

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201137938
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 6, 2011
Wayne County DHS (18)

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 September 6, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUES

1. The first issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.
2. The second issue is whether DHS properly denied Claimant's application for 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 1/19/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 5/11/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

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 6/10/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 7/7/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 33-34) based in part on a finding that Claimant had the functional capacity to perform light exertional work.
7. As of the date of the administrative hearing, Claimant was a 52 year old female ([REDACTED]) with a height of 5'4 " and weight of 135 pounds.
8. Claimant is an occasional smoker (3 cigarettes/day) and alcohol consumer with some history involving the abuse of pain medication.
9. Claimant failed to complete high school but obtained a General Equivalency Diploma.
10. Claimant receives ongoing medical coverage for injuries related to her auto accident, though she does not have medical coverage for any other medical problems.
11. Claimant claimed to be a disabled individual based on impairments of: pelvic fracture, sciatic nerve issues, vision problems, hypertension, depression, headaches and pain in her neck, back, shoulders, hips and legs.

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 4/2011, 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).

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. 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).

Symptoms, such as pain, fatigue, shortness of breath, weakness, or nervousness, will not be found to affect an individual's ability to do basic work activities unless the individual first establishes by objective medical evidence (i.e., signs and laboratory findings) that he or she has a medically determinable physical or mental impairment(s) and that the impairment(s) could reasonably be expected to produce the alleged symptom(s). SSR 96-3p. Once the requisite relationship between the medically determinable impairment(s) and the alleged symptom(s) is established, the intensity, persistence, and limiting effects of the symptom(s) must be considered along with the objective medical and other evidence in determining whether the impairment or combination of impairments is severe. *Id.* Vocational factors of age, education, and work experience are not considered at this step of the process. *Id.*

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 Social Summary (Exhibits 3-4) dated 4/28/11 was completed by the testifying DHS specialist. The specialist noted all of Claimant's impairments as listed above. It was noted that Claimant made complaints of falling and right foot paralysis.

Claimant completed a Medical- Social Questionnaire (Exhibits 5-7) dated 4/29/11. The document restated Claimant's impairments and listed her physicians, employment history and previous hospitalizations. Claimant noted a 6/2009 hospitalization due to a fractured wrist. She also noted a 12/2005 hospitalization for a fractured shoulder and a three month hospitalization from 1977 stemming from a car accident.

On 1/4/11, Claimant was physically examined by a non-treating physician (see Exhibits 9-16). The physician verified a two centimeter difference in the length of Claimant's legs. The examining physician also noted Claimant showed evidence of footdrop. Claimant's use of a brace on her right ankle was noted as was Claimant's lack of ambulatory aid (e.g. cane, crutches et al). The examiner noted that Claimant's ambulation "seems to be satisfactory". Claimant had normal ranges of motion in shoulder, hip, elbow and cervical spine areas. Claimant had some limited range of motion in the lumbar spine.

On 1/18/11, Claimant was psychologically examined by a non-treating physician (Exhibits 17-24). Claimant stated she was diagnosed for depression in 2003; perhaps not coincidentally, that year was also noted as the year her son died. The examiner found Claimant to have: contact with reality, diminished self esteem, no unusual behaviors, adequate insight and judgment, good cooperation and responsiveness. Claimant's communication skills were also deemed adequate. The examiner diagnosed Claimant with disorder with depressed mood, bereavement and an opioid dependence in remission.

Claimant was assessed a Global Assessment Functioning level of 65-70. 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 GAF score within the range of 61-70 is representative of a person with "Some mild symptoms OR some difficulty in social, occupational, or school functioning, but generally functioning pretty well, has some meaningful interpersonal relationships." Claimant's prognosis was fair.

An Activities of Daily Living (Exhibits 27-31) completed by Claimant was presented. Claimant noted she has trouble sleeping and usually sleeps two hours due to her pain. She stated she has trouble in the shower due to her weak leg and paralyzed foot. Claimant stated she does not need help around the house and performs duties such as cooking, vacuuming and laundry. She stated she has gained weight but did not specify how much. Claimant does her own shopping and is able to drive; Claimant testified she that she currently has no vehicle. Claimant noted she cannot spend a lot of time standing. Claimant indicated she visits with her friends and family.

Claimant presented an examination report (Exhibits 34-36) dated 6/3/11 from her treating physician. Claimant's complaints of pain in her knee, hips and back were noted. A diagnostic impression of the following was given: significant pelvic injury with hemipelvic fracture/disassociation, left knee arthralgia with probable internal derangement in left knee, sciatic nerve palsy with nerve damage and footdrop with associated atrophy in lower extremity. The physician recommended physical therapy for Claimant's left knee. An MRI was recommended to identify the problem with the knee. The physician thought

little could be done to help Claimant's hip pain. It was noted the injury was old and nerve damage was chronic and unchangeable.

A physical examination report (Exhibits 37-38) dated 6/24/11 was also presented. X-rays were taken and analyzed. The physician provided the following impressions:

- left knee arthralgia with tenosynovitis;
- evidence of medial collateral ligament sprain, joint effusion and chondromalacia;
- significant hemipelvic fracture dislocation with foreshortening of right leg
- sciatic nerve palsy with footdrop
- atrophy in right leg
- altered back mechanics
- bilateral sacroiliitis
- history of ruptured bladder
- history of lumbosacral plexus injury

Claimant's prognosis was favorable. Claimant's work status was "non-duty status", presumably meaning Claimant was not capable of working at that time.

A follow-up examination was performed with the accompanying report (Exhibits 39-40) dated 7/15/11 presented as evidence. The report differed little from the previous report. Claimant's prognosis was considered "favorable to fair" and her work status remained non-duty. It was noted that Claimant responded favorably to injections in her left knee.

The physical basic work activities such as walking and standing would be greatly affected by Claimant's knee, leg and pelvic injuries. Claimant's physicians did not provide specifics on Claimant's abilities to walk or stand though Claimant stated she could not walk or stand for extended periods because of her injuries. Claimant's testimony was credible and consistent with the medical documentation.

Further, Claimant's pain was well-documented and supported by the prescriptions to address her pain issues. Though Claimant had a history of prescription abuse, there is no reason to believe that Claimant is currently abusing her prescriptions. The pain which Claimant suffers would hamper basic work activities, such as her ability to concentrate.

Based on the presented evidence, there was a sufficient showing that Claimant has severe impairments which would affect the ability to perform basic work activities. Accordingly, the analysis may proceed to step three.

Claimant's primary impairment appears to be problems with her leg. Musculoskeletal issues are covered by Listing 1.00. Claimant's impairment does not appear to be specifically diagnosed, so the most relevant listing would be for joint dysfunction. The listing reads:

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

As indicated above, the ability to ambulate effectively is defined by SSA in 1.00B2b. This 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 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. This section 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.

Part B of the above listing involves upper extremity joints and is not relevant to Claimant's circumstances. Part A is relevant and will be considered.

Claimant stated she is capable of doing her own shopping and much of her household chores. Claimant testified she uses a single cane. Claimant indicated that she struggles with standing in the shower. Claimant also testified that she struggles when climbing stairs. There was no evidence that Claimant requires assistance with walking or standing. Claimant stated she can stand for 15 minute periods before her leg gets very weak.

Though Claimant undoubtedly has ambulation obstacles, there was not a sufficient showing that she has an inability to ambulate effectively as required to meet the above listing. Claimant still has the ability to walk and stand, albeit not for extended periods. Claimant is capable of performing ambulation basics such as stairs and walking on uneven ground. It is troubling that Claimant has some history of falling though there was little documentary evidence of this history. It would also seem that use of a cane would resolve the danger in falling. Based on the presented evidence it is found that Claimant failed to meet the SSA listing for joint failure.

The SSA listing for disorders of the spine (Listing 1.04) and pelvis fracture (Listing 1.06) were also considered and rejected for reasons comparable to the rejection of the listing for joint failure. Listed impairments for depression (Listing 12.04), visual efficiency (2.04) were considered and rejected primarily due to a lack of evidence. It is found that Claimant failed to meet an SSA listed impairment. 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.

Little evidence was provided as far as Claimant's current physical capabilities. No specific physical restrictions were provided. Though Claimant is limited in standing and walking it can only be speculated how limited she is. Claimant stated she is unable to lift her 30 pound grandchild though it is unknown whether she is able to lift a smaller weight. Claimant can sit for periods, though she stated she needs periods to stretch. Claimant's dexterity was not an issue.

Claimant's previous employment was as a secretary. Claimant described her previous employment duties as typing, filing, dictation, transcription. Claimant also stated that she was responsible for showing people around her workplace. Claimant testified that she was also responsible for organizing her office's medical library. Claimant testified she lost her job due to lay-off. Claimant suspects that she was laid-off due to having to miss time from work due to her impairments.

Claimant should have little problem performing the secretarial duties of her past employment. Claimant's ability to walk and stand, though impaired, would not affect her abilities to type, transcribe, or take dictation.

Claimant's ability to perform the librarian-type duties of her past employment is questionable. Claimant stated that she was responsible for collecting and filing large medical books. Claimant stated she is not capable of this duty due to her physical limitations. Claimant's testimony was reasonable. Claimant provided testimony that the medical books that she was expected to collect and organize are now too heavy for her to routinely carry and lift to shelf level. For this reason, it is found that Claimant is not capable of past relevant work.

In this, the fifth and last step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). 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 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).

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

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a).

Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

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

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

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

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

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific

case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

Claimant established some impairments to walking, standing and lifting. Claimant also established a non-exertional impairment related to pain, however, there is no evidence to find that the impairment was so substantial to prevent Claimant from performing most types of sit-down employment. A requirement to walk or stand two hours in an eight hour day with occasional lifting of items weighing up to 10 pounds would be a reasonable expectation for Claimant. It is found that Claimant is capable of sedentary employment.

Whether Claimant is capable of light work is more difficult to determine. There is little evidence concerning Claimant's lifting capabilities, so the focus will be on Claimant's walking and standing abilities. It is known that light work involved "a good deal of walking or standing". Jobs that would typically fall under light work would be fast food service, cashiers and light janitorial work. Such jobs would require a majority of standing though there may be periods where sitting is acceptable. Based on the presented evidence, it is not believed that Claimant is capable of such extensive walking or standing. It is found that Claimant is capable of sedentary employment, but not light work.

It must be determined whether Claimant's employment was unskilled or semi-skilled employment. Unskilled employment is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. 20 CFR 404.1568(a). A person does not gain work skills by doing unskilled jobs. *Id.*

Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. 20 CFR 404.1568(b). Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work *Id.*

Claimant described her past employment as including librarian-type duties which would tend to make her previous job as semi-skilled. However, Claimant is no longer capable of these skills due to her impairment. Claimant also testified she performed duties which tended to be primarily secretarial (e.g. typing and dictation). Claimant listed her previous job title as "secretary" (see Exhibit 7). A secretary (as opposed to administrative assistant) tends to be employment with little judgment and tends to support a finding that Claimant had unskilled employment. Based on the presented evidence, it is found that Claimant's previous work experience was unskilled.

At the time of the administrative hearing, Claimant was closely approaching advanced age (aged 50-under 55). Claimant has an education level of high school equivalency which does not provide direct entry into skilled work. Claimant has a history of unskilled employment. Based on this analysis, Vocational-Rule 201.12 applies. This rule mandates a finding that Claimant is disabled. Accordingly, the DHS denial of Claimant's MA benefit application was not proper.

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).

It has been found that Claimant is a disabled person for purposes of MA benefits. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly denied Claimant's application for SDA benefits on the basis that Claimant is not a disabled individual.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 1/19/11 for MA and SDA benefits;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA and SDA benefits by factoring the finding that Claimant is a disabled individual;
- (3) if Claimant is eligible, supplement Claimant for any benefits not received as a result of the improper denial; and

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(4) if Claimant is found eligible for future MA and/or SDA benefits, to schedule a redetermination for 9/2012.

The actions taken by DHS are REVERSED.



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

Date Signed: September 23, 2011

Date Mailed: September 23, 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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