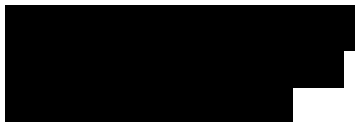


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

**IN THE MATTER OF:**



Reg. No.: 201140298  
Issue No.: 2009; 4031  
Case No.: [REDACTED]  
Hearing Date: October 10, 2011  
Oakland County DHS (04)

**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 from Detroit, Michigan. After due notice, a telephone hearing was held on October 10, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

**ISSUE**

The issue is 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 1/14/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 6/3/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3).
4. On 6/9/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/20/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 8/1/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 33) based, in part, on a determination that Claimant was capable of performing past relevant employment.
7. As of the date of the administrative hearing, Claimant was a 45 year old male (DOB 11/6/65) with a height of 6'0 " and weight of 190 pounds.
8. Claimant smokes approximately 10 cigarettes per day and has an irrelevant history of drug abuse.
9. Claimant's highest education level completed was the 12<sup>th</sup> grade.
10. Claimant last received medical coverage in 1/2011.
11. Claimant claimed to be a disabled individual based on and impairment of ankylosing spondylitis (AS).

### **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 6/2011, 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 though DHS does not often make the program available. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (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 SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under 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

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are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. 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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F2d 860, 862 (6<sup>th</sup> Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe

impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1<sup>st</sup> Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1<sup>st</sup> Cir. 1986).

In determining whether Claimant's impairments amount to a severe impairment, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation.

Claimant's only reported impairment is ankylosing spondylitis (AS). Claimant's reported symptoms include a limited range of motion of the neck and pain that goes into his arms and hips.

A physical examination report (Exhibits 4-7) dated 4/5/11 was presented. The physician noted Claimant reporting neck pain back to 2007. The report also noted that multiple epidural injections failed to relieve Claimant's report of pain. The examination revealed nothing notable concerning: gait, chest pain, swallowing, vision, neurology, gastrointestinal issue or musculoskeletal-wise.

It was noted Claimant had less than a 5 degree range of motion for his neck toward each side. Claimant was completely unable to move his neck forward or backward. Mild spinal tenderness was noted as was pain in the deltoid muscle. The examining physician gave an impression that Claimant has a severe cervical spasm with cervical spine tenderness and degenerative disc disease.

The second page of a Medical Examination Report (Exhibit 25) was submitted by the same physician that examined Claimant which noted Claimant's condition as deteriorating. It should be noted that the absence of the first page of the document was deemed harmless due to the inclusion of the more detailed examination report.

An undated Medical Social Questionnaire (Exhibits 13 and 15) completed by Claimant was provided. Claimant reiterated that he suffers from AS. He noted that he takes Vicodin, Naproxen and a muscle relaxer to treat the impairment.

Various documents (Exhibits 16-24) from the Department of Corrections were submitted. The documents were all from 2010. The documents noted that Claimant was deferred from mandatory work assignment while in prison due to the problems with his neck. It was also noted that Claimant was restricted from using the weight pit (a weight lifting area according to Claimant) without permission from the medical staff.

An Activities of Daily Living form (Exhibits 34-38) was presented. Claimant noted his back and neck pain affected his ability to sleep. Claimant also noted that the pain reaches his legs. Claimant noted he often needs to use railings when entering and exiting his bathtub. Claimant indicated that he does not shop but did not specify why he does not. Claimant noted that his pain and body stiffness increases over time.

Claimant's treating physician included a statement that Claimant "is totally disabled at this time due to ankylosing spondylitis". 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.

A document dated 1/24/03 was presented (see Exhibit 40). The document was not notable other than to establish that Claimant's AS symptoms go as far back as 8 years.

Claimant testified that there are 2-3 days per week where he suffers a sharp and debilitating pain from his neck. Claimant stated he has only fair days and bad days. He also stated that he often feels fatigued and drowsy, possibly due to medications that he takes. Claimant stated that he has a 5 pound lifting limit, though this was not verified by any of the documentation. Claimant testified that he has a one block walking limit due to the pain and stiffness in his hip. Claimant stated he has more stamina for standing but struggles while going up stairs. Claimant stated no problems with bending, squatting or grasping with his hands. Claimant stated that he sometimes uses a cane but did not happen to use one on the date of the hearing.

Claimant testified that he does his own grooming and shopping. Claimant also stated he is able to drive though he says that his physician asked him to not drive. Claimant also stated that he typically takes 1-2 naps per day.

The evidence established that Claimant suffers from AS but the consequences of the impairment are less certain. Medical documentation did not cite specific limitations on any of Claimant's work activities. The closest statement from a physician to a physical limitation was a conclusory statement that Claimant was disabled. However, it is unknown what restrictions Claimant had for the physician to conclude that Claimant was disabled.

Based on Claimant's own statements, it is believed that Claimant is impaired in walking, going up stairs and lifting. It is believed that the restrictions are at least minimally sufficient to establish impairment to the performance of basic work activities. Claimant's physician's statement that Claimant's condition is deteriorating is persuasive evidence that the impairment Claimant suffers from will continue for 12 months. Accordingly, it is found that Claimant suffers from a severe impairment and the 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 the 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.

Claimant established a severe impairment based on AS. The AS suffered by Claimant affects his spine. Listings for spinal problems fall under musculoskeletal 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.

In evaluating Claimant's impairment as it applies to the above listing, Parts B and C can be excluded as inapplicable. It is possible that Claimant meets Part A of the above listing and that is where the analysis shall focus.

The medical documentation made no references to nerve root compression. It is plausible that Claimant's chronic pain must be caused by some sort of nerve compression, however, medical support for this conclusion is expected. It should also

be noted that nerve root compression, rather than mere nerve compression is required to meet a SSA listing. Also problematic for Claimant is the lack of evidence concerning sensory or reflex loss. Minimally, there should be medical evidence that there is a weakening of muscles causing motor loss. In the present case, there is no such evidence. It is found that Claimant failed to meet a SSA listing for disorders of the spine. Accordingly, the disability 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.

A listing of Claimant's employment from the past 15 years was provided (see Exhibit 15). Claimant listed two different periods of 35 hour/week employment as a waiter. Claimant stated he had typical waiter duties such as taking food orders, reporting the orders to the kitchen and carrying food to the table. Claimant stated that he would be unable to perform waiter employment because of the generally fast paced nature of restaurants. Claimant believed that he could possibly slowly perform waiter duties but a slow performance would not be acceptable by any employer. Further, Claimant believed he would be unable to carry relatively heavy trays of food to tables without any neck range of motion and while in pain.

Claimant also listed employment as an assembler for a line. Claimant described his duties as having to assemble various parts as they came down to his place on an assembly line. Claimant testified that the actual line work was light in physical demands. He spoke of assembling light-weight parts such as a spring in an ashtray. Claimant also testified that he was expected to prepare for his place in the assembly line by carrying relatively heavy boxes that he would not currently be able to lift. Claimant also stated that the job was typically a standing job which he could not regularly perform for eight hours per day.

Based on the presented evidence, Claimant provided credible testimony that he is unable to perform his past employment. Accordingly, the disability analysis may move to the fifth and final step.

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.*

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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 testified that his standing and lifting abilities were very limited. As previously noted, these restrictions were not verified by a physician. Claimant indicated that he was restricted to lifting five pounds or less and limited in standing. Though it is probable that Claimant has some standing and lifting restrictions, the evidence would tend to support that Claimant is minimally capable of lifting items up to ten pounds and standing two hours within an eight hour day. These capabilities would support a finding that Claimant is capable of sedentary employment.

Based on Claimant's age (45 years), education (high school completion), work experience (semi-skilled with skills not transferable) and capable work level (sedentary), Vocational Rule 201.21 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly denied Claimant's application on the basis that Claimant is not a disabled individual.

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 already been found that Claimant is not disabled for purposes of MA benefits based on the finding that Claimant is capable of performing a sedentary level of employment and that vocational rules direct a finding that Claimant is not disabled. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly 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 properly denied MA and SDA benefits to Claimant based on a determination that Claimant was not disabled. The actions taken by DHS are AFFIRMED.



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

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Date Signed: October 14, 2011

Date Mailed: October 14, 2011

**NOTICE:** Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt 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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
  - misapplication of manual policy or law in the hearing decision,
  - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
  - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:  
Michigan Administrative hearings  
Reconsideration/Rehearing Request  
P. O. Box 30639  
Lansing, Michigan 48909-07322

CG/hw

cc:

