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

IN THE MATTER OF:

[redacted]

Reg. No. 201225322
Issue No. 2009, 4031
Case No. [redacted]
Hearing Date: March 19, 2012
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 March 19, 2012 from Detroit, Michigan. The claimant appeared and testified; [redacted] and [redacted] appeared and testified on behalf of Claimant. 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) 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 10/26/11, Claimant applied for SDA and MA benefits.

2. Claimant's only basis for MA and SDA benefits was as a disabled individual.

3. On 12/28/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (See Exhibits 1-2).

4. On 1/3/12, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 1/11/12, Claimant requested a hearing disputing the denial of SDA and MA benefits.

6. On 2/21/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 65-66), by determining that Claimant was capable of performing past relevant employment.

7. As of the date of the administrative hearing, Claimant was a [redacted] year old female ([redacted]) with a height of 5'2 '' and weight of 210 pounds.

8. Claimant is a former smoker with no known relevant history of alcohol or illegal substance abuse.

9. Claimant completed the 9th grade and subsequently obtained a general equivalency degree.

10. As of the date of the administrative hearing, Claimant had health coverage through Adult Medical program (AMP) and has had the coverage since approximately 11/2010.

11. Claimant stated that she is a disabled individual based on impairments of: neuropathy in the left leg, depression, ulcers, sciatic nerve damage and pain in her right knee.

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 controlling DHS regulations are those that were in effect as of 10/2011, the month of the application which Claimant contends was wrongly denied. 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 always offer the program to applicants. 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 CRF 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).

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 2011 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 F2d 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).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation. Some documents were admitted as exhibits but were not necessarily relevant to the disability analysis; thus, there may be gaps in exhibits numbers.

A Medical Social Questionnaire (Exhibits 5-7) dated [redacted] was presented. The Claimant completed form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant noted suffering impairments of: back surgery, L1 permanent damage to left leg and foot, L5 bulging, cramps and charley horses in both legs, surgery on right knee, osteoarthritis in left knee and nerve damage. Claimant noted the impairments affect her walking, sitting, standing and driving. Claimant reported two previous emergency room visits ([redacted]) involving breathing problems.

A list of prescriptions was attached (see Exhibits 17-18). Claimant reported taking the following medications: Motrin (for pain), Gabapentin, Ranitidine Hydrochloride, Sertraline Hydrochloride, Zolpidem (anti-depressant), Simvastatin and Ciprofloxacin Hydrochloride. A script (Exhibit 19) dated [redacted] for Prilosec, Albuterol, Atrovent and an unknown medication was presented. Another list of presctiptions (Exhibit 47) was presented. An unsigned list of prescriptions (Exhibit 47; duplicated in Exhibit 62) provided by Claimant was also presented; Claimant listed prescriptions for: Contin, Neurontin, Flexeril Xanax, Ambien, Zocor, Ibuprofin, Protonix, Zoloft and Prilosec.

A Medical Examination Report (Exhibits 8-9; duplicated Exhibits 38-39; 53-54) dated 8/5/11 was completed by a physician. It was noted that the physician first treated Claimant on [redacted]. The physician provided diagnoses of: LBP, depression, right knee

pain and chain smoking. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs subject to restrictions imposed by a specialist. Claimant's obesity was noted.

A Medical Examination Report (Exhibits 15-16; duplicated Exhibits 43-44, 58-59) dated [redacted] completed by Claimant's treating physician was presented. It was noted that the physician first treated Claimant on [redacted] and last examined Claimant on [redacted]. The physician provided diagnoses of torn lateral meniscus and osteoarthritis of the right knee. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant can meet household needs.

A Medical Examination Report (Exhibits 49-50) dated [redacted] was completed by a gastroenterologist. It was noted that the physician first treated Claimant on [redacted] and last examined Claimant on [redacted]. The physician provided diagnoses of gastric and esophageal ulcers. An impression was given that Claimant's condition was improving.

A Pre-Operative Consultation form (Exhibit 12; duplicated Exhibit 41, 56) was presented. The form was unsigned and undated but noted a total right knee replacement to be done with a surgical date of [redacted]. Driving directions (Exhibit 13; duplicated as 42, 57) were presented.

