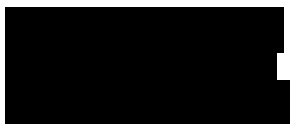



STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES


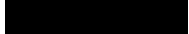
IN THE MATTER OF:



Reg. No.: 201140327
Issue No.: 2009; 4031
Case No.: 
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. After due notice, a telephone hearing was held on October 10, 2011 from Detroit, Michigan. The claimant appeared and testified; Timothy Perdue appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), , Specialist, and , 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 1/18/11, Claimant applied for SDA and MA benefits including retroactive MA benefits for 11/2010 and 12/2010.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 6/8/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).
4. On 6/13/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 1-4) informing Claimant of the denial.

5. On 6/20/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 8/2/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 80-81) based, in part, on a application of Vocational Rule 202.00.
7. As of the date of the administrative hearing, Claimant was a 41 year old female (DOB 1/8/70) with a height of 5'7 " and weight of 171 pounds.
8. Claimant has no known relevant history of alcohol or drug abuse but admits to smoking approximately 10-12 cigarettes per day.
9. Claimant's highest education level completed was the 12th grade.
10. Claimant last received medical coverage on an unspecified date.
11. Claimant claimed to be a disabled individual based on impairments and symptoms including: fibromyalgia, severe headaches, arm and leg tremors, memory loss, thyroid disease, depression, spinal tumors, sight conversion, asthma and chronic obstructive pulmonary disease (COPD).

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 are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). 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, all relevant evidence may be considered. The analysis will begin with the submitted medical documentation.

A physical examination report dated 4/14/11 from Claimant's treating physician was provided. The report noted medical problems including: thyroid removal surgery in 2007, numbness in fingers with burning pain, tremors in legs, severe headaches, history of blood clots, asthma, worsening vision, lower back pain, depression and hyperlipidemia. It was noted that Claimant was a chronic smoker.

The examination noted no apparent problem with Claimant's eyes. Claimant's nasal passages, hearing speech were all normal. Claimant's respiration was normal including noting that Claimant's breathing was unlabored, no wheezing and her chest was clear. Claimant's heart rate was also normal. Mild varicosities were noted on Claimant's lower extremities. Claimant's gait, skin and neurology were all normal. It was noted that Claimant had some neck tenderness. It was noted Claimant had some mid spinal tenderness and lumbar pain.

The examiner provided a diagnosis of the following: cervical spine pain with paracervical and trapezius spasm impingement syndrome, de quervian tenosynovitis (thumb pain due to tendons), hyperlipidemia, lower back pain, depression and anxiety with decreased memory, vision changes, asthma and headaches.

A psychological evaluation report (Exhibits 12-20) from a 4/25/11 examination was provided. It was noted that Claimant's children live with their biological father and that Claimant shares custody. When asked why the children live with their father instead of Claimant, Claimant conceded "I choose alcohol over my children." Claimant testified that she has a lengthy history involving alcohol and drug rehab but has been sober for

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over four years. Claimant also testified that she attends support meeting almost every day.

The evaluator noted that Claimant's appearance tended to contradict her claims of pain. It was noted that Claimant's gait was normal, no tremors were apparent and Claimant's ability to write appeared normal. It was also noted that Claimant exhibited no memory problems based on various tests administered.

The examiner concluded Claimant's behaviors and lifestyle were not consistent with a person claiming to be in severe pain or suffering from neurological disorders. The examiner noted that Claimant "indicated a classic case of Somatization Disorder which is common with people who have abused alcohol and drugs for a long time and after being in remission, they start developing all kinds of subjective bodily pain, neurological problems and the person attempts to stay in the victim's role, perhaps for attention." It was also noted that Claimant contradicted herself and tended to blame others for her own shortcomings.

The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM4). Axis I represents the acute symptoms that need treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale.

Claimant was diagnosed with Somatization Disorder on Axis I. No diagnosis was given on Axis II. The examiner concluded "none" for Axis III. Axis IV was noted for psychosocial stressors and lack of money. Claimant was given a GAF of 64. 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."

The examiner noted that Claimant's social functioning, ability to understand, remember and carry out instructions, maintain her schedule, seek help without assistance, maintain concentration and ability to perform routine tasks were all within normal limits. Claimant's mental ability to withstand stress associate with work was deemed moderately impaired due to somatic concerns.

Claimant completed an Activities of Daily Living (Exhibits 22-26), a questionnaire designed for clients to provide information about their abilities to drive, shop, perform housework, maintain social relationships and other day-to-day activities. Claimant noted she has trouble sleeping due to back pain. Claimant stated she often feels fatigued and takes 1-3 hour naps every day. Claimant stated she is often short of breath and can no

longer do her hair. Claimant noted that laundry is done at her parent's house because she needs help with it. Claimant can, and does drive. Claimant noted always forgetting items such as her purse. Claimant indicated that she spends time with her parents, boyfriend, children and friends.

A Medical Social Questionnaire (Exhibits 30-32) dated 2/24/11 completed by Claimant was presented. Claimant's complaints of tremors, dropping items, headaches and memory loss were noted. A previous hospitalization from 1/2011 was noted. Claimant stated she was also hospitalized in 4/2011 after she fell. Claimant indicated she was prescribed the following medications: Levothyroxine, Fioricet, Tylenol #4 and an inhaler.

A Medical Examination Report (Exhibits 33-34) dated 2/25/11 completed by Claimant's treating physician was provided. A history of impairments and complaints of "muscles wasteness", headaches and shortness of breath were provided. A diagnosis of chronic headaches, hypothyroidism, muscle weakness, tobacco abuse and asthma was provided. Claimant's gait was noted as antalgic. It was noted that Claimant wheezes and has muscle weakness. Claimant's condition was considered deteriorating.

A Medical Needs form (Exhibits 37-38) dated 2/25/11 from Claimant's treating physician was provided. It was noted that Claimant had a medical need for assistance with meal preparation, shopping, housework and laundry. It was indicated that Claimant was unable to work at any occupation for 12-18 months.

Various notes (Exhibits 39-45) dated 1/4/11 from a medical center were provided. The notes were in response to Claimant's complaints of loss of vision and balance. A chest examination revealed no abnormalities.

A neurological exam report (Exhibits 46-48) from an exam dated 2/19/10 was provided. It was noted that a previous MRI of the brain was negative. The examiner suspected fibromyalgia as an explanation for Claimant's pain complaints. A diagnosis of cervical radiculopathy with C3-C4 and C4-C5 foraminal encroachment was noted. Other documents from 2010 were also provided but were not particularly notable other than remaining consistent with Claimant's complaints of pain and balance.

A 2/12/10 letter (Exhibit 50) from a neurologist noted that a magnetic resonance imaging test was performed on Claimant's brain. The test noted no abnormalities.

A psychological examination report (Exhibits 71-77) dated 6/11/11 was presented. The examiner gave an Axis I diagnosis of bipolar disorder with a history of polysubstance dependence noted. Axis II was "deferred". Claimant was noted as suffering from fibromyalgia with a history of other issues though the diagnosis was deferred to medical documentation. Axis IV was noted for occupational and social difficulties. Claimant's GAF was 49. 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).”

A physical examination report (Exhibits 77a-79) dated 5/14/11 was provided. The examiner gave the following conclusions: Claimant had a normal gait, did not wheeze, had a thyroid disorder that was stable due to medication, had back pain due to spinal tumors and had no cranial nerve deficits.

Additional medical documents were provided during the hearing (Exhibits 82-85) from Claimant’s treating physician. A physician noted Claimant had fibromyalgia and hypothyroidism. The physician restricted Claimant from lifting weight of more than 5 pounds and prolonged standing. The physician noted that Claimant was taking the following prescriptions. Proair, Lyrica, Elavil, Fioricet, Cymbalta, Celebrex and Artane. Based on the two year history with Claimant, it was noted that Claimant’s condition steadily declined.

Claimant testified that while at work as a waitress in 1/2011 she began dropping items. She was sent home until she could return with medical clearance; Claimant stated that she has not been able to work since.

The medical evidence in the present case was somewhat contradictory. Multiple examiners noted Claimant’s normal gait. Claimant’s treating physician noted Claimant had an antalgic gait. 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*. Thus, the treating source’s opinion that Claimant’s gait is abnormal shall be recognized as more persuasive than other opinions.

Two psychological exams were performed. One examiner concluded Claimant suffered from bipolar disorder and a GAF of 49. A previous examiner diagnosed Claimant with somatization disorder and a GAF of 64. Based on the medical records, there was some basis for a diagnosis for bipolar disorder and it shall be considered as a basis for disability.

Claimant complained of shortness of breath but medical records revealed a long occurring smoking habit. Claimant also claimed a diagnosis of COPD but this was not referenced in any medical documentation. Though Claimant has asthma, it is difficult to recognize asthma (or COPD) as a basis of disability in light of Claimant’s smoking habit. If the smoking materially affects the asthma and shortness of breath, then Claimant may not be deemed disabled for the disability caused by her own addiction. Based on the evidence, it is found that Claimant’s asthma and shortness of breath are caused by her smoking habit and may not be a basis for disability.

Claimant testified having a condition called sight conversion. This condition was not referenced in any medical records and will not be considered as a basis for disability due to the lack of supporting evidence.

There was some medical basis for back pain suffered by Claimant. Multiple physicians indicated Claimant suffered lower back pain and had problems in her cervical spine. This shall also be considered as a basis for disability.

The diagnosis of fibromyalgia was the most persuasive evidence of a severe impairment. This was a recent diagnosis from Claimant's treating physician and would justify the pain complaints made by Claimant.

Based on the presented evidence, there is a basis that Claimant established impairments concerning fibromyalgia and bipolar disorder. Based on Claimant's treating physician's statements that Claimant condition has deteriorated, there is little reason to believe that the impairments will not continue for at least 12 months. Accordingly, it is found that Claimant established severe impairments based on bipolar disorder and fibromyalgia 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 depression and/or bipolar disorder. Mental impairments are described under listing 12.00. Depression and bipolar disorders fall under affective disorders; the 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.

The analysis as to whether Claimant meets the above listing for affective disorders will begin with Part B. Claimant testified that she performs chores, cooks for herself and even drives. Claimant stated she has trouble with her hair but performs all other grooming activities herself. There is simply little basis to find that Claimant is markedly restricted in the performance of daily activities.

Claimant noted she is very outgoing and has several social activities involving her friends, family and support groups. Claimant was repeatedly found cooperative in interview situations. There is no evidence of anti-social behaviors such as fighting or arguments. It is found that Claimant failed to establish any marked difficulties with social functioning.

There is an absence of evidence concerning episodes of decompensation. Claimant has not been hospitalized due to her behaviors. There was no evidence of hallucinations or suicidal tendencies or other types of decompensation episodes. It is found that Claimant does not suffer repeated episodes of repeated decompensation.

Claimant debatably suffers marked difficulties in maintaining concentration and pace, but Claimant cannot meet Part B without meeting a second requirement of Part B. Thus, it is found that Claimant fails to meet Part B of the listing for affective disorders.

Claimant could meet the above listing if it is found that Claimant meets Part C of the above listing. Claimant testified that she lives with an adult daughter but there is little evidence that Claimant requires a highly supportive living arrangement as required by the listing. Claimant performs numerous independent activities without the assistance of others. It was already found Claimant does not suffer repeated episodes of decompensation. There is also insufficient evidence to find Claimant's condition is so fragile that an increase in mental demands would cause decompensation. Thus, Claimant does not meet Part C of the above listing. It is found that Claimant fails to meet Parts B and C of the above listing and therefore does not meet the listing for affective disorders.

A listing for spinal disorders (Listing 1.04) was also considered and rejected. There was simply little evidence to establish that Claimant met any of the listing requirements.

Fibromyalgia is not, per se, a listed SSA impairment. Chronic Fatigue Syndrome (CFS) is a listed impairment per SSR 99-2p. The SSA ruling notes that if a claimant's fibromyalgia (FMS) fulfills the American College of Rheumatology criteria for FMS (which includes a minimum number of tender points) the FMS may also fulfill the criteria for CFS. In the present case, there is no such evidence of Claimant's FMS meeting such criteria. Thus, no analysis needs to be undertaken for step three concerning fibromyalgia. It is found that Claimant failed to establish meeting a listed SSA 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.

Claimant provided a history of her employment on Exhibit 32. Claimant noted that she worked from 11/2007-1/2011 as a waitress. Claimant described her duties as typical waitress duties such as taking customer orders and carrying trays of food to the table. There was testimony provided that indicated that the job involved prolonged standing and a fair amount of lifting. As previously stated, Claimant could not continue working after she stated she was continuously dropping items. Based on the presented evidence, it is found that Claimant is not capable of performing past employment as a waitress.

Claimant also stated that she worked for approximately one year as a cashier for a fast-food employer. Claimant described the job as requiring prolonged standing and a fast pace. Claimant's treating physician restricted Claimant from prolonged standing (see Exhibit 82) Based on the restrictions imposed by Claimant's treating physician, it is found that Claimant is not capable of returning to her cashier employment.

Claimant also noted previous employment as an assembler. Claimant testified that she had this and other jobs for periods no longer than two weeks. As the employment was not sustained, all other jobs are deemed irrelevant to step four.

Based on the previous findings, it is found that Claimant is not capable of returning to past employment. Accordingly, the analysis moves to step five.

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*

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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

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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).

The only evidence concerning Claimant's RFC was from her physician who stated Claimant is to avoid prolonged standing and is limited to a five pound lifting restriction. Claimant testified she was unable to sit for prolonged periods but the medical evidence did not verify this restriction. Based on these restrictions, it is found that Claimant is physically capable of performing most types of sedentary employment.

There is some basis to find that non-exertional impairments may further restrict Claimant's potential employment, however, Claimant was not shown to be particularly restricted in the performance of many duties. Claimant made pain complaints but still drives, shops and performs most household duties other than her hair and laundry. Claimant complained of memory loss but a psychological examination from 1/2011 revealed little, if any, memory loss. It cannot be doubted that Claimant has some psychological obstacles but none that would justify a blanket incapability of obtaining and maintaining employment. Thus, sedentary employment is the level of employment for which Claimant is capable.

Based on Claimant's age (41 years), education (high school completion), work experience (unskilled) and capable work level (sedentary), Vocational Rule 201.27 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 the applicable vocational rule directs 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

201140327/CG

Date Signed: October 19, 2011

Date Mailed: October 19, 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:

