

**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.: 2014-25425
Issue No.: 2009
Case No.: ██████████
Hearing Date: April 30, 2014
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 April 30, 2014, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included ██████████, Hearings Facilitator.

ISSUES

The first issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

The second issue is whether Claimant is entitled to Adult Medical Program (AMP) benefits when Claimant failed to apply.

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 10/4/12, Claimant applied for MA benefits.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 7/23/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).

4. On 1/17/14, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 3-4) informing Claimant of the denial.
5. On 2/5/14, Claimant requested a hearing disputing the denial of MA benefits.
6. On 3/28/14, SHRT determined that Claimant was not a disabled individual, in part, by reliance on a Disability Determination Explanation and application of Medical Vocational Rule 202.21
7. On 4/30/14, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A9) 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 5/8/14, 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 6/10/14, SHRT determined that Claimant was not disabled, in part, by determining that Claimant can perform past relevant employment.
13. On 6/18/14, 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 41 year old female with a height of 5'4" and weight of 240 pounds.
15. Claimant has no known relevant history of alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 12th grade.
17. As of the date of the administrative hearing, Claimant was an ongoing Medicaid recipient since 4/2014.
18. Claimant alleged disability based on impairments and issues including fibromyalgia, hip pain, neuropathy in feet, headaches, glaucoma, burning pain in legs, COPD, post-traumatic stress disorder (PTSD), and stroke complications.

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. "Current" work activity is interpreted to include all time since the date of application. The 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

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.

Discharge instructions (Exhibits A8-A9) from a hospital encounter dated 1/10/13 were presented. Details of Claimant's encounter were not provided but a discharge diagnosis of acute arthralgia was noted.

A psychological report (Exhibits 13-15) dated 4/1/13 was presented. The report was completed by a licensed psychologist with no history of treating Claimant. It was noted that Claimant reported depression since an attempted rape from two years prior. It was noted that Claimant reported hypervigilance, claustrophobia and nightmares. It was noted that Claimant could not afford to see a therapist. It was noted that Claimant reported various physical problems. It was noted that Claimant reported a lack of motivation. Noted examiner observations included the following: organized and logical speech, slow gait, adequate dress, tearfulness, orientation x3, poor self-esteem, and retarded motor activity. Axis I diagnoses of PTSD and major depressive disorder were noted. Claimant's GAF was 45-50. A guarded prognosis was noted.

Discharge instructions (Exhibits A1-A7) from a hospital encounter dated 4/27/14 were presented. Claimant's discharge medications included the following: aspirin, Atorvastatin, Gabapentin, Hydrocodone-acetaminophen, Lisinopril, and Xanax. Details of Claimant's encounter were not provided, but it was noted that the reason for stay was

transient ischemic attack and possible complex migraine. Generic instructions to treat migraine headaches and chest pain were provided.

Claimant alleged disability, in part, due to suffering headaches. Claimant verified that she was once treated for headaches; details of the treatment were not verified. A recurring complaint of headaches was not verified. A cause for headaches was not verified. Claimant failed to establish a significant impairment related to headaches.

Claimant testified that back pain, fibromyalgia, and neuropathy cause her to suffer sitting, standing, walking and lifting restrictions. Claimant testified that she can only stand for 5 minute periods due to back pain. Claimant testified that she can only sit for 10 minutes before she has to elevate her feet. Claimant testified that she can lift only 10 pounds. Claimant's testimony concerning her physical problems was suggestive of disability; presented documentation was not so suggestive.

Claimant's only first-hand evidence to verify physical problems was an 18 month old hospital diagnosis for acute arthralgia. "Acute" implies a temporary exacerbation and is not compelling evidence of ongoing body pain. Claimant's complaints were referenced in a psychological examination report, but little significance is attached to medical problems reported to a non-physician.

Claimant testified that she did not have medical insurance until 4/2014, thereby implying that her lack of resources was a factor in failing to seek treatment. Claimant stated that she suffered a stroke in 10/2013. Presumably, Claimant was treated for the stroke despite a lack of insurance. Claimant did not present documents of the alleged hospitalization. Based on the presented evidence, it is found that Claimant failed to establish significant physical impairments.

Claimant also alleged that she is unable to work due to psychological problems. A consultative examiner diagnosed Claimant with PTSD and depression. The examiner further verified that Claimant is significantly affected, as noted by Claimant's low GAF. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

Claimant's diagnoses, GAF and reported symptoms are suggestive of disability, however, Claimant failed to verify any treatment for her symptoms. It is appreciated that Claimant lacked insurance; however, numerous resources for psychological treatment are known to exist. Claimant conceded that she has not received psychological treatment in the last 13 years. Presumably, Claimant's functioning level would increase with proper therapy, guidance and/or medication.

The presented GAF is also not verified to be representative of Claimant's typical functioning level. It is plausible that Claimant's functioning level is better on other days.

Claimant also failed to verify specific psychological restrictions. For example, Claimant alleged memory problems. The only reference of memory problems noted that there was no appearance of such problems (see Exhibit 15). Claimant's social problems appear to be moderate (at worst), as she appears to still hold good relationships with friends and family (see Exhibit 14).

Based on the presented evidence, Claimant failed to establish significant impairment to performing basic work activities for a period of 12 months or longer. Accordingly, it is found that DHS properly denied Claimant's application. Claimant also alleged that DHS hampered her ability to obtain Adult Medical Program (AMP) benefits.

AMP is a program which DHS periodically offers. DHS last offered the program to persons who applied in 4/2013. Claimant alleged that she wanted to apply for AMP in 4/2013 but was dissuaded by an unspecified DHS specialist. Presumably, a DHS specialist advised Claimant that she had a pending application for MA based on disability and that there was no need to reapply for AMP benefits. AMP determinations do not require a finding of disability; thus, it is plausible that Claimant could have qualified for AMP benefits while her application claiming disability was evaluated.

Claimant's testimony was not verified but was credible. For purposes of this decision, Claimant's testimony will be accepted as accurate.

The Michigan Administrative Hearing System may grant a hearing about any of the following:

- denial of an application and/or supplemental payments;
- reduction in the amount of program benefits or service;
- suspension or termination of program benefits or service
- restrictions under which benefits or services are provided;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

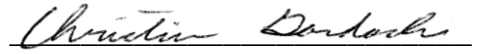
BAM 600 (7/2013), p. 3.

Claimant did not allege that DHS prevented her from applying for AMP or that DHS refused to let her apply; such actions would have administrative remedies. Claimant does not have a remedy for following bad DHS advice. It is found that Claimant failed to establish a basis for administrative remedy concerning AMP eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to establish a dispute concerning Claimant's desire to apply for AMP benefits in 4/2013. Claimant's hearing request is **PARTIALLY DISMISSED**.

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 10/4/12 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]
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