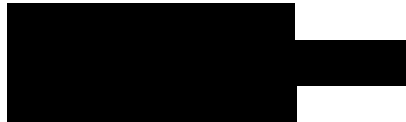


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No. 201216331
Issue No. 2009, 4031
Case No. [REDACTED]
Hearing Date: February 13, 2012
Macomb County DHS (36)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on February 13, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

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

FINDINGS OF FACT

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

1. On 9/12/11, Claimant applied for SDA and MA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 11/14/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2), in part, by application of Medical-Vocational Rule 202.14.
4. On 11/18/11, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 11/28/11, Claimant requested a hearing disputing the denial of SDA and MA benefits.
6. On 1/18/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 318-319) based, in part, by application of Medical-Vocational Rule 202-.13.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 6'0" and weight of 165 pounds.
8. Claimant does not smoke tobacco or drink alcohol as of 8/2011.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had no health coverage and last received coverage in 8/2011 (Medicaid through DHS).
11. Claimant contended that he is a disabled individual based on an impairments including: lower back pain, Chronic Obstructive Pulmonary Disease (COPD), depression, left wrist pain and a pinched neck nerve.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The controlling DHS regulations are those that were in effect as of 9/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged

(65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-

related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 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 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 and 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 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 exhibit numbers.

A Social Summary (Exhibits 3-4) 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; the presented Social Summary was unsigned. It was noted that Claimant reported impairments of COPD and left arm pain; both had onset dates of 2003. It was noted that Claimant coughed during the interview and had difficulty breathing. A slight limp was also noticed. Claimant reported suffering from alcoholism. A second Social Summary (Exhibits 11-12) dated [REDACTED] from an unknown "patient rep" was submitted. This form reported impairments of: depression, respiratory issues, back problems and arthritis.

A Medical Social Questionnaire (Exhibits 8-10) 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's form was completed by an unknown "patient rep". It was noted that Claimant had respiratory and back problems, arthritis, left side numbness and depression. Two previous hospitalizations were noted, in 9/2011 for major depression and 2008 for respiratory problems. A Medical- Social Questionnaire (Exhibits 108-110) completed by Claimant on 9 [REDACTED]. Claimant noted an additional hospitalization from 2006 for breathing problems.

Various physician notes ranging in date from 2003-2007 were presented (Exhibits 13-46). On [REDACTED] 3 it was noted that Claimant received ongoing treatment for scaphoid nonunion and avascular necrosis of the lunate left wrist. It was noted that Claimant was left handed. It was noted that Claimant sustained the injury when his arm was crushed between two steel frames at his workplace (see Exhibit 13). On [REDACTED] it was noted that

a CT scan revealed incomplete healing of the wrist (see Exhibit 18). On [REDACTED], it was noted that there was evidence of incomplete fusion and that Claimant was restricted to absolutely no use of his left hand. His prognosis was guarded (see Exhibit 21). On [REDACTED], it was noted that Claimant continued to show decreased grip strength and persistent pain (see Exhibit 24). Following a second surgery on the wrist, it was noted on [REDACTED] that Claimant's wrist was healing well (see Exhibit 29). On [REDACTED] 5, it was noted that arthrodesis was completely healed, though Claimant had marked weakness in grip strength and marked atrophy in his forearm muscles (see Exhibit 35), it was also noted that Claimant could not lift more than 10 pounds with his left hand and it was doubtful that Claimant could return to work as a welder. Claimant reported ongoing pain in his joints (see Exhibits 40 and 42). On 3/21/06, it was noted that Claimant was restricted to lifting 20 pounds and holding more than 5 pounds with his left hand or arm. On 1 [REDACTED], it was noted that Claimant's symptoms were minimal (see Exhibit 45).

Various operative reports and other medical documents from 2002-2003 were presented (Exhibits 58-82 and 91). The documents were consistent with other medical documents from the period.

On [REDACTED] and 7 [REDACTED], Claimant was strength tested (see Exhibits 47-57) by his treating physician. It was noted that Claimant had decreased left upper extremity strength and decreased tolerance for waist to overhead lifting. It was noted that Claimant was functioning at a level of light work and capable of occasionally lifting 20 pounds and frequently lifting 10 pounds.

Claimant was examined by a non-treating physician on [REDACTED] 1; the corresponding examination report (Exhibits 83-90 and duplicated in part by Exhibits 320-323) was presented. It was noted that Claimant reported lower back pain stemming from a vehicle accident in 2000. It was noted that Claimant had abused alcohol for several years. It was noted that Claimant had ankle pain stemming from a 30 year old surgery on a ruptured tendon. It was noted that Claimant reported being able to walk 8-10 blocks and standing for 30 minutes. It was noted that Claimant reported neck pain (which was verified by 2010 x-rays), which showed cervical degenerative changes. It was noted that Claimant had good grip strength in both arms. It was noted that Claimant could take care of his own household needs, including cooking and cleaning. Diagnoses and impressions were given of: bronchial asthma which was well controlled, chronic alcoholism in remission and alleged history of LBP, ankle pain and left arm pain. It was noted that Claimant's only functional limitation was being unable to squat more than 60%.

Claimant went to the hospital on [REDACTED] for pain and depression (see Exhibits 189-198). Claimant was treated for complaints of neck pain. An impression of cervical radiculopathy was given. During Claimant's psychiatric hospitalization, x-rays were

taken of Claimant's neck (see Exhibit 107). It was noted that Claimant's condition was stable compared to previous x-ray records from [REDACTED].

Discharge instructions (Exhibits 5-7) from the hospitalization were presented. It was noted that Claimant was admitted on [REDACTED] and discharged [REDACTED] for psychiatric treatment. It was noted that Claimant was prescribed various medications upon discharge. Additional documents (Exhibits 92-107) from the hospitalization were presented. It was noted that Claimant felt increasingly depressed and overwhelmed over the last two years, and especially the prior two months. It was noted that Claimant recently lost his home and feels helpless and hopeless. It was noted that Claimant had poor sleep and has recurrent thoughts of suicide.

At discharge, the treating physician provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th 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. The Axis I diagnosis was major depressive disorder, recurrent, severe and without psychotic features. Axis II was deferred. Axis III noted questionable asthma and a shoulder injury. Axis IV noted problems with his primary support group. 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)." At admission, Claimant's GAF was 15-20 which indicates some danger of hurting self or others (e.g., suicide attempts without clear expectation of death; frequently violent; manic excitement) OR occasionally fails to maintain minimal personal hygiene (e.g., smears feces) OR gross impairment in communication (e.g., largely incoherent or mute).

Medical documents (Exhibits 120-188 and 259) ranging from 1993-2011 were presented. The documents corresponded to a multitude of various medical appointments for Claimant including: a 6/2008 broken left arm from a fall on a ladder (Exhibits 120-128), an 8/2003 infection from a bee sting (see Exhibits 129-130), 1/2003 dated left wrist injury from a slip and fall (see Exhibit 131), 11/2002 problems breathing (see Exhibits 132-136), right wrist laceration (Exhibit 259), eye irritation from a foreign object (Exhibits 147-149) finger tip amputation of the left hand middle and ring fingers (Exhibits 150-163), additional medical records related to Claimant's left arm injury (Exhibits 164-188). Additional medical records (Exhibits 199-317), unless otherwise referenced, were either duplicate records, obsolete records or irrelevant records.

It is worth noting that despite the glut of medical records, an MRI on Claimant's spine was ordered. DHS queried for specifics on which section of Claimant's spine should be imaged; the issue was thought to be clarified when DHS was informed that the decision should rest with the physician taking the MRI. DHS failed to forward any such MRI documentation. Accordingly, Claimant will be given deference for any testimony concerning his back.

