

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-25204
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 12, 2014
County: Wayne (17)

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 June 12, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], 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 [REDACTED], Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED] (see Exhibit 64-65).
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 11-12).

4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (see Exhibits 5-6) informing Claimant of the denial.
5. On [REDACTED], Claimant's former administrative hearing representative (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 201.19.
7. As of the date of the administrative hearing, Claimant was a 46-year-old female with a height of 5'3" and weight of 140 pounds.
8. Claimant has a lengthy history of substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had no health insurance.
11. Claimant alleged disability based on impairments and issues including leg pain, body pain, and walking restrictions.

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).

It should be noted that Claimant's AHR requested a hearing. Claimant's AHR subsequently withdrew representation. Claimant testified that she wished to proceed with the hearing without representation.

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's former AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's former AHR subsequently amended the request to a telephone hearing. The hearing was conducted in accordance with Claimant's AHR's amended 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.* 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 a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 25-63) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of lower back pain, child, and abdominal pain. It was noted that Claimant was a twice per day IV heroin user; cocaine addiction was also noted. Diagnoses of bacteremia and suspected endocarditis were noted. Reduced quadriceps and Achilles reflexes were noted. Hypersensitivity to touch and exaggerated pain symptoms were noted. It was noted that an MRI showed extensive epidural back abscesses at many levels. It was noted antibiotic therapy was started. It was noted that it was difficult to tell if Claimant was being truthful concerning symptoms because she reported "yes" to every question about symptoms. An impression of progressive neurologic deficit with bilateral lower weakness was noted. On [REDACTED], it was noted that epidural abscesses were removed.

An internal-medicine examination report (Exhibits 78-85) dated [REDACTED] was presented. The report was completed by a consultative physician. It was noted that Claimant reported difficulty with walking, bent posture, poor balance, and leg pain. A reported history of anemia and sepsis was noted. It was noted that Claimant had multiple arm sores. Weak bilateral strength was noted. Claimant's gait was noted as slow and steady. Cervical and lumbar spine ranges of motion were noted as decreased. Reduced strength was noted in all extremities. It was noted that Claimant was likely a current street drug user. The following examiner impressions were noted: chronic bronchial asthma, chronic back pain, anemia, open sores.

A mental status examination report dated [REDACTED] was presented. It was noted that Claimant failed to follow-up with the hospital for treatment. It was noted that Claimant uses street drugs to treat pain. A diagnosis of polysubstance abuse was noted. It was noted that Claimant had no other apparent psychiatric symptoms. A very guarded prognosis was noted.

Claimant testified that she was hospitalized for several months beginning in [REDACTED]. Claimant testified that part of her hospitalization included physical therapy which taught her to walk.

Claimant testified that she has significant walking and lifting restrictions. Claimant also testified that she has chronic and severe back pain. Claimant's testimony was consistent with presented records.

Claimant's history of medication noncompliance and substance abuse were significant factors in Claimant's medical history. SSA provides guidance on how medical noncompliance and drug abuse affect the disability analysis.

Social Security Rule 82-60 states that an individual shall not be considered to be disabled for purposes of this title if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled. SSA states that when drug or alcohol use is a medically determinable impairment, it must be determined whether the claimant would continue to be disabled if he or she stopped using drugs or alcohol; that is, SSA will determine whether DAA is "*material*" to the finding that the claimant is disabled. 20 CFR 404.1535 and 416.935.

Claimants have the burden of proof to establish disability. SSR 13-2p. When drug and/or alcohol abuse (DAA) is applicable, SSA applies the steps of the sequential evaluation a second time to determine whether the claimant would be disabled if he or she were not using drugs or alcohol. *Id.* It is a longstanding SSA policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. *Id.* Noted considerations made by SSA concerning drug materiality include the following:

- Does the claimant have DAA?
- Is the claimant disabled considering all impairments, including DAA?
- Is DAA the only impairment?
- Is the other impairment disabling by itself while the claimant is dependent upon or abusing drugs and/or alcohol?
- Does the DAA cause or affect the claimant's medically determinable impairments?
- Would the other impairments improve to the point of non-disability in the absence of DAA

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.

Presented records verified that Claimant has range of motion restrictions, loss of motor strength and loss of neurological reflexes. Presented records also verified that Claimant has refused medical treatment despite her allegations of immense pain. It cannot be determined how serious or how permanent Claimant's restrictions are due to her failure to follow-up with hospital treatment and continued substance abuse. Until Claimant seeks proper medical attention and complies with medical treatment recommendations, a finding of disability is improbable.

Claimant contended that she is disabled and that she should not be punished by her past history of drug abuse. Claimant is correct in that she should not be punished for a history of drug abuse. The evidence was not compelling in establishing that Claimant's drug abuse was in the past.

It was not disputed that Claimant uses street drugs to self-medicate. Claimant denied IV drug use though it appears to be a distinct possibility due to multiple abscesses that Claimant exposed during the hearing to the testifying DHS representative. Claimant conceded that her drug abuse was so severe that she used cocaine and methadone during her lengthy hospitalization (see Exhibit 86).

It is possible that Claimant may have damaged her body so much that she is disabled no matter what drugs or medication that Claimant takes. Based on the presented evidence, a disability finding is not appropriate due to overwhelming evidence suggesting that drug use and medication noncompliance are significant factors in Claimant's health.

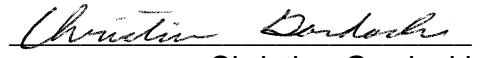
Based on the presented evidence, it is found that Claimant's medical noncompliance and/or drug abuse are material factors to a finding of disability. Accordingly, it is found that DHS properly denied Claimant's MA application.

It should be noted that Claimant was advised that she is likely eligible for health insurance due to a change in DHS policy beginning [REDACTED]. Claimant was strongly encouraged to immediately apply and to pursue proper medical treatment.

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]

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: 6/25/2014

Date Mailed: 6/25/2014

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:

