

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

IN THE MATTER OF:



Reg. No.: 2014-26407
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: April 30, 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, 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 [REDACTED], Medical Contact Worker.

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 SDA and MA 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 2-3).

4. On [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 reliance on a Disability Determination Explanation which determined that Claimant could perform past relevant employment.
7. On [REDACTED], an administrative hearing was held.
8. During the hearing, Claimant waived the right to receive a timely hearing decision.
9. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
10. On [REDACTED] an Updated Interim Order Extending the Record was mailed to Claimant to allow 30 days from the date of hearing to submit psychiatric treatment documents.
11. On [REDACTED] Claimant submitted additional documents (Exhibits A1-A6); no other treatment documents were submitted.
12. An updated hearing packet was not sent to SHRT because Claimant's newly submitted documents contained no new objective medical information.
13. As of the date of the administrative hearing, Claimant was a 56-year-old female with a height of 5'4 ½ " and weight of 164 pounds.
14. Claimant has no known relevant history of alcohol or illegal substance abuse.
15. Claimant's highest education year completed was the 12th grade.
16. As of the date of the administrative hearing, Claimant had no ongoing health insurance.
17. Claimant alleged disability based on impairments and issues including depression, irritable bowel syndrome (IBS), shakiness, hiatal hernia, and lumbar arthritis.

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 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.

Various handwritten treating physician records (Exhibits 27-34) from 2012 were presented. The records verify regular appointments for treatment of anxiety, depression, back pain, and IBS.

Radiology reports (Exhibits 46-47) dated [REDACTED] was presented. It was noted that views of Claimant's right hip were taken. An impression of an unremarkable examination was noted.

A radiology report (Exhibits 48) dated [REDACTED] was presented. It was noted that a CT scanning of Claimant's [REDACTED] revealed [REDACTED] was taken. An impression of an unremarkable enhanced area was noted. It was noted that an MRI may be necessary if symptoms persist.

Respiratory testing results (Exhibit 43) from [REDACTED] were presented. An interpretation of a severe obstruction was noted.

A list of prescriptions (Exhibits 35-37) was presented. On [REDACTED] it was noted that Claimant received recent prescriptions for Lipitor and Tenormin. Prescription issuances from 1/2013 and prior were also noted.

A mental status examination report (Exhibits 4-9) dated [REDACTED] was presented. The report was completed by a licensed psychologist with no history of treating Claimant. It

was noted that Claimant alleged prior diagnoses of panic disorder, depression, anxiety disorder, and social anxiety. Claimant's reported medications included the following: Clonazepam, Atenolol, Sertraline, Zyrtec, Atorvastatin, Diphenhydramine, and Abilify. Claimant reported performing daily activities with her sister's assistance. It was noted that Claimant reported anxiety when shopping. It was noted that Claimant was not working due to pain and anxiety. It was noted that Claimant received ongoing psychological treatment through [REDACTED]. Claimant denied any past psychiatric hospitalizations. Examiner observation of Claimant included the following: responds to instructions well, responds well to positive criticism, motivated, logical and organized thoughts, euthymic mood, good contact with reality, and friendly affect. It was noted that Claimant had depression symptoms, not social anxiety symptoms. Noted Axis I diagnoses included panic disorder, adjustment disorder with depressed mood, and major depressive disorder. Claimant's GAF was 64.

A physical examination report (Exhibits 10-15) dated [REDACTED] was presented. The report was completed by a physician with no history of treating Claimant. It was noted that Claimant reported a history of fibromyalgia, IBS, hiatal hernia, GERD, headaches, and an inflamed jaw joint. The examiner noted that Claimant would likely benefit from physical therapy to help improve pain tolerance. It was noted that Claimant should follow-up with a physician and/or dentist to treat jaw pain. It was noted that Claimant had mild difficulty performing examination tasks, likely due to minor range of motion losses. Claimant's gait was noted as normal. A lumbar x-ray report noted mild degenerative changes, mild disc disease and scoliosis.

Physician records (Exhibits A1-A2) were presented. It was noted that Claimant had health issues with anxiety, HTN, and lipidosis on [REDACTED].

Documents about depression (A3-A6) were presented. The documents appeared to be internet surveys completed by Claimant concerning depression.

It should be noted that Claimant presented additional records at the hearing (Exhibits A1-A6). Typically, an updated hearing packet is sent to SHRT for a reconsideration of disability. In the present case, the records were not deemed to present sufficiently new information to merit reconsideration by SHRT.

It should also be noted that following the hearing, Claimant was given 30 days to provide additional psychiatric treatment records. Claimant did not provide additional records. During the hearing, Claimant testified that her psychiatric treating facility would likely charge her for any records. Claimant contended that DHS should have the burden to obtain Claimant's treatment records. In determining which side had the burden, it was considered that DHS made a previous unsuccessful request of records from Claimant's psychiatric agency (see Exhibits 53-54). Consideration was also given to Claimant's concession that SSA and her attorney had the medical documents.

Claimant alleged disability, in part, based back pain causing walking restrictions. Presented radiology and loss of range of motion were verified.

Claimant alleged disability, in part, based on psychological symptoms. No history of treatment was verified but it was verified that Claimant took multiple anti-depressant medications. This evidence is consistent with some degree of psychological impairment.

It was verified that Claimant's GAF was 64. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 61-70 is representative of a person with "Some mild symptoms OR some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships." Claimant's GAF is further evidence of some degree of psychological impairment.

Based on the presented evidence, 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 affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

Other disorders and listings that were considered included IBS (Listing 5.06), weight loss (Listing 5.08), and spinal disorders (Listing 1.04). Each listing was rejected due to a lack of evidence.

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's work history includes approximately 10 years spent performing a clerical job. Claimant testified that her primary duty was data entry. Claimant testified that she has shaky hands and is unable to perform her past employment.

A consultative examiner noted that Claimant had minor loss of grip strength but it was also noted that Claimant had full dexterity. No treatment for hand shakiness was verified. Claimant failed to establish any impairment due to hand shakiness.

Claimant also testified that she cannot handle the stress of employment. Claimant's testimony was consistent with her sister's testimony. Neither Claimant's nor her sister's testimony was strongly supported by objective medical evidence.

The only objective medical evidence of psychological impairment were prescriptions for anti-depressants and a consultative examiner report. Claimant's GAF of 64 is only indicative of "mild" symptoms which should not preclude the performance of past employment.

Claimant also alleged disability based on IBS. There was little evidence that IBS causes anything worse than inconvenience to Claimant.

Based on the presented records, it is found that Claimant can perform her past clerical employment. Accordingly, Claimant is not a disabled individual and it is found that DHS properly denied Claimant's MA 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:

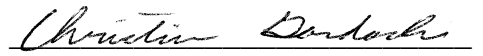
- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or

- 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 not disabled for purposes of MA benefits based on a finding that Claimant can perform past relevant employment. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is not a disabled individual for purposes of SDA eligibility and that DHS properly 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 properly denied Claimant's MA and SDA 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: 6/24/2014

Date Mailed: 6/24/2014

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:

