

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-000282
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 05, 2015
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 February 5, 2015, from Detroit, 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], specialist.

ISSUE

The issue is whether DHS properly denied Claimant's Medical Assistance (MA) eligibility 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 1/2014 (see Exhibits 79-80).
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 3-4).
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. As of the date of the administrative hearing, Claimant was a 46 year old female.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant alleged disability based on restrictions related to diabetes mellitus (DM), left-sided weakness, chronic imbalance, gout, high blood pressure, kidney problems, depression, vision loss, neuropathy, and obesity.

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, a 3-way telephone 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.* 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.

SGA means a person does the following: performs significant duties, 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 SGA. *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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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 presented medical documentation and testimony.

Claimant testified that she suffered a stroke approximately 1½ years ago. A consultative physician described it as a “mini stroke” (see Exhibit 22). The examining physician also noted that Claimant initially experienced slurred speech but she has since fully recovered.

An Initial Psychiatric Evaluation (Exhibits 63-65) dated [REDACTED] was presented. It was noted that Claimant complained of long-term depression, worse in the last year. It was noted that Claimant was raped when she was 15 years old. It was noted that Claimant was recently divorced. Observations of Claimant included the following: normal motor activity, good eye contact, anxious affect, normal speech, average intelligence, and intact memory. An Axis I diagnosis of major depressive disorder (recurrent and moderate) was noted. A global assessment of functioning (GAF) score of 55 was noted. Recommendations of Cymbalta and outpatient psychotherapy were noted.

Various psychological treatment notes (Exhibits 66-77) were presented. The notes document regular appointments by Claimant from 2012-2014 with her treating psychiatrist and therapist. It was regularly noted that Claimant reported crying spells, stress, and anxiety.

Various physician appointment documents (Exhibits 49-62) from 2013 were presented. Noted treatments included DM, breast cancer screening, blood in stool, and fatigue.

Hospital documents (Exhibits 31-46) from an admission dated [REDACTED] were presented. It was noted that Claimant presented after feeling light-headed resulting in her slumping over at a table. It was noted that Claimant urinated on herself. A history of “questionable” stroke (see Exhibit 40), congestive heart failure, and left-sided weakness was noted. It was noted that Claimant has been under stress, in part, because two of her children were recently indicted for a crime. It was noted that a CT of Claimant’s head revealed no acute process. It was noted that Claimant’s blood pressure medications were adjusted and that Claimant symptomatically improved. A discharge date of [REDACTED] was noted. It was noted that future admissions were likely due to comorbidities.

An internal medicine examination report (Exhibits 22-26) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. It was noted that Claimant reported a history of DM, renal failure, congestive heart failure, HTN, and asthma. It was noted that Claimant reported residual left-sided weakness related to a stroke. A complaint of severe back pain was noted. It was noted that Claimant had significant morbid obesity. Notable physical examination findings included the following: 341 pound weight, wide-based gait due to body habitus, “no chance” of squatting, and slow ambulation without cane. The examining physician noted that Claimant had reduced right hand pinching and limited right hand rapid alternative movements. An impression of reduced fine and gross dexterity in Claimant’s right hand was noted. The examiner noted that Claimant could likely walk ½ block without her cane, but would need a cane for stairs or longer distances. It was noted that Claimant could only see

shadows out of her right eye due to cataracts (see Exhibit 27). Mild hemiparesis on the right side was noted. Restricted lumbar and knee flexion motion was noted.

A mental status examination report (Exhibits 27-30) dated [REDACTED] was presented. The form was completed by a consultative licensed psychologist. A history of depression was noted. It was noted that Claimant reported not getting along well with others. Noted observations of Claimant included an adequate contact with reality, logical and goal directed speech, and denial of hallucinations. It was noted that Claimant gave the following answers to calculations: $16 - 9 = 8$, $4 \times 6 = 36$, serial 7s from 100 = 94, and $4 + 7 = 11$. A diagnosis of moderate-to-severe major depressive disorder, with psychotic features was noted. Claimant's GAF was noted to be 53. A fair prognosis was noted. It was noted that Claimant may not be capable of managing funds, in light of her difficulties with calculations.

An examining physician stated that Claimant stood 5'1" and weighed 341 pounds. Claimant testified that she was 4'9" and weighed 352 pounds. When asked about the height discrepancy, Claimant testified that she is sometimes forgetful. A physician's statement of height is more reliable than a forgetful claimant's statement of height. Based on a height of 5'1 and Claimant's last documented weight, Claimant's last documented BMI was 66.5.

Claimant reported to a consultative physician in 11/2014 that she took 11 different medications, including the following: Lisinopril, metformin, Lasix, tramadol, Elavil, Prozac, Cymbalta, Wellbutrin, and others. The prescriptions were generally consistent with hospital discharge medications (see Exhibits 31-32) and 2013 treatment records.

Claimant alleged restrictions, in part, based on psychological issues. Presented records verified at least a 2 year period of psychiatric treatment, a consistent diagnosis of depression (with little noted improvement), and GAFs indicative of moderate functioning restrictions. The evidence was sufficient to infer a degree of social and/or persistence impairment.

Claimant alleged restrictions, in part, based on gout, asthma, and neuropathy. Complaints of each were noted in psychological treatment records, but not within internal medicine treatment records. Due to the absence of medical treatment verification, no severe impairment will be found due to gout, asthma, and/or neuropathy.

Claimant alleged a history of cardiac problems. Treatment records were not presented. It was verified that Claimant took Lasix and Lisinopril; these medications are known to treat heart failure. Some degree of heart failure history can be presumed. Some degree of ongoing heart restriction can also be presumed.

A significant reduction in right eye vision was verified by a consultative examiner. Vision treatment was not verified. Due to the potential to correct the problem, a severe impairment will not be presumed.

Claimant alleged restrictions related to back pain. A reduction in lumbar motion was verified. Tramadol, a narcotic pain medication, was verified as prescribed. Treatment for back pain was not verified. Given Claimant's treatment history and morbid obesity, a degree of back pain can be presumed.

Claimant alleged that she has left-side weakness. It was odd that an examining physician found right-side restrictions which Claimant did not allege. Medical records sufficiently verified consistent left-sided weakness related to a stroke.

Based on presented evidence, a degree of long-term psychological, cognitive, and physical problems were verified. It is found that Claimant established having a severe impairment and the disability analysis may proceed to Step 3.

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 joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain. The listing was rejected due to a failure to establish that Claimant is unable to ambulate effectively.

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

A listing for visual acuity (Listing 2.02) was considered based on complaints of cataracts causing right eye vision loss. This listing was rejected due to a failure to establish a corrected eyesight of worse than 20/200 in Claimant's worst eye.

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

Cardiac-related listings (Listing 4.00) were considered based on Claimant's cardiac treatment history. Claimant failed to meet any cardiac listings.

Kidney disease listings (Listings 6.00) were considered based on references of kidney failure in Claimant's medical history. The listings were rejected due to a failure to establish any of the following: hemodialysis, transplant, or other sufficient complications.

A listing for peripheral neuropathies (Listing 11.14) was factored based on a documented diagnosis. The listing was rejected due to a failure to establish significant and persistent disorganization of motor function in two extremities.

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.

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 past history involves providing home help services. Claimant testified that her job included the following duties: cooking cleaning, transportation, grooming, and providing medications. Claimant testified that she sometimes had to lift clients.

Claimant testified that she can no longer perform the lifting required of her past employment. Claimant's testimony was consistent with presented evidence. It is found that Claimant cannot perform past employment and the disability analysis may proceed to the final step.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d

321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or

difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Physician statements of Claimant restrictions were not presented. Restrictions can be inferred based on presented documents.

Anecdotal statements from Claimant's psychological therapy records were concerning. On [REDACTED], Claimant's cousin reported that Claimant was under a lot of stress, and concern about Claimant dying was noted (see Exhibit 73). On [REDACTED], Claimant reported feeling like she was going to have a nervous breakdown (see Exhibit 72). On [REDACTED], Claimant was tearful and crying and reported she felt like "she didn't want to be here anymore", though suicidal ideation was denied (see Exhibit 71).

It was verified that Claimant took several anti-depressant medications (Cymbalta, Prozac, and Wellbutrin). The quantity of medications was indicative of a severe depression, which was also consistent with Claimant's diagnosis, and low GAF scores (53 and 55) from very different periods. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. Along with Claimant's calculation difficulties, the evidence was suggestive that Claimant was restricted to performing only simple and repetitive employment.

Physical impairments with ambulation, presumably due to back pain obesity were verified. Cane ambulation was verified. It was also verified that Claimant has some degree of left-sided dysfunction related to a previous stroke.

When factoring all of Claimant's restrictions, it is difficult to imagine any reasonably available employment that Claimant could perform. It is found that Claimant is a

disabled individual. Accordingly, it is found that DHS erred in denying 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 improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED], including retroactive MA benefits from 1/2014;
- (2) evaluate Claimant's eligibility for benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future benefits.

The actions taken by DHS are **REVERSED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/6/2015**

Date Mailed: **3/6/2015**

CG / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

