

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

IN THE MATTER OF:



Reg. No.: 201236294
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: June 7, 2012
County: Monroe DHS

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on June 7, 2012 from Monroe, Michigan. Participants included the above named claimant; [REDACTED] as Claimant's authorized hearing representative. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist, and [REDACTED], Specialist.

ISSUE

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

FINDINGS OF FACT

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

1. On 3/14/11, Claimant applied for MA benefits including a request for retroactive MA benefits from 2/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 11/17/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 12/1/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 2/22/12, Claimant requested a hearing disputing the denial of MA benefits.
6. On 4/5/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 29-30), in part, by application of Medical-Vocational Rule 203.18.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'9" and weight of 170 pounds.
8. As of the date of the administrative hearing, Claimant was a one pack per day smoker with no known relevant history of alcohol or substance abuse
9. Claimant's highest education year completed was the 10th grade.
10. As of the date of the administrative hearing, Claimant received county issued health coverage which covered prescription and doctor visit costs.
11. Claimant alleged that he is disabled based on impairments and issues including: slipped disk in lower back, unstable angina, left knee arthritis, asthma, depression and anxiety.

CONCLUSIONS OF LAW

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

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

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

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

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

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

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

Substantial gainful activity means a person does the following:

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

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

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. Exhibits submitted at the hearing were prefaced with an "A" to distinguish them from previously submitted records.

A Social Summary (Exhibits 3-4) dated 2/5/11 was presented. Claimant's form was completed by a Medicaid Advocate. It was noted that Claimant alleged impairments of acute coronary syndrome, hypertension, back pain and arthritis. It was noted that Claimant had chest pain for several years.

Hospital records (Exhibits A56-A64) from 7/2010 were presented. It was noted that Claimant presented to the hospital following a fall at home. Claimant reported thoracic and lumbar spinal pain. Spinal tenderness was noted in a physical examination. Diagnoses of cervical strain and contusions to the lumbar and thoracic spine were given.

A Medical Social Questionnaire (Exhibits 5-6) dated [REDACTED] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant's only prior listed hospitalization was from 2/2011.

Hospital records (Exhibits A11-A16) from 2/2011 were presented. It was noted that a left heart catheterization was performed. Impressions of non-obstructive CAD, hypertension and tobacco abuse were noted.

Records (Exhibits A7-A8) from a medical appointment dated [REDACTED] were presented. It was noted that Claimant's ejection fraction was 50%.

Hospital records (Exhibits 7-24) from 7/2011 were presented. It was noted that Claimant was admitted to the hospital on [REDACTED] upon reports of chest pain. Claimant described the pain as left-sided and radiating around his left shoulder. It was noted that Claimant reported similar symptoms in 2/2011 and that a catheterization showed normal functioning arteries. A recent catheterization showed the same (see Exhibit 8).

A physical examination from the 7/2011 hospitalization was not notable. A stress echocardiogram showed normal left ventricle function. It was noted that Claimant's heart rate was 60% of the predicted heart rate and that he only achieved a level of 7 metabolic equivalent tasks.

Medical records (Exhibits A5-A6) from a medical appointment dated [REDACTED] were presented. Diagnoses of non-obstructive ASHD, atypical chest pain, hypertension, hyperlipidemia and tobacco abuse were noted. Claimant reported intermittent chest pain relieved by sublingual nitro.

A Medical Examination Report (Exhibits A1-A2) dated [REDACTED] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of hypertension, tobacco abuse, atypical chest pain, hyperlipidemia and ASHD (presumed to mean arteriosclerotic heart disease). An impression was given that Claimant's condition was improving. It was noted that Claimant can meet household needs.

The treating physician listed Claimant's heart with a Class II functional capacity (see Exhibit A3). The corresponding form was dated by the physician on [REDACTED]. Class II is defined as a heart requiring slight limitations in physical activities while ordinary physical activity results in fatigue, palpitation, dyspnea and anginal pain. A therapeutic classification of Class C was given. This is representative of patients whose physical activity should be moderately restricted and whose more strenuous efforts should be discontinued.

An Initial Bio-Psycho-Social Assessment (Exhibits A48-A55) dated [REDACTED] was presented. It was noted that Claimant reported feelings of sadness and anxiousness. A diagnosis of dysthymic disorder was given. A GAF of 55 was also noted. A GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

Records (Exhibits A17-A20) from a medical encounter from 11/2011 were presented. It was noted that Claimant complained of urinary tract infection.

Hospital records (Exhibits A65-A142) from a 12/2011 hospital encounter were given. Consultation medical records (Exhibits A32-A47) following the hospitalization were also presented. Diagnoses were given of: moderate LAD and severe disease of the vessels, with a low-normal ejection fraction (it was measured at 50% per Exhibit A32). Claimant's continued smoking was noted.

Medical records (Exhibits A23-A27) related to a consultation dated 12/2011 were presented. Impressions were given that Claimant had borderline low blood pressure, chronic hypertension and angina pectoris (class II). Claimant's cardiac condition was stable.

A Physical Capacities Assessment (Exhibit A143) dated [REDACTED] was provided. It was noted that Claimant could never lift 10 pounds or more but could sometimes sit, stand and walk. It was noted that Claimant should never bend, squat, grasp, push/pull, stair climb or reach over shoulder. It was noted that Claimant's conditions were permanent and that his condition was progressive.

Claimant completed an Activities of Daily Living (Exhibits 25-28) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted no difficulties sleeping at night. Claimant noted losing 9 pounds "since his illness". Claimant noted that he vacuums and washes

dishes daily. Claimant noted he prepares his own food. Claimant noted that he visits with friends and family for 2-4 hours at a time.

Claimant complained of anxiety and depression. Only one psychological assessment was presented as proof of Claimant's psychological impairments. The records failed to verify any notable restrictions to the potential impairment of basic work activities. Claimant has not been psychologically hospitalized nor is there proof of any ongoing treatment for psychological disorders. Claimant's GAF is slightly indicative of psychological problems but, by itself, fails to establish any impairment to the performance of basic work activities.

Claimant also alleged pain in his knees and back. The records were relatively absent of any evidence that Claimant is unable to perform basic work activities because of back or knee issues.

Claimant was diagnosed with LAD and ASHD; the diagnoses are persuasive evidence of coronary problems. The most significant evidence of physical restrictions related to the heart were provided by Claimant's treating heart doctor who noted that Claimant had slight limitations in physical activities due to his heart. Claimant's therapeutic classification noted modest restrictions to physical activity and discontinuing more strenuous activity. This evidence is sufficient to pass the de minimus standards of the step two disability analysis.

The heart restrictions were noted by the physician on [REDACTED]. Other evidence established Claimant's heart condition as ongoing and progressive (see Exhibit A143). This tends to establish that Claimant's restrictions have lasted, or will last, for a period of 12 months.

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

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

Claimant's most prominent impairment appears to be heart-related issues, specifically artery disease. Cardiovascular impairments are covered by Listing 4.00. The coronary artery disease and occlusions are best covered by Listing 4.04 which reads:

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

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

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

OR

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

OR

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

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

Looking at Part A, Claimant was able to perform a stress test and performed at a level of 7 METs. Looking at Part B, there was an absence of evidence that Claimant required three ischemic episodes requiring revascularization. Looking at Part C, there was no evidence that Claimant meets any of the criteria of C(1) or that Claimant is unable to

perform an exercise tolerance test. It is found that Claimant does not meet the listing for ischemic heart disease.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's back pain complaints. The medical records were devoid of back pain causes. For example, there were no records verifying x-rays or an MRI of Claimant's back. 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.

A listing for asthma (Listing 3.03) was considered. This listing was rejected due to a total absence of evidence concerning respiratory testing and a failure to verify asthma attacks requiring physician intervention.

A listing for affective disorder (Listing 12.04) was considered based on diagnoses of depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation. For comparable reasons a listing for anxiety-related disorders (12.06) was rejected.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee pain. The listing was rejected due to a failure to establish that Claimant has an inability to ambulate effectively.

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.

A list of Claimant's work history was presented (see Exhibit 6). Claimant's only previous relevant job was as a baggage handler. Claimant stated that his duties involved moving

bags and other items onto dollies. Claimant stated that his job required mostly standing and a lot of lifting and bending.

Claimant testified that he was employed in 2008 as a fast food cashier. Claimant described his job as mostly standing with traditional cashier duties such as taking orders and exchanging money.

Claimant stated that his back pain would prevent him from performing his past relevant employment. He stated that his previous jobs required extending periods of standing that he could not currently perform. There was little evidence of back problems for Claimant. It is known that Claimant's heart physician noted that Claimant's heart had slight limitations in 8/2011. Medical restrictions from 5/2012 noted that Claimant was restricted from performing several activities including: lifting 10 pounds or more, bending, squatting, grasping, pushing, pulling and stair climbing. The documents were sufficient to support Claimant's testimony that he would be unable to perform his past employment and the analysis may proceed to step five.

In the fifth step in the process, the individual's RFC in conjunction with his or her age, education, and work experience, are considered to determine whether the individual can engage in any other substantial gainful work which exists in the national economy. SSR 83-10. While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

To determine the physical demands (i.e. exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967. The definitions for each are listed below.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there

are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.*

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.*

Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(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).

Medical documents were presented concerning Claimant's functional capacity. As noted in the step two analysis, Claimant's heart caused "slight limitations" in physical activities. This restriction should rule out heavy and very heavy exertional levels of employment from Claimant's physical capabilities.

Claimant was given much more severe restrictions by a medical center. According to a physical capacity assessment, Claimant was restricted from all lifting, even up to a relatively light weight of 10 pounds. The restrictions seemed excessive. For example, there was no medical evidence to suggest that Claimant should be restricted from grasping, yet, it was noted that Claimant should never be expected to grasp with either his right or left side.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner*, 486 F. 3d 234 (6th Cir. 2007); *Bowen v Commissioner*. Despite the seemingly excessive restrictions by a medical center, some weight must be given to them. There was no evidence to refute any of the restrictions, but the grasping restriction was unsubstantiated by any medical evidence. Similarly, it shall be accepted that Claimant can lift up to 10 pounds. This finding can be justified based on the seemingly more reliable restriction formed by Claimant's heart doctor. Accepting that Claimant is capable of some walking, sitting and standing and lifting up to ten pounds, it is found that Claimant is capable of sedentary employment, but not light employment.

Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (less than high school), employment history (unskilled), Medical-Vocational Rule 201.09 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.

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 3/14/11 including a request for retroactive MA benefits from 2/2011;
- (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.

The actions taken by DHS are REVERSED.



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

Date Signed: July 30, 2012

Date Mailed: July 30, 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

CG/hw

cc:

