

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

IN THE MATTER OF:



Reg. No.: 201254085
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: August 24, 2012
County: Monroe DHS

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on August 24, 2012 from Monroe, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS terminated Claimant's ongoing eligibility for Medical Assistance (MA) 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. Claimant was an ongoing MA benefit recipient.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/24/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 7-8).
4. On 5/9/12, DHS terminated Claimant's MA benefit eligibility, effective 6/2012, and mailed a Notice of Case Action (Exhibits 3-6) informing Claimant of the termination.

5. On 5/16/12, Claimant requested a hearing disputing the termination of MA benefits (see Exhibit 2).
6. On 6/22/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 109-110), in part, by application of Medical-Vocational Rule 203.21.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'3 " and weight of 185 pounds.
8. Claimant's highest education year completed was the 12th grade.
9. As of the date of the administrative hearing, Claimant had no medical insurance coverage since the termination of MA benefit eligibility from 5/2012.
10. Claimant claimed to be a disabled individual based on impairments of: chronic obstructive pulmonary disorder (COPD), depression and hepatitis.

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).

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 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).

The analysis of Claimant's MA benefit eligibility differs based on whether Claimant was an applicant or an ongoing recipient. It was not disputed that Claimant received Medicaid for 4/2012 and 5/2012 prior to DHS terminating Claimant's eligibility. It was not clear why Claimant only received Medicaid for two months if she was found disabled by DHS. It was clear that Claimant was an ongoing Medicaid recipient based on disability.

Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review

standard. 20 CFR 416.993(a); 20 CFR 416.994. In evaluating a claim for ongoing MA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20 CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required.

Claimant alleged impairments related to depression, hepatitis and COPD. Based on Claimant's testimony, Claimant's most significant problem seemed to deal with her breathing problems. Listing 3.02 covers disabilities for chronic pulmonary insufficiency and reads:

3.02 Chronic pulmonary insufficiency

A. Chronic obstructive pulmonary disease due to any cause, with the FEV₁ equal to or less than the values specified in table I corresponding to the person's height without shoes.

Table I

Height without Shoes (centimeters)	Height without Shoes (inches)	FEV₁ Equal to or less than (L,BTPS)
176-180	70-71	1.55

or

B. Chronic restrictive ventilatory disease, due to any cause, with the FVC equal to or less than the values specified in Table II corresponding to the person's height without shoes. (In cases of marked spinal deformity, see 3.00E.);

Table II

Height without Shoes (centimeters)	Height without Shoes (inches)	FVC Equal to or less than (L,BTPS)
176-180	70-71	1.75

Despite Claimant's complaints of respiratory problems, the record was devoid of any respiratory testing. Claimant testified that she had a hospital encounter in 2/2011 due to breathing problems, but no documentation concerning the encounter was presented. Based on the presented evidence, it is found that Claimant fails to meet the listing for chronic pulmonary insufficiency.

Claimant also alleged disability based on depression. The listing for depression is covered by affective disorders and 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.

Several psychological treatments were presented. Prior to an analysis of whether Claimant meets the listing for depression, the documents should be summarized.

A consultative examination report (Exhibits 27-31) dated [REDACTED] was presented. It was noted that Claimant had an extensive history of employment. It was noted that Claimant complained of anxiety and post-traumatic stress related to an assault by a former boyfriend. Claimant was noted as cooperative, friendly, calm, reserved, logical, goal directed and organized. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). An Axis I diagnosis of substance abuse in remission was presented. Claimant's GAF was 60-65. 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 prognosis was fair and that she was able to manage her own funds.

An Initial Bio-Psycho-Social Assessment (Exhibits 48-54; duplicated in Exhibits 81-87) from Claimant's treating psychological agency was presented. The assessment was completed on [REDACTED] by a person who did not specify their job title. It was noted that Claimant reported struggles with anxiety and depression. It was noted that Claimant was taking Klonopin and Paxil. It was noted that Claimant reported "some difficulty" with concentration. It was noted that Claimant reported the following symptoms: irritability, aggravation, impulsivity, persistent sadness, depressed mood, feeling overwhelmed, guilt and sleeping difficulties. It was noted that Claimant drank 3-4 times per month and smoked marijuana two times per week. Claimant's judgment, impulse control and insight were noted as poor. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). An Axis I diagnosis of anxiety disorder was provided. Claimant's GAF was 55. A GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

An Initial Bio-Psycho-Social Assessment (Exhibits 88-94) dated [REDACTED] from Claimant's treating psychological agency was also presented. The assessment was generally consistent with the assessment from [REDACTED] though Claimant's GAF was 75. A GAF within the range of 71-80 is indicative of symptoms, if present, that they are transient and expectable reactions to psychosocial stressors (e.g., difficulty concentrating after family argument); no more than slight impairment in social, occupational, or school functioning (e.g., temporarily falling behind in schoolwork).

A Psychiatric Evaluation (Exhibits 55-59; duplicated in Exhibits 71-75) dated [REDACTED] was provided. Axis I diagnoses of PTSD and anxiety disorder were given. Claimant's GAF was 45. A GAF 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)."

Medication Review Notes (Exhibits 60-69, 76-80) were presented. It was noted on [REDACTED] that Claimant reported seeing people following her sometimes; presumably a paranoid thought related to a previous assault. It was also noted that Claimant was doing better.

A Mental Residual Functional Capacity Assessment (MRFCA) dated [REDACTED] was completed by Claimant's treating therapist. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Of the 20 listed abilities, Claimant was only markedly limited in the ability to work in coordination with or proximity to others. Claimant was not significantly limited in the ability to complete a normal workday without interruptions from psychological based symptoms.

Looking at Part B of the listing for affective disorders, there was sufficient evidence to suggest Claimant had marked difficulties in social interactions. The MRFCAs verified marked difficulties while Claimant gave convincing testimony that she has a history of difficulties in dealing with her peers. It was established that Claimant has marked difficulties in social function.

Claimant failed to establish any other marked difficulties required for Part B. There is no evidence of repeated episodes of decompensation (e.g. psychological hospitalization). There is some evidence of difficulties with concentration. For example the MRFCAs noted Claimant had moderate difficulties in carrying out detailed instructions and maintaining attention for extended periods. However, Claimant had no limitation in two other concentration abilities and was not significantly limited in three other concentration abilities. There was also little evidence to support finding that Claimant had difficulties with performing daily activities. Claimant testified that she performs activities such as bathing, dressing, cooking, cleaning, laundry and shopping, though noted some problems related to breathing in carrying out the activities. There is no evidence to suggest that any subparts of Part C apply to Claimant. Based on the presented evidence, it is found that Claimant does not meet the listing for affective disorders.

There was evidence establishing that Claimant had hypertension and hepatitis. Neither diagnosis has a specific SSA listing. There was no evidence suggesting that Claimant has symptoms from either physical problem to justify consideration of a SSA listing.

Based on the presented evidence, it is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step two.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). If medical improvement is established, the analysis proceeds to step three; if there is no medical improvement, the analysis proceeds to step four.

It is known that DHS did not find medical improvement because DHS evaluated Claimant's allegation of disability based on a new application, not as an ongoing recipient. Thus, no medical improvement was established and the analysis may proceed to step four.

Step four considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). Step four lists two sets of exceptions.

The first group of exceptions allow a finding that a claimant is not disabled even when medical improvement had not occurred. The exceptions are:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.
20 CFR 416.994(b)(4)

If an above exception does not apply, then the process moves to step five. If an exception applies, then the analysis stops and the claimant is deemed not disabled.

The second group of exceptions allow a finding that a claimant is not disabled irrespective of whether medical improvement occurred. The exceptions are:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperated;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.
20 CFR 416.994(b)(4)

If an exception from the second group is applicable, the disability analysis stops and the claimant is to be found not disabled. 20 CFR 416.994(b)(5)(iv). The second group of exceptions to medical improvement may be considered at any point in the process. *Id.*

The presented evidence does not justify applying any of the above exceptions to the finding that medical improvement did not occur. Accordingly, the analysis may proceed to step five.

Step five of the analysis considers whether all the current impairments in combination are severe. 20 CFR 416.994(b)(5)(v). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe and the claimant will not be considered disabled. *Id.* If the impairments are considered severe, the analysis moves to step six. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.921 (a). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921 (b). 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. (*Id.*)

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).

There was sufficient documentation from Claimant's treating therapist to establish that Claimant had some psychological difficulties. Claimant has marked difficulties in working with others. Claimant has moderate difficulties in following detailed instructions, getting along with co-workers, interacting with the public, understanding and remembering instructions and maintaining concentration for extended periods (see Exhibits 95-96). All of these difficulties create a significant impairment to the performance of basic work activities.

The records established that Claimant was treated for psychological problems in 4/2011. The records established that Claimant's difficulties have lasted for longer than 12 months.

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 proceed to step six.

The sixth step in analyzing a disability claim requires an assessment of the Claimant's RFC and past relevant employment. 20 CFR 416.994(b)(5)(vi). 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's past relevant work included several years spent as a custodian. It is reasonable to presume that Claimant's employment involved cleaning chemicals and toxic fumes from the chemicals. Merely based on the COPD diagnosis, it can be concluded that Claimant cannot perform her past employment as a custodian.

Claimant also had past relevant work as an assembly line worker. Claimant testified that her duties primarily involved loading cosmetic cases onto a conveyor belt. Claimant described her duties as requiring repetitive arm motions, light lifting and a fair amount of standing. Claimant denied that she would be able to perform this employment. For purposes of this decision, Claimant's testimony will be accepted as accurate.

It is found that Claimant cannot perform her past relevant employment. Accordingly, the analysis moves to the seventh step of the disability analysis.

In the seventh step, 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).

For purposes of this decision, only an analysis of light work shall be considered. Light work requires an analysis of Claimant's lifting, sitting, standing and walking abilities.

Claimant conceded that she was capable of lifting up to 20 pounds. There was no documentation to contradict Claimant's testimony. 20 pounds is within the standards of light work.

Claimant testified that she was limited to 1 block of walking before experiencing breathing difficulties. Though Claimant is diagnosed with COPD, Claimant continues to

smoke. Claimant denied that her continued smoking contributes to her breathing restrictions, though common sense dictates otherwise.

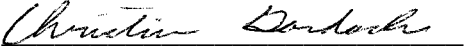
There was also a lack of evidence to support Claimant's single block walking restriction. A consultative examination report (Exhibits 38-40) was one of the few documents that addressed Claimant's COPD. The diagnosis was verified but the examining physician only noted that Claimant was restricted from working with fumes and toxins. Based on the presented evidence, it is found that Claimant is capable of performing the standing and walking duties for light work.

Claimant's psychological records established that Claimant would have difficulty with employment requiring working closely with others and performing work requiring detailed instructions. These restrictions may somewhat hinder Claimant's employment potential, but not sufficiently to justify a finding that Claimant is not capable of performing light work generally. It is found that Claimant is capable of performing a majority of employment requiring a light work exertional level.

Based on Claimant's exertional work level (light), age (approaching advanced age), education (high school), employment history (unskilled), Medical-Vocational Rule 201.13 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of MA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's MA benefit eligibility effective 6/2012 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

Date Signed: August 29, 2012

Date Mailed: August 29, 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 at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

