Exhibit 47) of Claimant's lumbar was presented. It was noted that mild facet degeneration was noted at L2-L3 and L3-L4. Moderate facet degeneration was noted at L4-L5 and L5-S1. Stenosis, focal disc herniation and neural foraminal narrowing were noted as absent.

A radiology report (Exhibits 56-57) dated [REDACTED] was presented. It was noted that a CT of Claimant's abdomen was performed. An impression of non-obstructing left renal calculus, and 2-3 simple renal cysts was noted.

A radiology report (Exhibit 62) dated [REDACTED] was presented. It was noted that a kidney ultrasound was performed. An impression of stable calyces was noted. It was noted that a tiny non-obstructing calculus from previous radiology was not identified.

A radiology report (Exhibit 64) dated [REDACTED] was presented. It was noted that Claimant underwent a brain MRI. It was noted that findings were consistent with right middle cranial fossa meningioma.

Hospital documents (Exhibits 66-74) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of fever, cough, and muscle aches. Noted active problems included headaches, anxiety, meningioma, and fibromyalgia. It was not apparent how Claimant was treated.

Hospital documents (Exhibits 75-92) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of fever and muscle aches. It was noted that Claimant received various medications and remained asymptomatic during admission. Noted discharge diagnoses included community-acquired pneumonia. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 93-96) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of chest pain. It was noted that chest radiography was negative. Treatment for Claimant was not apparent.

An MRI report of Claimant's brain (Exhibits 47-48) dated [REDACTED] was presented. It was noted that Claimant had a mass which was most consistent with a meningioma. A hyper-intense white matter lesion was noted to possibly represent old small vessel ischemic change.

An MRI report of Claimant's cervical spine (Exhibits 103-106) dated [REDACTED] was presented. A mild disc bulge at C5-C6 and C6-C7 was noted.

An MRI report of Claimant's lumbar spine (Exhibits 103-106) dated [REDACTED] was presented. Mild bilateral facet degeneration at L2-L3 and L3-L4 was noted. Moderate bilateral facet degeneration at L4-L5 and L5-S1 was noted. Mild hypertrophy was noted at L5-S1.

A brain MRI (Exhibits 118-119) dated [REDACTED] was presented. A stable brain MRI was noted.

Hospital documents (Exhibits 123-136) from an encounter dated [REDACTED] were presented. A diagnosis of pneumonia was noted.

Physician encounter documents (Exhibits 52-54) dated [REDACTED] were presented. It was noted that Claimant was treated for chest pain and pneumonia. A prescription for omeprazole was noted.

A Medical Examination Report (Exhibits 45-46) dated [REDACTED] was presented. The form was completed by a physician with no noted history of treating Claimant. The physician provided diagnoses of fibromyalgia, anxiety, and meningioma. Noted medications included Neurontin and Klonopin. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. Claimant's muscle strength was noted as 5/5 in all extremities. Claimant's gait, motor function, and senses were all noted as normal.

Hospital documents (Exhibits 8-35) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dizziness, related to shooting pains in her temples. Bilateral arm and hand tremors were noted. Lumbar tenderness on left of midline was noted. It was noted that a CT of Claimant's head was performed;

no acute intracranial pathology was noted. Noted treatment included rest, slow ranges of motion and pain medications.

An ultrasound report (Exhibits A3-A4) dated [REDACTED] was presented. An impression of tiny non-obstructing calculus was noted.

A Medical Examination Report (Exhibits A1-A2) dated [REDACTED] was presented. The form was completed by a physician who treated Claimant once (on [REDACTED]). The physician provided diagnoses of anxiety and insomnia. Painful corns on Claimant's left foot were noted. It was noted that Claimant had a normal gait. It was noted that Claimant had no obvious musculoskeletal or neurological abnormalities. It was noted that Claimant can meet household needs.

Claimant testified that she had no sitting or ambulation restrictions. Claimant testified that she had "jumpy muscles" and muscle weakness. Claimant testified that she performs all her daily activities, including driving. Claimant also testified that she has recurring headaches.

Claimant alleged disability, in part, due to muscle aches. Neurological testing was not provided but Claimant's physician provided a diagnosis of fibromyalgia. The diagnosis and treatment history is sufficient to verify some degree of muscle pain and fatigue.

Claimant alleged disability, in part, due to headaches. It was verified that Claimant has meningioma. Meningioma is known to be a condition which compresses the brain. It is presumed to be a cause of Claimant's headaches.

Abnormal spinal radiology and a diagnosis of fibromyalgia were verified. Spinal disorders and fibromyalgia can cause back and body pain which would likely cause some degree of concentration, ambulation, and lifting restrictions.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, Claimant established having a severe impairment 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.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

A listing for organic mental disorders (Listing 12.02) was considered based on a diagnosis of meningioma. This listing was rejected due to a failure to establish marked

psychological restrictions or a mental disorder of 2 years duration that imposes more than a minimal limitation on Claimant's ability to perform basic work activities.

It is found that Claimant failed to establish meeting a 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 her only employment in the last 15 years was as a day care worker. Claimant testified that she last worked in 2007. Claimant testified that her duties included the following: changing diapers, cooking, and doing activities with children.

Claimant testified that she has body shakes, muscle weakness, and "jumpy muscles". Two Medical Examination Reports were presented. Neither MER noted any notable neurological or musculoskeletal deficit. Both reports tended to note good health (e.g. normal gait, full muscle strength, normal motor function).

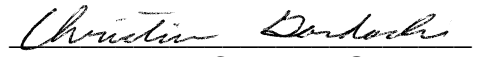
Both MERs also noted that Claimant does not require assistance with household needs. The reports were consistent with Claimant's testimony which conceded that she does her own shopping, driving, bathing, and dressing.

Claimant's diagnoses of fibromyalgia and meningioma could easily cause Claimant some degree of recurrent discomfort. Evidence was not presented to justify finding that Claimant's discomfort is so severe that performance of past employment is an unreasonable expectation. For example, in 3/2013, Claimant complained of shooting pains. Claimant's only submitted treatment after her complaint came eight months later, for kidney stones. The only treatment documented after 1/2014 was in 5/2014 when foot corns was the most notable obstacle for Claimant.

Based on the presented evidence, it is found that Claimant can perform past relevant employment for SGA. Accordingly, Claimant is not disabled and it is found 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 [REDACTED], including retroactive MA benefits from 3/2013, 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: 8/22/2014

Date Mailed: 8/22/2014

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:

