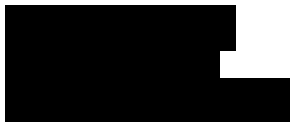


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201135972
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: August 9, 2011
Wayne County DHS (76)

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 August 9, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

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. On 4/25/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 5/16/11/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual.
4. On 5/20/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 5/31/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 6/22/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 59-60) based, in part, on Vocational-Rule 202.20.
7. As of the date of the administrative hearing, Claimant was a 49 year old male (DOB 6/16/62) with a height of 6'1 ½ " and weight of 210 pounds.
8. Claimant stated that he has no relevant history of tobacco, alcohol or substance abuse.
9. Claimant's highest year of education completed was the 11th grade.
10. Claimant has no ongoing medical coverage and has not received any coverage for years.
11. Claimant claimed to be a disabled individual based on impairments of depression and chronic 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 undersigned will refer to the DHS regulations in effect as of 5/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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).

Claimant contended that he was temporarily approved for SSI benefits as of the date of the administrative hearing. Claimant provided a letter from SSA which stated "We have received a temporary decision on your SSI claim. Come into our office immediately to do an update."

SSA allows for a temporary approval of benefits based on what is considered a presumptive disability. 42 CFR 416.931 states:

If you are applying for supplemental security income benefits on the basis of disability or blindness, we may pay you benefits before we make a formal finding of whether or not you are disabled or blind. In order to receive these payments, we must find that you are presumptively disabled or presumptively blind. You must also meet all other eligibility requirements for supplemental security income benefits. We may make these payments to you for a period not longer than 6 months. These payments will not be considered overpayments if we later find that you are not disabled or blind.

The temporary finding of a presumptive disability results in a six month award of SSA benefits; a non-temporary SSI award requires a 12 month or longer disability. A temporary SSI award is subject to change based on a full review of a file; a non-temporary award of SSI is not subject to such review. Thus, the undersigned is not inclined to interpret a temporary or presumptive finding of disability by SSA to satisfy the DHS requirements of receipt of SSA benefits. 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).

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.

Claimant presented a record of his daily activities (Exhibits 10-14). Claimant noted difficulty sleeping due to back pain and anxiety. Claimant also noted that he is unable to cook, wash while standing long, grocery shop or do laundry. The record was consistent with Claimant's testimony.

A radiology report dated 1/23/11 was presented. A physical examination of Claimant's back complaints resulted in the following impressions from the examiner: disc herniation, mild stenosis and degenerative changes at L5-S1, bulging disc with encroachment and degeneration at L4-L5, bulging disc and degenerative changes at L3-L4 and degenerative changes in the thoracic spine.

A Medical Needs form (Exhibit 24) dated 3/2/11 verified a physician diagnosis of lumbar radiculopathy, depression and degenerative joint disease. It was noted that Claimant had a need for assistance with several daily activities including: bathing, meal preparation, shopping laundry and housework. In response to a question how long Claimant could work at any job, the physician checked "no". In response to a question asking how long the limit lasted, the physician wrote "lifetime".

A DHS selected physician examined Claimant on 2/26/11; the corresponding report (Exhibit 26-33) was presented as evidence. The examiner performed a one-time physical examination on Claimant though no x-rays or lab tests appeared to be 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.

The examiner noted that Claimant had a decreased range of motion in the lower back due to back pain, There was a tenderness to palpitation of the lumbar paraspinal muscles. Limitations were noted on Claimant's ability to bend, stoop and squat. Claimant was also unable to complete a heel walk, toe walk and tandem walk though the examiner noted that Claimant refused to attempt the test because he knew he could not do it. Claimant testified that he attempted the test (i.e. he did not refuse the tests) but was unable to complete them. It was noted that Claimant was ambulatory without use of an assistive device. Claimant advised the examiner of a 10 minute limit on walking, standing or sitting.

A DHS selected physician also examined Claimant for mental obstacles on 2/24/11; the report was presented as Exhibits 46-49. The examiner noted the following observations: Claimant was edentulous (had no teeth), had some problems with concentration, attention and memory and problems with information, calculation and similarities and differences. The prescription Claimant was taking (Cymbalta) and the ongoing treatment from his psychiatrist and therapist were noted as helping with Claimant's reported problems which included: depression, feeling worthless, low self esteem, sleeping problems, weight loss and crying spells.

The examiner diagnosed Claimant with major depressive disorder. Claimant was assessed as having a Global Assessment Functioning (GAF) level of 50. The Diagnostic and Statistical Manual of Mental Disorders Fourth Edition (DSM-IV)

describes GAF as a scale used by clinicians to subjectively rate the social, occupational, and psychological functioning of adults. A score within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Claimant was given a guarded prognosis. It was noted that Claimant needs treatment and support services.

A pre-surgery document dated 5/12/11 was presented as evidence (Exhibit 39; duplicate of Exhibit 18). The document verified an unspecified surgery scheduled for 6/8/11.

A psychological assessment (Exhibits 40-44) dated 1/14/11 was presented. The examiner noted a mental status which included: depression, anxiety, suicide ideation, problems in eating, mood swings, low energy and sleep disturbance. The examiner diagnosed Claimant with depression. Follow up services were provided by the examiner and are reflected as Exhibits 50-58). The follow-up visits are notable only for a confirmation of a diagnosis for depression.

Claimant testified that he underwent a spinal surgery in 6/2011. Claimant stated that the surgery relieved some of his back pain but that it also uncovered nerve damage which is now affecting his legs. Claimant stated that he now suffers an increased pain in his right leg and will have to undergo another surgery. Claimant also stated that he uses a cane though Claimant did not use one to attend the hearing. None of the submitted medical documents involved Claimant's condition post-surgery.

Claimant also stated that he was homeless since 2009 but is not anymore thanks to a program from COTS, a non-profit agency. The lack of homelessness is relevant in that Claimant's GAF score may be higher now that Claimant is not homeless.

Based on the presented evidence, Claimant established a severe impairment based on depression. Claimant's GAF, even factoring Claimant's lack of homelessness, is evident of a problem performing basic work activities. Claimant's concentration and attention were noted as problematic by the DHS examiner. Claimant's litany of symptoms (anxiety, sleep disturbance, low energy et al.) are also problematic despite Claimant's treatment and medication.

Claimant also established an impairment based on back and leg pain. Claimant is ambulatory without the use of an assistive device but Claimant has a limited ability to walk (or stand) for lengthy periods. Further, it does not factor Claimant's pain in walking. The records verified multiple spinal problems for Claimant ranging from stenosis, degenerative disc disease and herniation. As Claimant established multiple severe impairments, the disability analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the Claimant is deemed disabled. If a listed impairment is not met, then the analysis moves to step four.

Claimant's back problems fall under musculoskeletal impairments (Listing 1.00). Listing 1.04 applies to spine disorders and reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

As indicated above, the ability to ambulate effectively is defined by SSA in 1.00B2b. The definition reads:

Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity

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functioning (see 1.00J) to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Further guidelines are provided in 1.00B2. SSA provides examples of ineffective ambulation; the regulation reads:

To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living. They must have the ability to travel without companion assistance to and from a place of employment or school. Therefore, examples of ineffective ambulation include, but are not limited to, the inability to walk without the use of a walker, two crutches or two canes, the inability to walk a block at a reasonable pace on rough or uneven surfaces, the inability to use standard public transportation, the inability to carry out routine ambulatory activities, such as shopping and banking, and the inability to climb a few steps at a reasonable pace with the use of a single hand rail.

As indicated above, further guidance is given by 1.00J. 1.00J4 applies specifically to hand-held assistive devices and reads:

Hand-held assistive devices. When an individual with an impairment involving a lower extremity or extremities uses a hand-held assistive device, such as a cane, crutch or walker, examination should be with and without the use of the assistive device unless contraindicated by the medical judgment of a physician who has treated or examined the individual. The individual's ability to ambulate with and without the device provides information as to whether, or the extent to which, the individual is able to ambulate without assistance. The medical basis for the use of any assistive device (e.g., instability, weakness) should be documented. The requirement to use a hand-held assistive device may also impact on the individual's functional capacity by virtue of the fact that one or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling.

Part A requires evidence of root compression characterized by multiple symptoms including motor loss (atrophy with associated muscle weakness or muscle weakness)

accompanied by sensory or reflex loss. There is insufficient evidence that Claimant suffers from any sensory or reflex loss. Thus, Claimant does not meet Part A of the listing.

