

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

**IN THE MATTER OF:**



Reg. No. 201212840  
Issue No. 2009  
Case No. [REDACTED]  
Hearing Date: May 14, 2012  
Wayne County DHS (15)

**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, an in-person hearing was held on May 14, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] appeared as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Manager, appeared and testified.

**ISSUE**

The issue is whether DHS properly denied Claimant's application for State Disability Assistance (SDA) benefits on the basis that Claimant is not a disabled individual.

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 6/9/11, Claimant applied for SDA benefits.
2. Claimant's only basis for SDA benefits was as a disabled individual.
3. On 9/21/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 9/27/11, DHS denied Claimant's application for SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 11/8/11, Claimant requested a hearing disputing the denial of SDA benefits.

6. On 1/16/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 28), in part, by finding that Claimant's retains the capacity to perform her past relevant employment.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'2" and weight of 198 pounds.
8. Claimant has no known relevant history of tobacco, alcohol or illegal drug abuse.
9. Claimant's highest education year completed was the 12<sup>th</sup> grade.
10. As of the date of the administrative hearing, Claimant had ongoing Medicaid coverage from DHS.
11. Claimant alleged that she is a disabled individual based on impairments including: arthritis in her knees, fatigue, bladder problems, inverse psoriasis and asthma.

### **CONCLUSIONS OF LAW**

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 he or she (see BEM 261 at 1):

- receives other specified disability-related benefits or services;
- resides in a qualified Special Living Arrangement facility;
- 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), see Medical Certification of Disability

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for SDA benefit eligibility without

undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 3.

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 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 submitted application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing

SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1<sup>st</sup> Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1<sup>st</sup> Cir. 1986).

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. It should be noted that many of the exhibits were submitted in duplicates.

A Social Summary (Exhibits 9-10) dated [REDACTED] was presented. A Social Summary is a standard DHS form to be completed by DHS specialists which notes alleged impairments and various other items of information. It was noted that Claimant reported impairments of arthritis and inverted psoriasis. It was noted that Claimant reported knee and leg stiffness due to arthritis.

A Medical Social Questionnaire (Exhibits 16-18) 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 problems with severe arthritis and inverted psoriasis. Claimant noted that she had difficulty moving because of the arthritis. A 5/2011 emergency room visit related to lymphadenopathy was noted. Claimant also testified to a 3/2012 hospitalization related to her gall bladder.

A Medical Examination Report (Exhibits 19-20) dated [REDACTED] was completed by Claimant's treating physician. The physician failed to note Claimant's last examination date or how long Claimant was a patient. The physician provided diagnoses of: osteoarthritis, postmenopausal bleeding, hyperlipidemia and hypertension. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

A physical examination report (Exhibits 11-13) dated [REDACTED] was provided. Claimant reported problems with coughing and bronchitis. Claimant reported losing her breath from walking a flight of stairs or after one block. It was noted that Claimant showed no significant wheezing during examination. It was noted that Claimant had difficulty getting up and ambulating. Following a physical examination, the following conclusions were given: obesity, hypertension, history of bronchitis with possible asthma, recent breast surgery to remove benign mass, history of fibroid uterus, arthritis of knees, history of hyperlipidemia and a history of psoriasis. A fair prognosis was provided.

Claimant was again examined on [REDACTED]; a corresponding physical examination report (Exhibits 3-10) by a DHS assigned examiner was presented. It was noted that Claimant had a history of inverted psoriasis which was in remission. It was noted that Claimant reported chronic left thigh and hip pains. A dark discoloration in this area was noted. Claimant also reported COPD, hypertension, osteoarthritis and headaches. It was noted that Claimant was obese.

A slight subnormal range of motion was noted in the following areas: lumbar flexion, hip forward flexion and knee flexion. The report noted examination of: general survey, vital signs, heart, respiratory, cardiovascular, gastrointestinal, skin, extremities, bones/joints and neurological. An impression of inverted psoriasis was and osteoarthritis was given. It was noted that Claimant had crepitus flexion/extension of both knees.

A psychiatric evaluation (Exhibits 29-30) dated [REDACTED] was presented. It was noted that psychotherapy was recommended and that Claimant was instructed to return within one month. Claimant's prescriptions for Cymbalta and Desyrel were refilled.

The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4<sup>th</sup> edition) (DSM IV). Axis I represents the acute symptoms that need treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale. An Axis I diagnosis of major depressive disorder, recurrent without psychotic features was given. No diagnosis was given for Axis II. Axis III noted hypertension, hypercholesterolemia, bronchitis, asthma, arthritis and psoriasis. Axis IV was noted as moderate. Claimant's GAF was 50. 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)."

Various hospital records (Exhibits 31-88) were submitted; the records concerned a hospital stay from [REDACTED] and a discharge date of [REDACTED]. Claimant entered the hospital complaining of abdominal pain, weakness and dizziness. Claimant had her gall bladder removed. Claimant's prognosis appeared good (see Exhibit 33). It was noted that Claimant had post-operative acute renal failure following the operation. Claimant was advised to see her physician within one week. Claimant was given discharge diagnoses of: cholecystitis, sepsis, methicillin-resistant Staphylococcus aureus bacteremia, iron deficiency anemia, acute kidney injury, hypertension and debility. Various testing was performed during Claimant's hospital stay.

Claimant's heart was examined prior to the gallbladder removal. Claimant was considered a low cardiac risk for an intermediate risk procedure (see Exhibits 44-46).

Claimant was examined for anemia (see Exhibits 47-49). Claimant was found to have an iron deficiency.

A resting echocardiogram report dated [REDACTED] was presented. Claimant's ejection fraction was noted as 60%.

Patient discharge instructions (Exhibits 84-88) concerning medication were provided. The following were listed as medications that Claimant should start or continue taking: Vancomycin, Betamethasone, Ferrous Sulfate tablet, Hydrocodone-Acetaminophen, Norvasc, Simvastatin, Sevelamer Carbonate and Polyethylene Glycol.

Claimant completed an Activities of Daily Living (Exhibits 21-25) 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 knee pain. Claimant noted she fixes her own meals but sometimes her daughter helps. Claimant noted that she washes dishes and does laundry, but does less work around the house than she used to do. Claimant noted she does her own shopping with the help of her daughter. Claimant noted she reads and watches television. Claimant noted that sometimes she feels like not doing anything due to pain.

Claimant also testified concerning her ability to complete daily living activities. Claimant stated she bathes herself but needs help. Claimant stated she sometimes needs help putting on her socks and pants. Claimant testified that she does no cleaning, laundry or cooking. Claimant stated she has not driven since 2008.

Claimant testified concerning her physical restrictions. Claimant stated she can walk half of a block before her knees prevent her from further walking. Claimant stated that her right hand cramps and hampers her writing. Claimant stated she has a two hour time limit in sitting and would need 30 minutes before she could sit again for two hours. Claimant estimated she could lift no more than one or two pounds. Claimant estimated that she could stand 20-30 minutes before needing one hour of rest before she could stand that long again. Claimant stated she could not kneel due to knee pain. Claimant stated she could bend and squat but with pain. Claimant stated she has used a walker for one month and used a cane before that.

Claimant's primary complaint concerned her knees. It was established by Claimant's treating physician and examining physicians that Claimant suffers from osteoarthritis in both of her knees. It was less established how Claimant is affected by the osteoarthritis. Claimant's physician listed no specific limitations. The physician from the examination dated 8/17/11 noted only a "slightly" decreased range of motion, though the physician also noted Claimant displayed crepitus of the knees.

The examination from [REDACTED] was more detailed regarding Claimant's limitations. The difficulty Claimant displayed in ambulating and getting up was significant. The restriction is also representative of a significant impairment to performing basic work activities. Based on the presented evidence, Claimant's ability to ambulate was significantly restricted.

The evidence tended to establish that Claimant has a several year history involving back pain. Claimant testified that she had problems with her knees since 2006. Both examination reports from 8/2011 noted a history of osteoarthritis. Claimant's testimony from 5/2012 that the problem was ongoing was credible. It would be reasonable to presume that Claimant has suffered a significant impairment to performing basic work activities due to her knees for at least 12 months. It is found that Claimant established

the durational requirements for suffering from a severe impairment. Accordingly, the disability analysis may proceed to step three.

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If 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.

Typically, an administrative law judge examines whether a person is disabled for a 12 month period for purposes of an MA benefit application. An MA benefit application requires a 12 month or longer disability. The present case involves SDA. A 90 day period of disability is required for SDA. As SDA requires only disability for a period of 90 days, the SSA listings will be interpreted to require only a 90 day period of disability, even when the listing specifically refers to a 12 month or longer period.

Claimant's primary impairment was knee pain and ambulation restrictions due to osteoarthritis. Based on the presented evidence, the most appropriate SSA listing would be for joint dysfunction. The listing for joint dysfunction 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.

It was found that Claimant established that she has a severe impairment to ambulation due to osteoarthritis. It has yet to be determined whether Claimant is unable to effectively ambulate.

Claimant testified that she has a half block walking limit though an examiner's notes point to Claimant's shortness of breath (see Exhibit 11) rather than joint dysfunction. Claimant also stated she needs a walker for ambulation. An examining physician noted that Claimant had difficulty with ambulation (see Exhibit 13) though the difficulty was not specified.

A second examiner noted only a slightly decreased range of motion for Claimant. The same examiner found that medical evidence did not support the need for a walker (see Exhibit 9); this is persuasive in support of a finding that Claimant does not ineffectively ambulate. The examiner's acknowledgements that Claimant has crepitus upon flexion and extension of the knees and a history of osteoarthritis in her knees are somewhat supportive of a finding of that Claimant has an inability to ambulate effectively. The examiner also acknowledged Claimant's ongoing need for pain management due to osteoarthritis; this also supports a finding that Claimant has an inability to ambulate effectively.

The Medical Examination Report information was also considered. It was noted that Claimant is able to meet her household needs (see Exhibit 20). An ability to meet household needs is generally not consistent with a person who ambulates ineffectively. Though the evidence was somewhat mixed, the evidence tended to support a finding that Claimant is able to effectively ambulate. Accordingly, claimant does not meet the listing for joint dysfunction.

A listing for affective disorder (Listing 12.04) was considered based on a diagnosis of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, concentration or repeated episodes of decompensation. 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 renal dysfunction (Listing 6.02) was considered. This listing was rejected due to a failure to establish a renal disease that has or will last 90 days. It was only established that Claimant had renal problems as of 3/2012. There was no evidence to establish ongoing renal problems except that Claimant was taking kidney medication two months later.

A listing for dermatitis (Listing 8.05) was considered based on Claimant's complaints of inverted psoriasis. This listing was rejected because no medical evidence verified that Claimant had extensive skin lesions lasting longer than three months despite prescribed treatment.

A listing for asthma (Listing 3.03) was considered based on Claimant's testimony. This listing was rejected as no medical records established that Claimant suffers chronic bronchitis or reoccurring asthma attacks.

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 18). Claimant noted that she worked as a sitter from 5/2004-2/2009 and 11/2009-11/2010. Claimant stated this job

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was part-time and that her income did not amount to SGA. Because the income from sitter employment did not amount to SGA, it was not considered in whether Claimant could still perform the job.

Claimant stated that she was a machine operator from 6/2002-10/2002. Claimant stated she could no longer perform her job duties which required long periods of standing. Claimant also stated that her pain medication makes her drowsy and this also would prevent her from performing the employment.

Claimant worked at a casino from 11/2001-12/2001. Claimant stated she was responsible for cleaning slot machine areas. Claimant again testified that the employment required extensive walking, which she is unable to perform.

For purposes of this decision, Claimant's testimony that she is unable to perform her past relevant employment will be accepted as accurate. Based on this finding, the disability analysis may proceed to step five.

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 limited to a half block of walking. Claimant testified that she is limited to lifting 1-2 pounds. Though the medical evidence supported finding some restrictions to ambulation, the medical evidence failed to verify Claimant's testimony. Physical examination established that Claimant may be

slow and that Claimant may have discomfort, but they also tended to establish that Claimant can perform the minimum requirements of sedentary employment.

Concerning non-exertional restrictions, there was some evidence that Claimant has psychological restrictions. It was established that Claimant's GAF was measured at 50 and that she suffers depression. The evidence concerning psychological restrictions was insufficient to presume that Claimant could not perform the requirements for sedentary employment.

Claimant also alleged that her medications cause her fatigue, such that she cannot be reasonably expected to perform sedentary employment. A list of medications following Claimant's gall-bladder surgery was provided (see Exhibits 84-85). The list included Hydrocodone-acetaminophen (5-325 mg; 1 tablet every four hours as needed). Simply because Claimant may take a pain medication is not a sufficient reason to find disability. The records failed to establish that any one, or combination of medications, would prevent Claimant from performing at least a sedentary level of employment.

Claimant's circumstances present a close call in determining whether a sedentary level of employment is a reasonable expectation for Claimant to perform. Claimant established several problems (e.g. kidney function, fatigue, depression, arthritis) which could reasonably amount to a finding of disability. On the other hand, the medical records often failed to specify restrictions to Claimant's abilities making it difficult to determine what Claimant can or cannot do.

Based on the presented evidence, it is more likely than not that Claimant is not capable of performing a level of sedentary employment due to the combined restrictions involving ambulation, breathing, depression and fatigue. In lieu of specific vocational evidence to the contrary, a finding that Claimant is not capable of sedentary employment equates to a finding that Claimant is not capable of performing any employment. Thus, Claimant is a disabled individual. Accordingly, it is found that DHS improperly denied Claimant's application for SDA benefits.

### **DECISION AND ORDER**

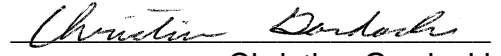
The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's SDA benefit application dated 6/9/11;
- (2) evaluate Claimant's eligibility for SDA benefits subject to the finding that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper application denial; and

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(4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found otherwise eligible for ongoing SDA benefits.

The actions taken by DHS are REVERSED.

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

Date Signed: June 7, 2012

Date Mailed: June 7, 2012

**NOTICE:** Administrative Hearings 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. Administrative Hearings 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.

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

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