Medical reports dated 6/2002 and older (Exhibits 137-145) were presented. An impression of broad mild disk bulging was noted at L4-L5 with possible narrow root compression. Moderate broad based disk bulging with small central disk herniation changes were noted at L5-S1. An impression of S1-S2 disk space revealed broad based disk bulge changes. An impression of moderate degenerative arthritic changes was also suggested in the lower lumbosacral spine. Medical records from 2009 and 2010 (Exhibits 243-248) note that x-rays revealed a degenerative cervical spine, manifested by disc space narrowing with degenerative end-plate. Disc space narrowing was more pronounced (than at C1-C2) at C4-C5 and C5-C6.

Claimant completed an Activities of Daily Living (Exhibits 111-115) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted difficulty sleeping due to back, neck and arm pain. Claimant noted that he sometimes needs help getting out of bed due to back pain. Claimant noted his family fixes his meals because he has nowhere to go. Claimant noted a loss of appetite due to depression. Claimant noted he visits with friends and family when time permits.

Claimant testified that he has ongoing difficulties with gripping. Claimant testified that he is limited to approximately 25 pounds in lifting. Claimant estimated that his standing and walking are limited to 15 minute periods due to LBP. Claimant testified that he is capable of bathing, grooming and shopping, though he states he is clumsy at times. Claimant testified that he tries to help with housework but that he cannot perform yard work. Claimant stated he stopped drinking alcohol and smoking in 8/2011.

Claimant complained of COPD and other respiratory issues. Claimant stated he was a decades long 2 pack per day smoker until 8/2011. An impression of bronchial problems was given by a physician examiner in 10/2011, though this was only two months after Claimant stated that he quit smoking. Medical records were presented for just about every ailment Claimant ever had, but the records only noted occasional references to respiratory problems. Generally, there was a lack of evidence to support any restrictions to Claimant's performance of basic work activities due to respiratory problems.

Claimant alleged he suffers ongoing left hand pain. Though the history of Claimant's left arm injury was exceptionally documented, little evidence was submitted to establish significant current obstacles for Claimant. A physical examination from 10/2011 noted

Claimant had good grip strength, a far cry from 2004's problems of atrophy and total left arm and hand debilitation. Simply based on the long medical history of left hand and arm difficulties, it would be reasonable to presume some lingering pain from the approximately 10 year old injury. It would also be reasonable to accept Claimant's testimony that his left wrist pain prevents him from writing for longer than a 20 minute period.

Claimant alleged lower back pain and neck pain. Claimant's history of back problems appear to extend back to 2002. The medical records from that year referenced root compression, bulging discs and degenerative arthritic changes in the lumbar spine. It cannot be stated with certainty how those impairments would affect Claimant ten years later, but such problems are not known to dissipate without surgical intervention; there was no evidence of such intervention. In particular, degenerative and arthritic changes would reasonably lead to a worsening of Claimant's back pain ten years later. Claimant's back records from 2010 established some problems with his cervical spine though no specific restrictions were placed on Claimant because of the pain. It would be reasonable to conclude some degree of pain and discomfort in Claimant's cervical and lumbar spine. As noted above, Claimant will get every benefit of the doubt concerning back problems due to the failure by DHS to submit new medical evidence stemming from an MRI.

Most problematic for Claimant is that a 10/2011 physical examination from a non-treating physician failed to uncover any exertional restrictions other than squatting. No limits were found to Claimant's abilities to lift, stand or walk. It was noted that all spinal movements were pain free and within normal range. In Claimant's favor, the examination was performed by a non-treating physician. There was not any evidence that the examining physician had access to Claimant's medical documentation history. It is also worth noting that the examining physician did not rule out that Claimant suffered back or neck pain, the physician only stated that Claimant is not physically restricted because of his pain.

Based on the presented evidence and applying a de minimus standard, Claimant established sufficient problems in walking, standing and lifting sufficient to find that Claimant has a significant impairment to performing basic work activities. The evidence established that Claimant's impairments have and are expected to continue for a 12 month period or longer. Accordingly, Claimant established a severe impairment to performing basic work activities and 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 deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's primary impairment involved back pain. Musculoskeletal issues are covered by Listing 1.00. Back problems are covered by SSA Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Looking at Part A, Claimant alleged lower back pain but there is a lack of a positive straight leg-raising test. An examining physician (see Exhibit 84) noted that Claimant was able to perform a straight-leg raising test without pain. There was a lack of evidence of arachnoiditis and pseudoclaudication to consider whether Claimant met parts B or C of the above listing.

It is plausible that Claimant's neck pain is caused by spinal disorders which rise to the level of the SSA listing. The submitted medical evidence does not support this. Though the absent medical testing may have established the evidence necessary to meet the listing, it would be inappropriate to assume medical test results merely because DHS is at fault for not obtaining the results. It is found that Claimant does not meet the SSA listing for spinal disorders.

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

disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain and left arm pain. This listing was rejected because it was not established that Claimant is unable to ambulate effectively or that Claimant is unable to perform fine and gross movements in each upper extremity.

A listing for COPD (Listing 3.02) was considered. This listing was rejected due to a lack of any medical testing of Claimant's respiratory capabilities.

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 110). Claimant's only employment from the last 15 years was as a welder from 1998 to 2003. Claimant testified that the job included a lot of climbing of ladders, lifting up to 300 pounds (with the assistance of a coworker). Claimant stated he could not perform the necessary climbing or lifting necessary to perform his past employment due to his back pain and standing limitations. Based on the presented medical records, Claimant's testimony that he is physically unable to perform his past welder job duties is credible. It is found that Claimant cannot perform his past relevant employment and the disability analysis may move 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 nonexertional restrictions, Claimant noted depression. The evidence was relatively silent as to how depression affects Claimant's ability to work. It is known that Claimant was hospitalized in 9/2011 because of depression. Psychiatric hospitalization is evidence of decompensation which could interrupt Claimant's ability to perform employment. There was no evidence of any other psychiatric hospitalizations. This tends to make the 9/2011 decompensation appear to be an isolated incident and not an ongoing problem. Claimant's GAF of 45 at the time of the hospital discharge is persuasive evidence of serious psychological problems, but without specifics of how the problems affect Claimant's ability to work, little can be concluded from the GAF. Perhaps not coincidentally, Claimant's hospitalizations coincided with Claimant's last usage of alcohol. This tends to make the hospitalization related to an alcohol issue rather than depression. Based on the presented evidence, it is found that Claimant failed to establish any psychological restrictions to perform employment.

Looking at Claimant's exertional restrictions, Claimant alleged problems with standing and walking. Claimant testified that he is limited to standing to 15 minutes because of LBP. There was medical evidence of lumbar problems but a lack of evidence as to how Claimant is affected by the problems. The spinal x-rays from 2010 was evidence that was theoretically consistent in finding that Claimant had 15 minute standing and walking restrictions; however, the evidence was insufficient to verify Claimant's testimony. At this point, the ordered MRI of either Claimant's cervical or lumbar spine would have been insightful. As DHS was at fault for the failure to submit the MRI, the submitted evidence will be construed favorably for Claimant. It is found that Claimant established standing and walking restrictions due to LBP.

Claimant's testimony was consistent with finding that Claimant was capable of performing the exertional requirements necessary for sedentary employment, but not the standing required for light employment. Accordingly, it is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (closely approaching advanced age), education (high school- does not provide for entry into skilled work), and employment history (semi-skilled but not transferrable), Medical-Vocational Rule 201.14 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It has already been found that Claimant is disabled for purposes of MA benefits based on application of Medical-Vocational Rule 201.14. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

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

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- (1) reinstate Claimant's MA and SDA benefit application dated 9/12/11;
- (2) evaluate Claimant's eligibility for MA and SDA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) schedule a review of benefits in one year from the date of this administrative decision if Claimant is found eligible for future MA and 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: 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.

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Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