Surgical Outpatient Discharge Instructions (Exhibit 20) dated [redacted] was presented. A prescription for Vicodin was noted.

A script (exhibit 21) dated [redacted] signed by a physician was presented. The signing physician noted Claimant was "unable to work at this time".

A physical examination report (Exhibits 22-28) dated [redacted] was presented. It was noted that Claimant reported numbness in her feet beginning 8/2008. Claimant reported that a neurosurgeon found a bulging disk at L1. It was noted that Claimant underwent surgery, which gave her some relief from the pain. Claimant reported gaining 60-70 pounds since 8/2008. Claimant reported doing 90% of her personal care but noted that she does not shower without someone else being home out of a concern of falling; Claimant reported two previous shower falls.

Claimant was able to slowly walk without the use of a cane. Claimant's reflexes measured 2+ at her knees and right ankle "but only 1+ at the left" ankle. Straight leg raising test was negative. Claimant declined to perform tandem heel and toe walking tests.

The examining physician noted Claimant was limited in sitting, standing, bending, stooping, carrying, pushing and pulling. Claimant had limited range of motion involving the lumbar spine.

A medical report (Exhibit 29; duplicated Exhibit 45, 60) from an [redacted] examination was presented. An MRI of Claimant's lumbar spine was taken. Impressions were given of moderate left paracentral disc herniation at L5-S1 and minimal circumferential disc bulge with associated annular tear at L4-l5 were noted.

A Medical Examination Report (Exhibits 36-37; duplicated as Exhibits 51-52) dated 1/5/12 was completed by a neurologist. It was noted that the physician first treated Claimant on [redacted] and last examined Claimant on [redacted]. The physician provided a diagnosis of lumbar radiculopathy. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. Left lower extremity weakness was noted. It was noted that Claimant had a lumbar spine MRI on [redacted].

An unsigned Guidance Center document (Exhibit 46; duplicated Exhibit 61) was presented. The document noted appointment for Claimant to see a case manager, psychiatrist and counselor.

Claimant completed an Activities of Daily Living (Exhibits 30-34) dated [redacted]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble sleeping due to pain. Claimant noted she only showers when someone else is home. Claimant noted she can't drive, do laundry or take a bath by herself. Claimant noted someone helps her fix her own meals. Claimant noted she can make beds. Claimant noted she uses a scooter when she shops. Claimant noted she is in constant pain and needs surgery and cash. Claimant estimated she has not driven since 2010.

Claimant testified to having 5 minute walking limits before left foot pain prevented continued walking. Claimant estimated she can stand for 5 minutes on each leg (10 minutes total). Claimant stated she can sit for 1-2 hours before LBP prevents further sitting. Claimant estimated she had a lifting limit of 10 pounds. Claimant stated she avoids bending at the waist and uses a "grabber" for picking up items. Claimant also testified that she often drops items and cannot explain why. Claimant stated she uses a cane when walking.

Comparable physical restrictions were reported by Claimant during the physical examination from [redacted]. The report noted that Claimant reported an ability to stand for 10-15 minutes, a 20 minute walking limit and sitting limits of 30-60 minutes. Claimant noted LBP prevents extended standing, sitting or walking. Claimant also reported mid-back pain which affects her breathing and right knee buckling (which inhibits her activities).

The analysis of whether Claimant has a severe impairment will begin with an examination of Claimant's psychological impairments. One treating physician referred to Claimant's depression (see Exhibit 8). The same physician noted Claimant's mental status appeared stable. Claimant testified that she was seeking treatment for depression, and this was marginally verified by appointment notices for the Guidance Center. No treatment records were presented. Claimant took medications known to treat depression and anxiety (e.g. Zoloft and Xanax) but this is not insightful into establishing to what degree Claimant is impaired. Based on the presented evidence, there was insufficient evidence that Claimant has a severe psychological impairment.

Claimant also claimed multiple physical impairments. A physical examiner noted Claimant was restricted in many physical activities including walking, sitting and standing (see Exhibit 25). Claimant's testimony that she had 60 minute sitting restrictions and 5-10 minute walking standing restrictions was consistent with diagnoses of LBP, lumbar radiculopathy and right knee pain though it should be noted that the restrictions were not verified by the medical evidence. Based on the presented evidence, it is found that Claimant established significant impairments to the performance of basic work activities.

The physical examination report dated [redacted] noted an onset date for Claimant's right knee pain at 8/2008. Other records and Claimant's testimony established that Claimant's LBP has been ongoing for over one year. It is found that Claimant established meeting the durational requirements for a severe impairment.

As it was found that Claimant established significant impairment to basic work activities for a period longer than 12 months, it is found that Claimant established having a severe impairment. Accordingly, the disability analysis may move to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is to be deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

One of Claimant's primary impairments involved right knee pain. Musculoskeletal issues are covered by Listing 1.00. Joint dysfunction is covered by Listing 1.02 which 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.

There was medical support that Claimant's right knee was hampered by osteoarthritis and a torn lateral meniscus (see Exhibit 15). There was also some evidence that Claimant's right knee required knee replacement surgery based on an unsigned pre-operative document scheduling Claimant for knee replacement surgery. The evidence was sufficient to establish some joint dysfunction.

There was also evidence of a limited range in motion. This was verified by the physical examination report from [redacted].

There was not sufficient evidence of an inability to ambulate effectively. It is known that Claimant was limited in walking but the medical records did not identify to what extent that Claimant was limited. The physical examiner noted Claimant was capable of climbing stairs as long as she did so slowly and walked “foot by foot”; if Claimant was capable of climbing stairs despite knee problems, it is difficult to presume restrictions to the less exertional activity of walking on even ground. Claimant testified that she was not capable of activities such as shopping, but again, the medical records identified no such restrictions. Based on the presented evidence, it is found that Claimant does not meet the SSA listing for joint dysfunction.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant’s LBP complaints. This listing was rejected due to a lack of evidence and a failure to establish a spinal disorder resulting in a compromised nerve root or a medically verified motor loss.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement suffered repeated episodes of decompensation in increasing duration or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

A listing for peripheral neuropathies (Listing 11.14) was considered based on allegations that Claimant has nerve damage. This listing was rejected due to a failure to verify nerve damage or to verify a loss of motor function.

It is found that Claimant failed to establish meeting a SSA listing. 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 submitted a history of employment (see Exhibit 7). Claimant's recent employment history included two different waitress jobs since 1997. Claimant testified that the jobs required comparable job duties. Claimant stated that her waitress employment included traditional waitress duties such as taking orders, bringing food and drinks to the customers' table and giving and taking food bills to customers. Claimant stated the jobs required essentially only standing, no sitting. Claimant also testified that the job included food preparation such as pouring heavy five gallon containers of dressing. Claimant estimated her food trays weighed up to 50-75 pounds. Claimant also stated that she was required to clean the bottom of her employers' refrigerator which required crawling on the floor.

Claimant testified that she would be unable to perform the required standing or lifting duties required of her employment. Claimant's testimony was consistent with the medical evidence. It is found that Claimant is not capable of performing past relevant employment and the disability analysis moves on to the fifth step.

In 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).

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).

Looking at exertional restrictions, Claimant alleged that she is not capable of sitting or standing for extended periods. Based on diagnoses of right knee pain and LBP, there is reason to find that Claimant is incapable of the standing which would be required for SGA. LBP and other pain could theoretically prevent from performing sedentary

employment but the evidence was not as supportive. It is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (advanced age), education (less than high school) and employment history (unskilled), Medical-Vocational Rule 201.01 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

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 disabled for purposes of MA benefits based on application of Medical-Vocational Rule 201.01. 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.

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 MA and SDA benefit application dated 10/26/11;
(2) evaluate Claimant's eligibility for MA and SDA benefits on the basis that Claimant is a disabled individual;

(3) supplement Claimant for any benefits not received as a result of the improper denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision if Claimant is found eligible for future MA or SDA benefits.

The actions taken by DHS are REVERSED.

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

Date Signed: April 3, 2012

Date Mailed: April 3, 2012

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

201225322/CG

CG/hw

cc: [redacted]