

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

IN THE MATTER OF:



Reg. No.: 201265456
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: October 10, 2012
County: Wayne 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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on October 10, 2012 from Taylor, Michigan. Participants included the above named claimant. [REDACTED] appeared as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED] Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application 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. On 1/27/12, Claimant applied for MA benefits (see Exhibits 11-12) including retroactive MA benefits (see Exhibits 9-10) back to 10/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 5/21/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 13-14).
4. On 5/24/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 7/13/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 8/31/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 50-51), in part, by application of Medical-Vocational Rule 202.07.
7. On 10/10/12, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A114; B1-B111; C1) at the administrative hearing, which were forwarded to SHRT along with previously presented documents.
9. On 10/11/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits D23-D24), in part, on additional medical records (Exhibits D1-D22) and an application of Medical-Vocational Rule 202.07.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'6" and weight of 147 pounds.
11. Claimant has no known relevant history of alcohol or illegal substance abuse, but was a tobacco smoker until 10/2011.
12. Claimant's highest education year completed was 12th grade.
13. As of the date of the administrative hearing, Claimant received Adult Medical program benefits.
14. Claimant alleged that she is disabled based on impairments and issues including: equilibrium difficulties due to stroke, shortness of breath related to heart problems, ruptured disc and nerve problems.

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 the 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).

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 2012 income limit is \$1010/month.

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).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CF R 416.920 (5)(c). In determining whether Claimant's impairment amounts to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the presented medical records. It should be noted that the AHR provided hundreds of duplicate documents including dozens from 2010 and prior.

A Medical Social Questionnaire (Exhibits 17-19) was presented. Claimant completed the form. Claimant failed to date the form, though it is presumed that she completed the form after 1/18/12, the date that the form was created. Claimant listed that she had the following impairments: back injury, vertigo, dizziness which causes driving restrictions, nerve disorder and forgetfulness. Claimant noted she was hospitalized over 4 days in [REDACTED] and for five days in [REDACTED].

A Consultative Mental Examination Report (Exhibits D8-D11) dated [REDACTED] was presented. Claimant reported depression since 2000. Claimant reported auditory hallucinations and paranoid thoughts. Claimant also reported suicidal ideation. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). An Axis I diagnosis of major depressive disorder with psychosis was noted. Claimant's GAF was 49. 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)."

A Consultative Physical Examination Report (Exhibits D12-D19) dated [REDACTED] was presented. It was noted that Claimant reported that she began feeling back pain while working at a job requiring her to carry suitcases; this was in [REDACTED]. Claimant also reported that she was struck in the back by a cart while on her job. Claimant reported that she has leg pain but that she is able to perform driving and other daily activities. Claimant's range of motion was limited in the lumbar spine and in making a fist. The examiner determined that Claimant was limited in sitting, standing, bending, stooping, carrying, pushing and pulling. The examiner noted that she examined prior medical documentation concerning Claimant's back which noted "mild disk desiccation and disk space narrowing at L4-L5 and L5-S1." It was noted that the prior medical document noted no stenosis or narrowing.

Medical clinic documents (A34) dated [REDACTED] noted complaints of back pain by Claimant. The complaint was repeated by Claimant on [REDACTED] (see Exhibit A42).

Hospital documents (Exhibits A1-A14) were presented. It was noted that Claimant was admitted on [REDACTED] discharged on [REDACTED]. It was noted that Claimant presented with complaints of vomiting, headaches and blurry vision. Various radiology documents (Exhibits 22-25) from [REDACTED] were presented. An MRI of Claimant's brain noted findings compatible with an acute ischemic infarction. Radiology of Claimant's carotid artery noted significant stenosis. Discharge documents (Exhibits 30-31) noted that Claimant was stable upon discharge. It was noted that Claimant could perform activity as tolerated and that she was encouraged to quit smoking. Claimant was given nine discharge medications. An impression of acute right cerebellar infarct was provided (see Exhibit A6).

A medical clinic document (Exhibits A32) dated [REDACTED] was presented. It was noted that Claimant reported spells of dizziness. It was noted that Claimant was a smoker.

A physician letter (Exhibit A15) dated [REDACTED] was presented. It was noted that Claimant had a recent stroke. It was noted that Claimant was considered disabled. A history of a lumbar herniated disc was noted. It was noted that Claimant was unable to stand or sit for 15 minutes at a time. Claimant's vertigo was noted as mild.

A Medical Examination Report (Exhibits 11-12) dated [REDACTED] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on [REDACTED] and that Claimant's treatment was ongoing. The physician provided diagnoses of melanoma, coronary artery disease, vertigo related to stroke, neurological disorder, hypertension and a ruptured disc in the spine. An impression was given that Claimant's condition was stable. It was noted that Claimant can not meet household needs though no specific needs were specified.

A cardiologist report (Exhibits 48-49) dated [REDACTED] was presented. It was noted that Claimant reported medical problems including: chest pain and discomfort, hypertension and hyperlipidemia. It was noted that Claimant continued to smoke.

Medical documents (Exhibits 32-34) dated [REDACTED] were presented. A radiology report noted slight prominence of the left ventricle and slight decreased activity of the anterolateral apical. Claimant's left ventricle ejection fraction was measured at 62%.

A cardiologist report (Exhibits 46-47) dated [REDACTED] was presented. It was noted that a recent stress test was suboptimal, but also negative for ischemia and that an EKG was normal. It was noted that hypertension may have caused Claimant's stroke. It was noted that the examiner wanted to lower Claimant's blood pressure.

Physician documents (Exhibits 27-29) dated [REDACTED] were presented. It was noted that Claimant presented with complaints of ongoing dizziness, lower back pain, decreased

left eye vision and high cholesterol. A physical examination was unremarkable other than noting decreased range of motion in lower back extension.

A consultative examination report (Exhibits D1-D7) dated [REDACTED] was presented. It was noted that Claimant had a back injury complicated by left leg numbness. It was noted that straight-leg raising test was mildly positive. It was noted that there was a mild limitation of physical activity. It was noted that Claimant spoke normally and had normal muscle strength other than her right hand which was 4/5. It was noted that Claimant had a mild limitation of physical activity. It was noted that Claimant could perform all 23 listed physical activities which included (among others): sitting, standing, bending, carrying, picking up a coin and squatting.

A consultative mental examination report (Exhibits 40-45) dated [REDACTED] was presented. It was noted that Claimant reported on-and-off sadness since [REDACTED]. It was noted that Claimant had fair or good relationships with others. It was noted that Claimant performed her daily activities independently. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). Axis I diagnoses included adjustment disorder with anxiety and depressed mood and dysthymic disorder. Claimant's GAF was 75. A GAF within the range of 71-80 notes if symptoms are present, they are transient and expected 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). It was noted that Claimant's ability to remember and understand was slightly impaired. It was noted that Claimant's ability to maintain attention and concentrate was mildly impaired. It was noted that Claimant's ability to withstand stress was mildly to moderately impaired. It was noted that Claimant did not think she could mentally do a job if she was offered one.

Claimant testified that she has balance problems caused from her stroke. She testified that she had vertigo prior to her stroke. Claimant testified that she has never fallen, does not use a cane; but that she occasionally stumbles. She also stated that she often feels dizzy. Claimant testified that she was hospitalized for a week sometime in [REDACTED] or [REDACTED] though no record of the hospitalization was provided.

Claimant completed an Activities of Daily Living (Exhibits 35-39). Claimant failed to sign the document, but it is presumed to have been completed after [REDACTED] the date that the document was created. Claimant noted that she awoke 4-5 times per evening due to back pain. Claimant noted that she performs her own housework daily. Claimant noted that she has difficulty walking due to dizziness. Claimant noted that she has panic attacks.

The medical records established that Claimant sought treatment for back pain, dizziness and various heart problems. The consultative examination dated [REDACTED] established that Claimant had some loss of strength in her right side, most notably in her right hand. It is debatable whether Claimant's impairments were significant; however, step two requires only meeting a de minimus standard. The established loss

of strength on the right side is deemed sufficient to meet the de minimus standard for establishing a significant impairment to performing basic work activities.

The medical records established that Claimant had ongoing problems since [REDACTED] Claimant established meeting the 12 month durational requirement of having a significant impairment to performing basic work activities.

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 deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be heart-related issues, specifically ischemic heart disease relating to a previous stroke. Cardiovascular impairments are covered by Listing 4.00. Ischemic heart disease is covered by Listing 4.04 which reads:

4.04 Ischemic heart disease, with symptoms due to myocardial ischemia, as described in 4.00E3 -4.00E7, while on a regimen of prescribed treatment (see 4.00B3 if there is no regimen of prescribed treatment), with one of the following:

A. Sign- or symptom-limited exercise tolerance test demonstrating at least one of the following manifestations at a workload equivalent to 5 METs or less:

1. Horizontal or downsloping depression, in the absence of digitalis glycoside treatment or hypokalemia, of the ST segment of at least -0.10 millivolts (-1.0 mm) in at least 3 consecutive complexes that are on a level baseline in any lead other than a VR, and depression of at least -0.10 millivolts lasting for at least 1 minute of recovery; or
2. At least 0.1 millivolt (1 mm) ST elevation above resting baseline in non-infarct leads during both exercise and 1 or more minutes of recovery; or
3. Decrease of 10 mm Hg or more in systolic pressure below the baseline blood pressure or the preceding systolic pressure measured during exercise (see 4.00E9e) due to left ventricular dysfunction, despite an increase in workload; or
4. Documented ischemia at an exercise level equivalent to 5 METs or less on appropriate medically acceptable imaging, such as radionuclide perfusion scans or stress echocardiography.

OR

B. Three separate ischemic episodes, each requiring revascularization or not amenable to revascularization (see 4.00E9f), within a consecutive 12-month period (see 4.00A3e).

OR

C. Coronary artery disease, demonstrated by angiography (obtained independent of Social Security disability evaluation) or other appropriate medically acceptable imaging, and in the absence of a timely exercise tolerance test or a timely normal drug-induced stress test, an MC, preferably one experienced in the care of patients with cardiovascular disease, has concluded that performance of exercise tolerance testing would present a significant risk to the individual, with both 1 and 2:

1. Angiographic evidence showing:

- a. 50 percent or more narrowing of a nonbypassed left main coronary artery; or
 - b. 70 percent or more narrowing of another nonbypassed coronary artery; or
 - c. 50 percent or more narrowing involving a long (greater than 1 cm) segment of a nonbypassed coronary artery; or
 - d. 50 percent or more narrowing of at least two nonbypassed coronary arteries; or
 - e. 70 percent or more narrowing of a bypass graft vessel; and
2. Resulting in very serious limitations in the ability to independently initiate, sustain, or complete activities of daily living.

The evidence established that Claimant has heart problems in [REDACTED] which were serious enough to cause a stroke. By [REDACTED] radiology reports revealed that Claimant's problems had significantly diminished. Claimant's ejection fraction was a very functional 62%. A stress test was performed on Claimant in [REDACTED]. The description of "sub-optimal" indicates that Claimant has reason to be concerned about her heart function however the test was negative for ischemia. Claimant reached a level of 9 METs on her stress test; notably more than the maximum of 5 METs allowed for the listing. There is no angiographic evidence that Claimant's arteries are restricted to the extent required by Part C. Based on the presented evidence, Claimant did not meet the listing for ischemic heart disease.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. No radiology reports concerning Claimant's spine were presented, but it was noted in a medical document from 1/2011 that recent radiology revealed "mild disk desiccation and disk space narrowing at L4- L5 and L5- S1." Assuming the reference to prior spinal radiology to be accurate, the evidence fell well short of establishing a spinal disorder resulting in a compromised nerve root.

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 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 visual acuity (Listing 2.02) was considered based on complaints of poor eyesight. This listing was rejected due to a failure to establish a corrected eyesight of worse than 20/200 in Claimant's worst eye.

A listing for anxiety-related disorders (Listing 12.06) was considered based on Claimant's treating physician's diagnosis of an anxiety disorder. 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 had a complete inability to function outside of her home.

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.

SSA records of Claimant's earning history (D20-D22) were presented. The records showed that Claimant had no earnings within a calendar year greater than \$4,000 since 2000. Claimant reported previous employment as a welder on a Medical Social Questionnaire (Exhibit 19) through 1998 but listed no employment on the form for 1999 or 2000. Presumably, Claimant's only past relevant employment is as a welder. Claimant testified that her welding duties involved significant lifting and the handling of dangerous machinery. Claimant testified that she is not capable of returning to her welding employment. Claimant's testimony was reasonable based on the presented medical evidence. It is found that Claimant cannot perform her past employment. Accordingly, the analysis may proceed to step five.

In the fifth 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(b).

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 a consideration of light work will be considered. Light work requires a fair amount of standing and walking with lifting up to 20 pounds.

Claimant alleged impairments due to her heart. In step three of the analysis, consideration such as a suboptimal stress test was noted along with "slight" aberrations with her arteries. Medical records in ██████ noted "slight" prominence of the left ventricle and "slightly" decreased activity of anterolateral apical; these records are supportive of minimal heart impairments within a few months following Claimant's stroke. It is also known that Claimant was able to reach a level of 9 METs on her stress test. Light work is known to require a level of significantly less than 9 METs.

Claimant alleged that she could not perform the walking or standing necessary for light work due to constant dizziness. Other than reporting the dizziness to the doctor, the medical evidence does not support a conclusion that Claimant's activities are restricted. Claimant drives and performs daily activities independently despite the dizziness. Further, a consultative examiner concluded on ██████ that Claimant had no restrictions to walking, standing, carrying, lifting or any other physical activities. It is probable that Claimant has dizziness issues but the medical evidence does not support finding that the problem is so severe that Claimant is prevented from performing light work.

Claimant also asserted back pain but again there is a lack of radiological support. The only evidence of radiology from prior to ██████ indicated only mild narrowing and mild disk desiccation at one vertebrae. Again, the medical evidence would not preclude Claimant's performance of light work.

Claimant also alleged psychological restrictions. Claimant failed to present any treatment records; this is supportive of finding no psychological impairments. In ██████ Claimant had a GAF of 49, a relatively low functioning psychological level. As of 6/1/12, Claimant's GAF was assessed as 75 by a consultative examiner. As noted above a GAF of 75 is evidence of only slight functioning impairments. The examiner noted that Claimant had mild impairments to concentration and mild to moderate impairments for dealing with stress; however, the examiner's conclusions would not preclude Claimant from performing light work. Based on the presented evidence, it is found that Claimant is capable of performing light work.

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 denied Claimant's MA benefit application dated [REDACTED] including retroactive MA benefits, based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.


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

Date Signed: January 4, 2013

Date Mailed: January 4, 2013

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.

201265456/CG

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

CG/hw

cc:

