

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-004292
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: April 27, 2015
County: Oakland (2)

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, an in-person hearing was held on April 27, 2015, from Madison Heights, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative (AHR). [REDACTED], Claimant's boyfriend, testified on behalf of Claimant. Participants on behalf of the Department of Health and Human Services (DHHS) included [REDACTED], manager.

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 March 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 5-6).
4. On [REDACTED], DHHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibits 2-4) informing Claimant of a denial of MA benefits for March 2014.

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 33 year old female.
7. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
8. Claimant's past employment includes full-time employment as an apartment manager.
9. Claimant alleged disability based on restrictions related to diagnoses chronic pancreatitis, back and neck pain, obsessive-compulsive disorder, anxiety, and attention deficit hyperactivity disorder (ADHD).

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.* 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 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 (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.

Prior to an analysis of presented medical documents, one procedural issue should be noted. Claimant's AHR requested an extension of the record so that Claimant may obtain and submit a psychiatrist or psychologist evaluation. Claimant's AHR's request was denied for multiple reasons.

Presented medical records already included such an evaluation. Thus, there was no compelling need for a second evaluation.

Secondly, Claimant did not present good reason for not obtaining an evaluation before the hearing. Claimant had health insurance since at least June 2014. Claimant testimony conceded that she has not received psychological treatment since obtaining health insurance. Claimant had ample opportunity to seek out a treating psychiatrist and/or psychologist before the date of hearing.

Thirdly, Claimant's AHR only seeks a finding of disability for the months of March 2014-May 2014. A mental health assessment from April 2015 or later is not particularly insightful into Claimant's mental health from one year earlier.

For the above reasons, Claimant's AHR's request to extend the record was denied. The analysis will begin with a summary of presented medical documentation.

Various psychiatric treatment records (Exhibits 40-150) from 2011-2013 were presented. Claimant's GAF was regularly noted to be 45. Diagnoses of bipolar disorder, OCD, cannabis dependence, and alcohol dependence were regularly noted. It was noted that Claimant's treatment was terminated because Claimant's therapy authorizations expired and she failed to attend a reassessment appointment.

Handwritten physician office visit notes (Exhibit 33-39) dated [REDACTED] were presented. Diagnoses were listed but not legible.

Handwritten physician office visit notes (Exhibit 32) dated [REDACTED] were presented. Reports of pain, racing thoughts, and vaginal discharge were noted.

Handwritten physician office visit notes (Exhibit 31) dated [REDACTED] were presented. Complaints of hoarseness, racing thoughts, pain, anxiety were noted. Prescribed medications included Xanax, Norco, gabapentin, and two illegible medications. Unspecified limitations in bending and standing were noted. Diagnoses of anxiety, bronchitis, and an illegible diagnosis were noted.

An internal medicine examination report (Exhibits 21-27) dated [REDACTED] was presented. The report was noted as completed by a consultative physician. Reported problems included chronic pancreatitis, chronic pain, anemia, and mental illness. Reported current medications included Ativan, Lortab, pancreatic enzymes, an inhaler, and lithium. A history of alcohol and tobacco abuse was noted. A reported history of a motor vehicle accident causing a hand fracture was noted. Physical examination findings noted no abnormalities other than limited hip and lumbar flexion motion ranges.

Claimant estimated that she washes or sanitizes her hands 500 times per day. Claimant testified that she often has panic attacks in vehicles. Claimant testified that she needs someone to talk to her when she showers or she is at risk for a panic attack. Claimant

testified that whenever she cleans, it takes her a long time because of her perfectionism and OCD tendencies.

Claimant alleged that OCD and anxiety are recurring problems which adversely impact her ability to work. Claimant's testimony was consistent with her psychiatric treatment records from 2011-2013. Claimant has two obstacles in using her 2011-2013 treatment records in support of finding that a severe impairment exists.

First, Claimant was a regular alcohol consumer throughout her psychiatric treatment. Thus, it cannot be determined how much of Claimant's symptoms were caused by her then ongoing alcohol abuse, and which were not.

Secondly, over a one year period exists between Claimant's last therapy appointment and the time that Claimant seeks a finding of disability. It is reasonably possible that Claimant has ongoing mental health obstacles despite the passage of time and a period of sobriety, however, the best evidence of ongoing symptoms is the only physician statement presented following Claimant's application date.

A mental status examination report (Exhibits 16-20) dated [REDACTED] was presented. The report was noted as completed by a limited licensed psychologist and cosigned by a licensed psychologist. Various symptoms reported by Claimant included insomnia, anxiousness, and irritability. It was noted that Claimant reported a "long and extensive history of alcohol abuse and dependence." It was noted that Claimant was clean and sober for 14 months. Complaints of chronic abdominal and back pain were noted. Claimant reported that she lost custody of a child. Notable interview observations of Claimant included the following: dressed in a nice manner, normal posture and gait, sat comfortably, at least low average intelligence, cooperative, polite, appropriate affect, serious but pleasant mood, logical and goal-directed stream of mental activity, and in-touch with reality. It was noted that Claimant hoped to perform modeling work and to write a book. Diagnoses included adjustment disorder, anxiety managed with medication, alcohol dependence in early remission, and personality disorder with dependent borderline features. A fair prognosis was noted. A medical source statement noted that Claimant had no symptoms that affected her ability to appropriately interact with others or engage in routine work-related activities.

The consultative examiner noted no symptoms and no restrictions on Claimant's ability to work despite the existence of psychological disorders. It is found that presented evidence was insufficient to establish severe psychological restrictions.

Claimant testified that she has recurring abdominal pain due to chronic pancreatitis. Claimant's testimony was consistent with a history of heavy alcohol consumption. Claimant's testimony was not consistent with presented documents which verified zero treatment for pancreatitis. Presented evidence was insufficient to infer that Claimant is restricted due to pancreatic pain.

Claimant alleged that she has recurring back pain stemming two different times she was hit by an automobile. Claimant testified that she was hit once while riding in a car and a second time when she was a pedestrian. Claimant's testimony was consistent with restrictions in ranges of motion and pain medication such as Norco.

It is found that Claimant established significant impairment 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 spinal disorders (Listing 1.04) was considered based on Claimant's lumbar pain complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

Digestive disorder listings (Listings 5.00) were considered based on Claimant's allegation of pancreatitis. Claimant presented insufficient evidence that any digestive disorder listing was met.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. 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 had a complete inability to function outside of the home.

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 has a history of entertainment-related and bar-related employment. Claimant testified that she had occasional paying jobs, but none resulted in income exceeding presumptive SGA limits. It will not be determined whether Claimant can return to performing such employment because Claimant's past income did not amount to presumptive SGA income limits.

Claimant testified that she worked for six months as a full-time apartment manager. Claimant testified that her duties included answering telephone calls, showing apartments, and dealing with cash.

It was noted in the second step of the disability analysis that Claimant's restricted range of hip and lumbar flexion, as well as pain medications, justify finding that Claimant has a severe impairment. Restrictions in hip and lumbar motions would not prevent the performance of employment as an apartment manager based on Claimant's reported duties.

During the hearing, Claimant was asked if she was capable of performing full-time employment. Claimant testified that she is not capable because she knows of no job that allows her to smoke marijuana all day long. Claimant further testified that marijuana alleviates her abdominal and back pain.

Presented evidence did not support a finding that Claimant has pancreatic pain, let alone that Claimant must smoke marijuana all day long so that her pain is bearable. Psychological restrictions during Claimant's period of sobriety were also not established by medical documentation.

Based on presented evidence, Claimant is capable of performing past employment as an apartment manager. Accordingly, it is found that DHHS properly denied Claimant's application for 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 June 25, 2014, including retroactive MA benefits from March 2013, based on a determination that Claimant is not disabled.

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



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

Date Signed: **4/30/2015**

Date Mailed: **4/30/2015**

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:

