

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201232707
Issue No. 2009
Case No. [REDACTED]
Hearing date: May 9, 2012
Wayne County DHS (17)

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 9, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] testified on behalf of Claimant. [REDACTED] appeared as Claimant's authorized hearing representative. 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) 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 1/13/11, Claimant applied for MA benefits (see Exhibits 64-79), including a request for retroactive MA benefits for 12/2010 (see Exhibits 52-53, duplicated by 80-81).
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/29/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 5-6).

4. On 5/13/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibit 58-62) informing Claimant of the denial.
5. On 8/8/11, Claimant requested a hearing disputing the denial of MA benefits.
6. On 3/28/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 84), in part, by finding that Claimant retains the capacity to perform past relevant work.
7. On 5/9/12, an administrative hearing was held.
8. Claimant submitted additional medical documentation (Exhibits A1-A64) related to Claimant's alleged disability.
9. On 5/10/12, the medical packet was forwarded to SHRT for a reconsideration of disability.
10. On 6/18/12, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'3" and weight of 160 pounds.
12. Claimant has no known relevant history of tobacco, alcohol or illegal drug abuse.
13. Claimant's highest education year completed was the 12th grade.
14. As of the date of the administrative hearing, Claimant had no ongoing medical coverage and had not had any coverage since approximately 6/2010.
15. Claimant alleged that she is a disabled individual based on impairments including: depression, post-traumatic stress disorder (PTSD), anxiety and multiple personality disorder.

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 1/2011, 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; 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 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 also be noted that exhibits submitted prior to the administrative hearing are numbered 1-84; exhibits submitted by Claimant at the hearing are prefaced with an "A".

A Social Summary (Exhibits 11-12) dated 1 [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; Claimant's form was completed by an unspecified Medicaid advocate. Claimant's listed impairments included: bipolar anxiety, thyroid problems, panic attacks, OCD and PTSD.

A Medical Social Questionnaire (Exhibits 13-15) 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. A hospitalization from 12/2010 due to acute ketosis was noted.

A psychiatric examination report (Exhibits 7-10) dated [REDACTED] was presented. The examiner is not known to be a treating physician. Claimant reported suffering crying spells, withdrawn behavior, mood swings, anxiousness and OCD behavior. It was noted that Claimant had been seeing a psychiatrist off and on since the 1990s. It was noted that Claimant was able to take care of her needs. It was noted that Claimant had low self-esteem and had contact with reality. Claimant's mood was noted as depressed. The examiner concluded that Claimant was able to understand, follow and retain directions. It was noted that Claimant reported social anxieties. It was noted that Claimant was not able to competently manager her funds.

The examiner 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.

An Axis 1 diagnosis of bipolar I disorder, mixed type and obsessive compulsive disorder was given. An Axis II diagnosis was deferred. Axis III noted diabetes, back pain and reflux. Axis IV noted moderate social, employment and health problems. 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)."

Hospital records (Exhibits 19-51) were presented. A past medical history of esophagitis, anxiety, hypercholesterolemia, thyroid nodule and DM (presumably intended to mean diabetes mellitus) was noted. On [REDACTED], and impression plan (in order of importance) of hyperglycemia, ketosis and mild electrolyte abnormality was given.

A hospital physical examination report dated [REDACTED] was presented. Areas of examination included: constitution, head, eyes, ears-nose-throat, neck, cardio, abdominal, exterior, skin and neurology. All examined areas were described as "normal" or noted no abnormalities.

Progress notes (Exhibits 34-42) were presented. The notes ranged from 2009-2010. The notes were not significant other than remaining consistent with other submitted medical records.

A [REDACTED] physical examination report (Exhibit 49) was presented. The examiner gave an impression that Claimant suffered type II diabetes and bronchitis. The corresponding

plan included giving Claimant an Albuterol inhaler and a prescription for Levemir in increasing doses until Claimant's fasting blood sugar levels fell below 140.

An ER Clinical Nurse Report (Exhibit A1) dated [REDACTED] was presented. It was noted that Claimant complained of back pain rated at a 9 out of 10. It was noted that Claimant was discharged with prescriptions for Dilaudid and Valium.

A Psychiatric/Psychological Examination Report (Exhibits A2-A3) dated [REDACTED] was presented. It was noted that Claimant had major depression and had a GAF of 50. An identical diagnosis occurred on 4/26/11 (see Exhibits A4-A5).

An Adult Psychosocial Assessment Initial (Exhibits A6-A10) dated [REDACTED] was presented. The assessment was signed by Claimant's therapist, not a physician. It was noted that Claimant had panic attacks. Claimant denied suicidal ideation but stated that she had thoughts of not wanting to live. It was noted that Claimant reported mood changes and not wanting to leave the home but denied social anxiety. Claimant's symptoms were described as "severe" (see Exhibit A9). A guarded prognosis was given due to the severity of Claimant's symptoms and a history of abuse. Claimant was again diagnosed with major depression. The assessor also gave a secondary diagnosis of panic disorder. Claimant's GAF was 45.

An Intake Assessment dated [REDACTED] was presented. The assessment was from a different treating agency from the assessment dated [REDACTED] but was very consistent with the patient history and assessment noted in the [REDACTED] assessment.

Various progress notes from Claimant's psychological treating facility (Exhibits A62-A64) were presented. It was noted on [REDACTED] that Claimant was able to fight her suicidal ideation. It was noted on [REDACTED] that Claimant had hate and anger for her daughter and that she wanted acceptance from her family. It was noted on [REDACTED] Claimant began having auditory hallucinations.

Health clinic records (Exhibits A24, A31-A54) were presented. The records were from various 2011 dates. The records dated [REDACTED] concerned Claimant's request for diabetes medication refill. It was noted on the same date that Claimant had back pain. The records were not found to be notable other than establishing that Claimant had problems with diabetes and back pain.

Hospital records concerning blood tests (see Exhibits A25-A30; duplicated in Exhibits A56-A61) were presented. A blood test from [REDACTED] noted no abnormal levels (see Exhibit A25). A comprehensive Metabolic Panel dated [REDACTED] showed normal levels in all areas other than GFR which was described as moderately decreased (see Exhibit 26).

Claimant completed an Activities of Daily Living (Exhibits 15-18) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted suffering insomnia and bronchitis. Claimant noted she has racing thoughts which keep her up at night. Claimant noted she works around the house including doing dishes and her clothes. Claimant noted that she shops for food. Claimant noted that she has to go down all aisles when she shops, due to her mental disorders. Claimant noted that she usually drives when she needs to shop. Claimant noted that she doesn't do anything outside of her home and is too depressed to do activities inside of her home. Claimant noted that she isolates herself from others most of the time. Claimant noted that she has difficulties in attending appointments and is often late when she does go.

Claimant testified that she had arthritis and pain in her back, but did not specify any physical restrictions. Claimant stated that she sees a therapist weekly. Claimant stated that she sees a psychiatrist regularly for prescriptions. Claimant testified that she was currently taking the following prescriptions: Lamictal, Celexa, Xanax and Trazodone.

The analysis of step two will begin with a consideration of Claimant's abilities to perform physical basic work activities. The records established that Claimant has ongoing problems with back pain and diabetes. The records failed to establish any exertional restrictions stemming from either impairment. Based on the presented evidence, Claimant failed to establish any exertional limits to performing basic work activities.

A more compelling case was made for Claimant's ability to perform non-exertional basic work activities. Claimant was diagnosed with major depression by multiple providers. Claimant's depression symptoms (e.g. panic attacks, anhedonia, thoughts of suicide) were also documented. The four medications that Claimant was taking all pertain to depression and side effects such as anxiety. It was recently noted that Claimant had memory problems (see Exhibit A9). It is also concerning that Claimant's GAF decreased from 50 to 45 as of 4/2012; a decrease in GAF is indicative of regression rather than improvement. Though most of the above cited problems were noted by a therapist rather than a psychiatrist, the information tended to be consistent with other information, such as psychiatric progress notes and prescribed medications. The problems established by Claimant would tend to create problems for her in work activities such as social functioning and her ability to carry out instructions. Based on a de minimus standard, it is found that Claimant established impairments to performing basic work activities.

It was established that Claimant struggled with depression and its symptoms since at least approximately 2009 through the date of the administrative hearing. It is found that Claimant established that the impairments to performing basic work activities meet the durational requirements for a severe impairment.

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

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

The impairment for which Claimant most persuasively established was for depression. The listing for depression is covered by affective disorders and reads:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Looking at Part B of the above listing, there was generally a lack of medical support to find that Claimant met any of the circumstances justifying meeting the depression listing. Claimant's Activities of Daily Activities (see Exhibits 15-18) did not note any problems with cleaning, cooking, shopping, driving or other daily activities. It is found that Claimant is not markedly restricted in performing daily activities.

Claimant's AHR suggested that Claimant has social functioning difficulties which may justify meeting Listing 12.04 (B)(2). The medical records noted that Claimant tends to isolate herself at times. The records also repeatedly note that Claimant denied suffering any social anxiety. Claimant's Activities of Daily Living notes that Claimant shops and attends church. The evidence suggests that Claimant may isolate herself from certain family members but does not have social restrictions otherwise.

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There is a lack of evidence that Claimant suffered periods of extended decompensation. Claimant receives ongoing therapy treatments but has not been recently hospitalized due to depression.

There is a total lack of evidence to find that Claimant meets any of the circumstances in part C. Based on the presented evidence, it is found that Claimant failed to establish meeting the listing for affective disorders.

A listing for affective disorder (Listing 12.06) was considered based on documented complaints of anxiety. This listing was rejected for identical reasons for rejecting the affective disorder listing. It was also not established that Claimant had a complete inability to function outside of her home.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's complaints of back pain. The medical records were devoid of back pain causes. There was not a specific diagnosis for Claimant's back pain. This listing was rejected due to a lack of evidence and a failure to establish a spinal disorder resulting in a compromised nerve root.

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 stated that she worked as a data processor for a credit union from 1995-2001. Claimant stated that she worked as a customer service assistant from 2003-2010. Claimant stated that both jobs were full-time; thus, both jobs would likely qualify as past relevant work.

Claimant conceded that she is physically capable of performing both previous jobs. Thus, no analysis will be made of exertional restrictions.

Concerning a non-exertional analysis, the evidence was generally devoid of direct limitations in Claimant's abilities to perform employment, past or future. Claimant did not testify to obstacles in performing her specific past employment. Thus, the step four analysis will consider Claimant's general ability to perform employment.

Claimant implied that she had multiple personality diagnosis disorder by describing herself in parts. Claimant also stated that she has a "dark side". Claimant's statements were compelling in finding that she was unfit to perform any employment; the statements were also generally unsupported by medical documentation. There were no apparent references to multiple personalities by any of Claimant's treating physicians. Evidence of psychiatric hospitalizations would have been supportive in finding that Claimant's depression and/or anxieties were severe. No such recent hospitalizations exist.

The medical evidence established ongoing anxiety problems for Claimant. Claimant testified that she has anxiety attacks 2-3 times per day. Claimant stated that she cannot breathe during the episodes. Presumably, Claimant suffers attacks despite psychological and medical treatment. The attacks are somewhat supportive of finding that Claimant is not capable of performing employment.

Claimant's GAF is considered to be a borderline level of disability. As noted above, it is representative of "serious" impairments including the ability to maintain employment. GAF, by itself, it is not conclusive evidence of disability. A GAF is an assessment of a client's mental state at a single point in time. A GAF cannot predict future performance. Of concern in Claimant's case is that her GAF decreased over time despite medical and psychological treatment. Also of note is the guarded prognosis from her therapist. Another examining physician found that Claimant was not competent to manage her funds. Claimant's impairments would reasonably lead to affect Claimant in areas of: judgment, social interaction, adaptation and persistence.

Based on the presented evidence, more evidence supported finding that Claimant was not psychologically capable of performing any employment due to psychological impairments. This finding justifies a finding that Claimant is not capable of performing past relevant employment. Accordingly, the analysis moves 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(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).

There was evidence of exertional problems for Claimant but a lack of evidence that Claimant is work restricted from exertional impairments. For purposes of this decision, it is found that Claimant has no exertional work restrictions.

In step four, Claimant's non-exertional restrictions were found to be such that she was not capable of reasonably performing past relevant employment. The analysis was based on a determination that Claimant was not capable of performing any area of employment due to depression symptoms. Applying the finding from step four to step five, results in concluding that Claimant is not capable of performing any level of RFC. This finding dictates a finding that Claimant is a disabled individual. Accordingly, the DHS denial of Claimant's MA benefit application based on a finding that Claimant was not disabled is found to be improper.

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 benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated 1/13/11 including a request for retroactive MA benefits for 12/2010;
- (2) upon reinstatement, evaluate Claimant's eligibility for MA 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) if Claimant is found eligible for future MA benefits, to schedule a review of benefits in one year from the date of this administrative decision.

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The actions taken by DHS are REVERSED.



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

Date Signed: July 3, 2012

Date Mailed: July 3, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

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

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

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cc:

