

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 15-004999  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: May 20, 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 May 20, 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 Health and Human Services (DHHS) included [REDACTED], specialist.

**ISSUE**

The issue is whether DHHS 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 February 2014.
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 3-5).
4. On [REDACTED], DHHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibits 6-7) 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 49 year old female.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's highest education year completed was the 12<sup>th</sup> grade, via general equivalency degree.
9. Claimant has a history of semi-skilled employment, with no known transferrable job skills.
10. Claimant alleged disability based on restrictions related to diagnoses of arthritis and depression.

#### **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 (October 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 (July 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 DHHS 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 DHHS regulations. BEM 260 (July 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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.

An MR report of Claimant's right knee (Exhibit A1) dated [REDACTED] was presented. Suprapatellar joint effusion was noted. Ligaments and tendons were noted as intact. Mild soft tissue swelling was noted. Marginal spurring and extensive cartilage thinning were noted. An impression of osteoarthritic changes, marrow changes in the superior medial femoral condyle, and a ganglion cyst was noted.

Handwritten physician notes (Exhibits 50; 55) dated [REDACTED] were presented. A diagnosis of knee pain and history of arthritis was noted.

Drug testing documents (Exhibits 56-63) dated [REDACTED] were presented. A positive marijuana finding was noted.

Hospital documents (Exhibits 27-45) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain, shortness of breath, and nausea. It was noted that abdominal radiology verified gallstones. Following chest x-rays, an impression of no suspicious pulmonary or pleural abnormality was noted. It was noted that Claimant had her gall bladder removed. A discharge date of [REDACTED] was noted.

Handwritten physician notes (Exhibits 47-48; 52-53) dated [REDACTED] were presented. Diagnoses of urinary tract infection, degenerative arthritis, and nicotine addiction were noted. Prescriptions for Norco, Motrin, Keflex, Wellbutrin, and Prozac were noted.

Handwritten physician notes (Exhibit 49; 54) from May 2014 were presented. Refills for Norco, Wellbutrin, and Motrin were noted. Impressions of obesity, degenerative arthritis, depression, and nicotine addiction were noted.

An internal medicine examination report (Exhibits 13-15) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. It was noted that Claimant reported chronic arthritis, knee problems (right knee worse than left), neck pain, hip pain, and back pain. It was noted that Claimant was a marijuana user and a pack per day tobacco user. Claimant's height was noted to be 5'2" and Claimant's weight was 272 pounds. No joint abnormalities were noted. The examiner noted that Claimant does not use a cane. Tandem walk, heel walk, and toe walk were each noted as slowly performed. A slow gait was also noted. Crepitus was noted in knee flexion and extension; a slight decreased range of motion was noted. An impression of depression and arthritis was noted.

Medical records verified that Claimant was hospitalized for gallstones in February 2014. Claimant testimony conceded that she has not had complications since. Presented medical records were consistent with Claimant's testimony.

Claimant testified that she has knee arthritis and pain. Claimant testified that she currently sees a physician for knee pain. Claimant testified that she may soon undergo gel injections in her knees to alleviate her pain.

Claimant testified that she is restricted in standing and ambulation due to knee pain. Claimant testified that she has particular difficulty with stairs. Claimant's testimony was consistent with knee radiology, prescribed pain medications, and a diagnosis of knee arthritis.

It is found that Claimant established severe restrictions related to knee pain. Claimant also alleged severe psychological impairments.

A psychiatric examination report (Exhibits 10-12; 68-71) dated [REDACTED] was presented. The report was noted as completed by a consultative psychiatrist. The following mental health symptoms were reported by Claimant: social isolation, crying spells, sleeping difficulty, feelings of hopelessness, feelings of helplessness, memory and concentration difficulties, and ongoing panic attacks (2 times per week). It was noted that Claimant lost her mother, father, and husband over a recent three year period. It was noted that Claimant stopped working due to anxiety. Claimant reported that she watches television all day. Noted observations and assessments of Claimant made by the consultative examiner include the following: fair grooming, fair hygiene, low self-esteem, some psychomotor retardation, motivated to get better, insightful, goal directed stream of mental activity, anxious affect, and orientation x3. The examiner stated that Claimant can perform ADLs. Diagnoses included major depressive disorder, panic disorder, complicated bereavement, and marijuana/alcohol use. A fair prognosis was noted.

Claimant testified that past depression rendered her to rarely leave her house or bathe. Claimant testified that she still suffers panic attacks weekly. Claimant testified that her panic attacks increase the more that she leaves her home.

Presented primary care physician records verified a diagnosis of depression. The diagnosis was consistent with prescriptions for Prozac and Wellbutrin. Claimant testified that she now takes Ativan instead of Prozac. Presented records verified some degree of concentration and social restrictions due to depression.

It is found that Claimant established exertional and non-exertional significant impairments to basic work activities for a period longer than 12 months. Accordingly, 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. Claimant does not require the use of a cane or a walker. 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 complaints of back pain. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

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.

A listing for inflammatory arthritis (Listing 14.09) was considered based on a diagnosis of arthritis. The presented medical records were insufficient to establish that Claimant has an inability to ambulate effectively, perform fine and gross movements, or suffers inflammation or deformities with a diagnosis of ankylosing spondylitis or other spondyloarthropathies, or suffers repeated manifestations of inflammatory arthritis.

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 she worked for several years for a fast food restaurant. Claimant testified that she prepared orders and had very little interaction with customers.

Claimant testified that she also held employment where her primary duty was to insure that mail order purchases matched outgoing shipments.

Claimant testified that both of her past jobs required long periods of standing which she can no longer perform. Claimant's testimony was consistent with presented records. It is found that Claimant cannot perform past employment and the 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.

Claimant testified that she has sitting restrictions because of her knees and back. Zero treatment for back problems was verified. Four year old knee radiology was verified, however, there was no compelling impression to suggest ongoing sitting restrictions.

It is notable that Claimant is an ongoing tobacco and marijuana user. Smoking is understood to increase joint pain associated with arthritis. Thus, Claimant can reduce some degree of ongoing knee pain by simply quitting smoking.

Claimant's AHR noted Claimant's obesity as a factor in Claimant's restrictions. Claimant's height and weight calculates to an approximate body mass index (BMI) close to 50. Claimant's BMI, though certainly high, should not reduce Claimant's ability to perform sedentary employment.

At the second step of the analysis, it was found that Claimant is restricted in walking and standing. Claimant's radiology, though old, verified significant cartilage loss which probably causes Claimant pain and discomfort when ambulating. Though Claimant surely has knee pain with ambulation, the evidence was not so persuasive to justify an inference that Claimant cannot perform the minimal ambulation and lifting required of sedentary employment. This finding is consistent with Claimant's ability to ambulate without a cane, Claimant's testimony that she can independently perform laundry, bathing, dressing, and grooming.

It is problematic for Claimant that she alleges psychological impairments but has not seen a psychiatrist or psychologist despite the passage of a year with medical insurance. Presented records verified a history of depression, particularly closer in time to a string of deaths of close family members. A diagnosis for depression and medication for Ativan and Wellbutrin helped to verify a psychological restriction. The evidence was not particularly insightful into verifying the degree of impairment.

The most compelling verified depression symptom was psychomotor slowing. The symptom would have been more compelling if documented over time rather than after a consultative examination. Based on presented evidence, it is probable that Claimant would have difficulties with complex employment due to concentration and/or persistence problems. Employment still available to Claimant would include non-complex office jobs and light assembly and/or packaging. The availability of Claimant's employment opportunities was not verified, however, Claimant's restrictions are not deemed to be so significant that verification of available jobs is necessary.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (high school equivalency with no direct entry into skilled employment), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.21 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHHS properly found Claimant to be not disabled for purposes of MA benefits.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHHS properly denied Claimant's MA benefit application dated [REDACTED] including retroactive MA benefits from February 2014, based on a determination that Claimant is not disabled.

The actions taken by DHHS are **AFFIRMED**.



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**Christian Gardocki**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human  
Services

Date Signed: **5/27/2015**

Date Mailed: **5/27/2015**

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:

