

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201120879
Issue No.: 2006, 2009, 4031
Case No.: [REDACTED]
Hearing Date: May 23, 2011
Wayne County DHS (49)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on May 23, 2011. The claimant appeared and testified; [REDACTED] appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUES

1. Whether DHS properly failed to process a redetermination for Claimant's Medical Assistance (MA) and State Disability Assistance (SDA) based on an alleged failure by Claimant to submit redetermination documents.
2. Whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits on the basis 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. Claimant was an ongoing MA and SDA recipient.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. Claimant's MA and SDA benefits were scheduled to end on 12/31/2010, subject to the completion of a benefit redetermination.

4. DHS did not process the redetermination because Claimant failed to submit necessary redetermination documents.
5. On 1/12/11, Claimant reapplied for MA and SDA benefits.
6. On 2/4/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual.
7. On 2/7/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
8. On 2/28/11, Claimant requested a hearing disputing the denial of MA and SDA benefits and the closure of MA and SDA benefits from 12/2010.
9. On 3/24/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 43-44) using Vocational Rule 203.28 as a guide and finding that Claimant retained the capacity to perform medium work
10. On 5/23/11, an administrative hearing was held.
11. Claimant submitted additional medical documents which were forwarded to SHRT for evaluation.
12. On 8/25/11, SHRT again determined that Claimant was not a disabled individual (see Exhibits 54-55) using Vocational Rule 203.28 as a guide and finding that Claimant retained the capacity to perform medium work
13. As of the date of the administrative hearing, Claimant was a 48 year old male [REDACTED] with a height of 5'11" and weight of 227 pounds.
14. Claimant smokes approximately 10 cigarettes per day and has no relevant history of alcohol or drug abuse.
15. Claimant's highest year of completed education was the 8th grade.
16. Claimant last received medical coverage in 12/2010 when he received Medicaid coverage from the State of Michigan.
17. Claimant claimed to be a disabled individual based on impairments of congestive heart failure, hypertension, kidney failure and lower back pain.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

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).

Concerning the failure by DHS to redetermine Claimant's MA and SDA benefits for 12/2010, the undersigned will refer to the DHS regulations in effect as of 12/2010, the month of the DHS decision which Claimant is disputing. The undersigned will also use this month concerning the SDA and MA benefit denial if it is found that DHS improperly failed to redetermine Claimant's SDA and MA benefits. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

DHS must periodically redetermine an individual's eligibility for benefit programs. BAM 210 at 1. A complete redetermination is required at least every 12 months. *Id.*

The redetermination process begins with DHS mailing a redetermination packet in the month prior to the end of the benefit period. *Id.* at 4. The packet consists of forms and requests for verification that are necessary for DHS to process the redetermination. The forms needed for redetermination may vary, though a Redetermination (DHS-1010) is an acceptable review form for all programs. Verifications for redetermination must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time.

In the present case, Claimant's MA and SDA benefits were in the process of being redetermined for 1/2011. Claimant contended that DHS mailed the redetermination documents to the wrong address and he never received the documents and therefore, should not be held responsible for failing to return them. Claimant stated he reported a change of address to DHS in 10/2010 and that DHS should have updated his address in time to mail the DHS-1010 to his proper address. Claimant initially stated he called an unknown phone number to report the change. It was later clarified that Claimant reported the address change in 10/2010 to a DHS worker responsible for administering chore service benefits.

The testifying DHS specialist stated that she believed that the way the DHS database worked, updating an address with a chore services worker does not give notice to the eligibility specialist of the updated address. Thus, what appears to have happened is that Claimant properly reported an updated address to a worker handling one aspect of his case, but not to a second DHS worker handling a different aspect of his case. There is no logical reason Claimant should have thought to update his address twice with DHS; a report to one DHS office should be satisfactory reporting. Thus, Claimant should not be faulted for failing to return a DHS-1010 that was mailed to an old address, after Claimant reported a change of address. It is found that the DHS termination of MA and SDA benefits was improper.

It is known that Claimant reapplied for SDA and MA benefits on 1/12/11 after the MA and SDA benefits ended 12/2010. If a disability analysis reveals that DHS properly determined Claimant not to be disabled, there is no reason to reverse the improper termination because a lack of disability is as appropriate of a reason to terminate MA and SDA benefits as failing to return redetermination documents. However, if Claimant is found to be disabled, the redetermination decision should be reversed because Claimant would have been entitled to uninterrupted MA and SDA benefits. The disability analysis will begin with a look at the MA benefits.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

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 at 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. It was not disputed that Claimant's only potential category for Medicaid would be as a disabled individual.

Disability is established if one of the following circumstances applies (see BEM 260 at 1-2):

- 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).

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 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 nearly identical definition of disability is found under DHS regulations. BEM 260 at 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). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927.

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. The current monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; 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).

201120879/CG

In determining whether Claimant's impairments amount to a severe impairment, the undersigned can consider all relevant evidence. The undersigned shall begin the analysis by reviewing Claimant's medical documentation.

A Medical Examination Report (Exhibits 6-7) dated 1/20/11 was presented from Claimant's treating physician. The examining physician diagnosed Claimant with congestive heart failure (CHF), hypertension, gastroesophageal reflux disease (GERD), sleep apnea, anxiety, lower back pain and high cholesterol. It was noted that Claimant took nine different medications. Claimant's condition was noted as stable. It was also noted that Claimant is unable to meet his needs in the home and needs assistance with daily activities.

Progress notes dated between 6/2010-9/2010 (Exhibits 9-13) were submitted. The notes also referenced Claimant's GERD, hypertension, anxiety and substance abuse remission. A progress note dated 2/4/10 (Exhibit 14) noted a positive testing for drugs though subsequent tests were negative.

A physician letter dated 7/27/10 referenced a four-five month problem Claimant had with pruritus, a dry skin condition. The physician provided medication instructions for the condition.

Lab results (Exhibits 15-18) from a 6/22/10 specimen were provided. A low mean platelet volume, high eosinophils percentage and low ALK phosphatase were noted.

Letters from substance abuse treatment centers (Exhibits 19-22) were provided. The dates of the letters ranged from 6/28/10-9/10/10. The letters were not notable other than verifying Claimant's attempts at drug abuse treatment.

A Medical - Social Questionnaire (Exhibits 23-25) dated 1/20/11 was completed by Claimant. Claimant noted a 2006 and 2007 hospital stay associated with Congestive Heart Failure (CHF).

An Activities of Daily Living (Exhibits 26-29) was also presented. The form is intended to be completed by DHS clients to convey how well typical daily activities can be completed. Claimant noted his sleep apnea and a need for help with preparing meals. Claimant also noted that his sister does his shopping and housework for him.

Various SSA-related forms were presented (see Exhibits 31-37) The forms verified Claimant's previous SSA denial from 11/5/10 and a subsequent SSA application dated 1/14/11.

It should be noted that DHS may have had a basis to terminate Claimant's MA and SDA benefits by virtue of Claimant's failure to appeal an SSI application based on a finding

that Claimant was not disabled (see BEM 260). There are problems with upholding the DHS determination based on Claimant's failure to appeal the SSI denial. There is no evidence that the SSI determination was based on a finding that Claimant was not disabled, though a decision denying SSI benefits would unlikely be for any other reason. Also, the DHS denial was based on a finding Claimant was not disabled, not because of an SSA decision. If DHS did not consider Claimant's SSA application denial to be problematic, it would be presumptuous of the undersigned to find it problematic with less evidence than DHS had. Finally, it is plausible that Claimant's condition worsened since the SSI application denial. If Claimant's condition worsened, DHS is not beholden to the SSA decision. For these reasons, the disability analysis will proceed despite the SSA denial of Claimant's application.

A Classification of Patients with Disease of the Heart (Exhibit 45) dated 6/25/11 was presented. The physician completed form found Claimant's heart functional capacity was Class III and therapeutic classification was Class C. A Class III functional capacity refers to "patients with cardiac disease resulting in marked limitation of physical activity. They are comfortable at rest. Less than ordinary activity causes fatigue, palpitation, dyspnea or anginal pain". A Class C therapeutic classification refers to "Patients with cardiac disease whose ordinary physical activity should be moderately restricted, and whose more strenuous efforts should be discontinued."

Claimant was physically examined on 6/25/11; the examiner's report was presented as Exhibits 46-54. It was noted that Claimant reported suffering renal failure stage IV; it was noted that Claimant might need dialysis in the future. Claimant's medications were noted; they included: Prilosec (20 mg x1/day), Lasix (20 mg x 1/day), Lisinopril (40 mg x 1/day), Coreg (25 mg x 2/day), a daily aspirin, Zocor (40 mg x 1/day), Buspar (50 mg) and nitroglycerin as needed.

The examining physician performed a one-time physical examination of Claimant, though no x-rays or lab tests were performed. The examiner looked at the following areas: general survey, vital signs, heent, respiratory, cardiovascular, gastrointestinal, skin, extremities, bones/joints and neurologic. Based on the examination, Claimant was considered normal or unremarkable in all areas except as noted below.

Claimant's straight leg range of motion was limited to 60 degrees. It was noted that Claimant had limits in squatting. The examiner stated Claimant would have significant limitations in working based on the history of cardiomyopathy. The examiner concluded that Claimant would be limited in lifting, carrying, pushing or pulling any weight limit more than 10 pounds and prevented from climbing more than one flight of stairs and walking more than one block. An EKG was performed and noted left ventricular hypertrophy and a possible bifascicular block and right bundle branch block. It was noted these findings would be consistent with Claimant's medical history.

Based on the presented evidence, Claimant established a severe impairment related to his CHF. Claimant has severe physical limitations in all physical activities including walking, pulling, lifting and taking stairs. There was no evidence that would suggest the limitations would not continue for 12 months or longer. It is found that Claimant meets the requirements of step two. The disability analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether 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.

The listed impairment Claimant is most likely to meet concerns Claimant's heart impairment. Cardiovascular impairments are covered by Listing 4.00. Claimant's congestive heart failure is best covered by Listing 4.02 which reads:

4.02 Chronic heart failure while on a regimen of prescribed treatment, with symptoms and signs described in 4.00D2. The required level of severity for this impairment is met when the requirements in *both A and B* are satisfied.

A. Medically documented presence of one of the following:

1. Systolic failure (see 4.00D1a(i)), with left ventricular end diastolic dimensions greater than 6.0 cm or ejection fraction of 30 percent or less during a period of stability (not during an episode of acute heart failure); or
2. Diastolic failure (see 4.00D1a(ii)), with left ventricular posterior wall plus septal thickness totaling 2.5 cm or greater on imaging, with an enlarged left atrium greater than or equal to 4.5 cm, with normal or elevated ejection fraction during a period of stability (not during an episode of acute heart failure);

AND

B. Resulting in one of the following:

1. Persistent symptoms of heart failure which very seriously limit the ability to independently initiate, sustain, or complete activities of daily living in an individual for whom an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that the performance of an exercise test would present a significant risk to the individual; or

2. Three or more separate episodes of acute congestive heart failure within a consecutive 12-month period (see 4.00A3e), with evidence of fluid retention (see 4.00D2b (ii)) from clinical and imaging assessments at the time of the episodes, requiring acute extended physician intervention such as hospitalization or emergency room treatment for 12 hours or more, separated by periods of stabilization (see 4.00D4c); or
3. Inability to perform on an exercise tolerance test at a workload equivalent to 5 METs or less due to:
 - a. Dyspnea, fatigue, palpitations, or chest discomfort; or
 - b. Three or more consecutive premature ventricular contractions (ventricular tachycardia), or increasing frequency of ventricular ectopy with at least 6 premature ventricular contractions per minute; or
 - c. Decrease of 10 mm Hg or more in systolic pressure below the baseline systolic blood pressure or the preceding systolic pressure measured during exercise (see 4.00D4d) due to left ventricular dysfunction, despite an increase in workload; or
 - d. Signs attributable to inadequate cerebral perfusion, such as ataxic gait or mental confusion.

There is no evidence of any recent ejection fraction (EF) testing. A previous administrative decision referenced an ejection fraction percentage of 10-20% from 2007. There is no evidence of an ejection fraction testing since 2007 or any first-hand evidence of any EF testing. There is also no evidence concerning exercise testing of Claimant. Without any relevant evidence of EF testing or Claimant's ability to complete an exercise test, Claimant cannot meet the listing for 4.02.

Listings for lower back pain (Musculoskeletal listings of 1.00) were also considered and rejected. The evidence was so sparse for kidney dysfunction, no listing was considered. There is no listed impairment for hypertension. It is found that Claimant failed to meet an SSA listed impairment. Accordingly, the analysis may proceed 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.

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.*

Claimant presented a list of his employment from the last 15 years (see Exhibit 25). Claimant listed construction employment from 2004-2006. Claimant testified that he had no employment in the last 15 years and that he has memory issues which may have caused him to mistakenly list employment from the last 15 years. Claimant stated he had construction employment for a five year period but the period was from 1990-1995. Claimant's testimony was questionable but unrefuted. In lieu of directly contradictory employment, Claimant's testimony is considered the best evidence of Claimant's employment. It is found that Claimant has no employment within the last 15 years. Without any employment in the last 15 years, it can only be found that Claimant is not capable of performing past employment and the disability analysis may proceed to step five.

At the fifth step in the analysis, the burden shifts from Claimant to DHS to present proof that Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c)

The fifth step looks at Claimant's capable level of work, age, education and type of previous work. These factors are matched up to a SSA Vocation-Rules. The rules are provided in grid format and are informally referred to as the Grid. The Grid provides the outcome as to whether the claimant is disabled or not.

An analysis was not made at step four as to the type of employment Claimant is capable of due to Claimant's lack of recent employment history. A finding must be made for the step five analysis.

It was established that Claimant had 10 pound lifting, carrying and pulling requirements due to his CHF issues. This tends to place Claimant at a sedentary level of employment. However, Claimant's severe walking restrictions of one block and one flight stair climbing restrictions would severely impact Claimant's ability to work. Though it is theoretically possible there is some employment situation complimentary to Claimant's physical limitations, it is not believed that such employment would be a realistic expectation. Based on the totality of medical evidence, it is found that Claimant is not capable of even sedentary employment.

As a person incapable of even sedentary employment, the Grid is unnecessary and it must be found that Claimant lacks the functional capacity to perform substantial gainful activity. Accordingly, it is found that Claimant is disabled and that DHS erred in terminating Claimant's MA benefits effective 1/2011. An analysis for the SDA termination must also be performed.

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 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 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- 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).

The undersigned already found Claimant to be disabled for purposes of MA benefits based on an incapability of performing substantial gainful employment. The analysis and finding equally applies to the termination of SDA benefits. It is found that DHS improperly terminated Claimant's SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's SDA and MA benefits effective 1/2011. It is ordered that DHS:

201120879/CG

- (1) use Claimant's application dated 1/12/11 to serve as a timely submitted Redetermination for purposes of MA and SDA benefit eligibility effective 1/2011;
- (2) initiate evaluation of Claimant's eligibility for MA and SDA benefits effective 1/2011, based on the finding that Claimant is a disabled individual;
- (3) if Claimant is found to be eligible for MA or SDA benefits, initiate the process to supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) schedule a redetermination date of 8/2012 if DHS determines Claimant to be eligible for MA and/or SDA benefits.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: September 9, 2011

Date Mailed: September 9, 2011

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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