Looking at Part B of the SSA listing, Claimant also testified having leg pain which may be a symptom of spinal arachnoiditis. However, Claimant may not meet the requirements of an impairment listing without medical records supporting such a finding. The undersigned cannot presume a disease simply from a complaint of a single symptom. It is found Claimant does not meet Part B of the above listing.

Looking at Part C, there was a reference in Claimant's records to mild stenosis. Part C also requires an inability to ambulate effectively. This requirement would require a need for various assistive devices. Even if Claimant's testimony was accurate concerning his need for a cane, the use of one cane is insufficient to establish an inability to ambulate effectively; needing two canes meets the requirement. It is found that Claimant failed to meet the requirements for Part C. As Claimant did not meet any of the sections of Listing 1.04, it is found that Claimant does not meet the listed impairment of 1.04.

Claimant also alleged an impairment based on depression. Mental disorders are found under Listing 12.00. Depression is considered an affective disorder; the appropriate listing reads:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
 1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration

OR

- C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Looking at Part A of the listing for depression, there was testimonial evidence that Claimant suffered from sleep disturbances, difficulty concentrating and decreased energy. Claimant testified to a 20 pound weight gain in 2011 though that would likely be more attributable to Claimant's physical limitations rather than depression. Claimant denied any psychotic symptoms such as hallucinations and he also denied suicidal

thoughts. There was no medical evidence supporting that Claimant suffers from more than three of the listings in Part A.

Looking at Part C of the listing, there is simply no evidence that established suffered from any of the three ways which would qualify to meet the listing for depression. Claimant has not suffered from episodes of decompensation and has remained fairly stable. There is no evidence to conclude that an increase in mental demands would cause decompensation; nor is there any evidence that shows a highly supportive living arrangement is necessary for Claimant's ability to function. It is found that Claimant failed to meet the listed impairment for depression. As Claimant does not meet a SSA listed impairment, 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.

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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 established a severe impairment with his back. The radiology report (Exhibits 15-16) dated 1/23/11 described a litany of various problems with Claimant's spine. The subsequent 6/2011 surgery tends to support a seriousness of the back problems.

Claimant's lack of assistive device in walking tends to show Claimant's spinal problems may not be terribly impact his ability to work. The DHS examiner from 2/24/11 noted some problems by Claimant but did not paint a picture that would tend to indicate Claimant was incapable of many levels of work.

Claimant's physician painted a much more bleak picture for Claimant. The Medical Needs form dated 3/2/11 indicated Claimant could never work again and was in need of

assistance of several daily activities such as cleaning, shopping and cooking. The undersigned gives great record to the opinion of Claimant's treating physician. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*.

There was evidence that Claimant's depression was improving and not a significant ongoing obstacle. Claimant recently overcame his homelessness. Claimant had been receiving ongoing medication and therapy to assist with his psychological state. However, it also cannot be presumed that Claimant is without some psychological barriers.

Claimant's depression was a severe but seemingly improving impairment, however, the opinion of Claimant's treating physician that Claimant may never work again cannot be discounted. The opinion seemed to be consistent with other medical records and Claimant's testimony. Based on the presented evidence, it is found that Claimant is incapable of even a level of sedentary employment.

It is unnecessary to evaluate Claimant's prior employment as a finding that Claimant is incapable of sedentary employment would automatically result in a finding that Claimant is not capable of past relevant work. Thus, the disability analysis may proceed to the final step.

At the fifth step in the analysis, the burden shifts from Claimant to DHS to present proof that Claimant has the residual capacity to maintain 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.

The finding within step four that Claimant is incapable of even sedentary employment applies to the step five analysis. Based on this finding, it can only be found that

Claimant lacks the residual capacity to maintain any substantial gainful employment. Accordingly, it is found that Claimant is a disabled individual and the DHS determination denying MA benefits is found improper.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 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 has already found Claimant to be disabled for purposes of MA benefits by finding that Claimant has combined physical and mental impairments expected to last one year or more. The finding analysis applied equally to a determination of SDA benefits. The finding makes Claimant automatically eligible for SDA benefits based on the lesser 90 day durational requirement. 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 denied Claimant's MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 4/25/11 for SDA and MA benefits;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA and SDA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial;
- (4) if Claimant is found eligible for MA and SDA benefits, to schedule a review for 8/2012.

201135972/CG

The actions taken by DHS are REVERSED.



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

Date Signed: August 12, 2011

Date Mailed: August 15, 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.

CG/hw

cc:

