

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

IN THE MATTER OF:



Reg. No.: 201248547
Issue No.: 2009; 4031
Case No.: [REDACTED]
Hearing Date: August 2, 2012
County: Wayne DHS (49)

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 August 2, 2012 from Detroit, Michigan. Participants included the above named claimant. [REDACTED] of [REDACTED] appeared as Claimant's authorized hearing representative. [REDACTED] testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) 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 1/18/12, Claimant applied for SDA and MA benefits (including retroactive MA benefits for 10/2011-12/2011).
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 4/3/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).

4. On 4/5/12, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 4/23/12, Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On 6/15/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 55-56), in part, by application of Medical-Vocational Rule 202.13.
7. On 8/2/12, an administrative hearing.
8. Claimant presented additional medical records at the administrative hearing.
9. On 8/3/12, the newly presented medical records were forwarded to SHRT.
10. On 9/11/12, SHRT determined that Claimant was not a disabled individual (see Exhibits A63-A64), in part, by application of Medical-Vocational Rule 202.10.
11. As of the date of the administrative hearing, Claimant was a 53 year old male with a height of 5'9" and weight of 243 pounds.
12. Claimant has a history of tobacco usage and no known relevant history of alcohol or other controlled substance abuse.
13. Claimant's highest education year completed was the 9th grade.
14. As of the date of the administrative hearing, Claimant had no health insurance coverage and last had coverage approximately three years ago.
15. Claimant alleged that he is disabled based on impairments and issues including: sciatica pain, spinal arthritis, knee pain, headaches, chronic obstructive pulmonary disorder (COPD).

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 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

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 impairment amounts to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation.

A Social Summary (Exhibits 3-4) dated 3/20/12 was presented. The form was completed by Claimant's DHS specialist. It was noted that Claimant alleged impairments of: bipolar disorder, schizophrenia and COPD. It was noted that Claimant reported a stoppage in alcohol and drug abuse two years prior. It was noted that Claimant used a cane or walker when he attended the interview.

A Medical Social Questionnaire (Exhibits 5-8) dated 3/14/12 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 reported sciatic nerve pain, back disease and psychological problems. Claimant did not list any prior hospitalizations.

A Psychiatric/Psychological Examination Report (Exhibits 9-11) dated 1/31/12 from Claimant's treating doctor was presented. It was noted that Claimant was first evaluated on 6/2010 and last examined on [REDACTED]. It was noted that Claimant saw the physician every four weeks. It was noted that Claimant reported: having visual hallucinations, feeling sad, feeling irritable and mood swings. Claimant's insight was noted as limited and his judgment was considered fair. It was noted that Claimant took Cymbalta and Depakote and that his memory was adversely affected by the medications. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). An Axis I diagnosis of schizoaffective disorder; bipolar type was provided. Claimant's GAF was noted as 60. GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. It was noted that Claimant's GAF was 46 "last year".

A Mental Residual Functional Capacity Assessment (Exhibits 12-13) dated [REDACTED] completed by an unknown person identified as an LLMSW was presented. This form lists 20 different work-related activities among four areas: understanding and memory,

sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". Claimant was found markedly limited in 10 of the 20 listed abilities including 6 of the 8 abilities related to concentration. Claimant was found limited in abilities not related to concentration including: getting along with co-workers without distracting them or exhibiting behavioral extremes, maintaining socially appropriate behavior while adhering to basic standards of neatness and cleanliness, setting realistic goals or making plans independent of others and understanding and remembering detailed instructions.

Prescription documents (Exhibits 19-20) dated [REDACTED] were presented. It was noted that Claimant took prescriptions for Ibuprofen and Cyclobenzaprine.

An appointment form (Exhibit 21) dated [REDACTED] for a free diabetes education class was presented. The form referred to a hemoglobin A1C test which Claimant scored a 5.8. It was noted that a normal result was 5.6 or less for persons without diabetes.

Hospital documents (Exhibits A1-A17 and A55-A62) were presented. It was noted that Claimant was admitted on [REDACTED] and discharged on [REDACTED] 2. It was noted that Claimant presented to the hospital with a complaint of leg pain. It was noted that Claimant reported suffering a lifting injury two months prior. It was noted that Claimant reported leg weakness, numbness and tingling in the leg. A physical examination noted normal respiratory function. It was noted that Claimant was suicidal because of the pain. It was noted that a psych resident concluded that Claimant claimed to be unable to tolerate the pain and that he would be fine if his pain was controlled. It was noted that Claimant reported to the emergency room several times prior concerning the same problem.

Additional hospital documents (Exhibits A30-A39) related to the [REDACTED] admission were presented. It was noted that Claimant reported his leg pain as a shooting pain radiating down his leg. COPD and hypertension were noted as part of Claimant's medical history. A review of systems found Claimant to be negative for all listed symptoms other than musculoskeletal pain. An assessment of lumbar radiculopathy was noted. An Axis I diagnosis of mood disorder with a GAF of 55 was noted.

Hospital documents (Exhibits 27-54; duplicated by Exhibits A18-A28; A40- A54) were presented. It was noted that Claimant arrived and was discharged on [REDACTED]. It was noted that Claimant reported leg pain. It was noted that Claimant should follow pain management but has no insurance. It was noted that an MRI showed L5-S1 pathology. A physical examination showed tenderness in Claimant's upper leg/thigh. A primary diagnosis of sciatica was noted. It was noted that Claimant was referred to clinics and advised that the emergency room is not the place for chronic pain problems such as sciatica.

Claimant completed an Activities of Daily Living (Exhibits 14-18) dated 3/14/12; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. It was noted that Claimant's social worker hand-wrote the form, presumably based on discussions with Claimant. It was noted that Claimant had trouble sleeping due to pain. It was noted that Claimant makes his own bed every day and dusts as needed. It was noted that Claimant shops with his girlfriend. Claimant noted that he is forgetful. Claimant noted that he visits with friends and family every two weeks. Claimant noted that his girlfriend and sister keep his appointments for him. Claimant testified that he is able to bathe and dress himself. Claimant stated he has no issues with completing laundry.

Claimant testified that he is limited to walking for one block periods. Claimant estimated he is limited to standing for five minutes due to leg pain. Claimant stated he has no restrictions to sitting. Claimant stated that his hand cramps when he writes. Claimant thought he had lifting restrictions but couldn't specify a weight lifting limit. Claimant stated that his back limited him in bending and squatting. Claimant stated that he does not use a walking aid.

The presented medical documents concerning exertional work restrictions were limited to Claimant's sciatica pain. References were made to hypertension and COPD, but there was no evidence to justify finding any restrictions based on the reported history.

It was established that Claimant presented to the hospital on two occasions in 2/2012 concerning leg pain. It was noted that Claimant previously reported to the ER for a sciatica problem on an unspecified number of past occasions. The documents established that Claimant has sciatica issues which cause Claimant pain. The medical documents never specified any work restrictions. Claimant testified that he is restricted in walking and standing. The diagnosis, treatment for pain and verification of hospital trips were sufficient to establish a presumption that Claimant would be limited in walking and standing due to sciatica pain, though not necessarily to the extent mentioned by Claimant. Based on a de minimus standard, it is found that Claimant established having a significant exertional impairment to the performance of basic work activities.

Psychological treatment documents were also presented. Claimant's treating provider opined that Claimant has marked restrictions to performing several abilities related to work. The specific marked restrictions found by Claimant's treating physician seemed to be inconsistent with a GAF of 60. As noted above, a GAF of 60 is representative of moderate functioning difficulties. Based on GAF ranges, a GAF of 60 implies moderate functioning problems bordering on mild (mild symptoms are representative of a GAF from 61-70). A finding of marked restrictions in 9 of 20 work abilities is strongly suggestive of a much lower GAF than 60.

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*. Claimant's GAF is somewhat inconsistent with marked restrictions to performing work abilities. Other medical documents fail to

note any particular basis for the marked restrictions as little reference is made to social, concentration and adaptation difficulties. For purposes of step two and in deference to a de minimus standard, there was sufficient evidence to establish psychological impairments to performing basic work activities. However, the deference is not necessarily applicable in other steps of the disability analysis.

Claimant's physical restrictions were only established to have begun in 12/2011, two months prior to Claimant's hospital visits. Claimant's psychological problems appear to have been ongoing problems since 2010, when Claimant's treating doctor first examined patient. The presented evidence was sufficient to establish that Claimant's impairments have and/or will continue 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 related to schizophrenic-related disorders. The listing for schizophrenic disorders is covered by Listing 12.03 and reads:

12.03 Schizophrenic, paranoid and other psychotic disorders:

Characterized by the onset of psychotic features with deterioration from a previous level of functioning.

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 or more of the following:

1. Delusions or hallucinations; or
2. Catatonic or other grossly disorganized behavior; or
3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
 - a. Blunt affect; or
 - b. Flat affect; or
 - c. Inappropriate affect; OR
4. Emotional withdrawal and/or isolation;

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 schizophrenic, paranoid, or other psychotic 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.

The best evidence of Claimant's abilities was the MRFCA. The MRFCA was completed by an LLMSW, presumably by someone serving in a therapist capacity for Claimant. Because the completer of the form is not a physician, the work restrictions do not receive significant weight. Licensed social workers are specifically identified by SSR 06-03p as "not acceptable" medical sources. SSR 06-03p goes on to state that "only acceptable medical sources can give medical opinions." The restrictions listed on the MRFCA can be considered as non-medical opinions, however, the restrictions are not subject to the treating source rule cited in step two and require no particular deference. The particular case presents an additional obstacle because the length of the relationship between Claimant and the presumed therapist is not clear. Thus, it cannot be stated with any certainty how familiar that the form completer was with Claimant's circumstances.

Looking first at Part B, there was sufficient evidence that Claimant was markedly limited in abilities related to persistence and concentration. Claimant was found markedly limited in 6 of 8 abilities including: working in coordination with or proximity to other without distraction, performing activities within a schedule while maintaining regular attendance and punctuality, sustaining an ordinary routine without supervision, carrying out detailed instructions and maintaining attention and concentration for extended periods. Most notably, Claimant was markedly limited in the ability to maintain a normal workday without interruption from psychologically based symptoms. The restrictions were consistent with other evidence such as a diagnosis of schizoaffective disorder and prescribed medications.

The MRFCA was also suggesting of marked social interaction restrictions. Claimant was deemed to be markedly limited in getting along with peers without distraction and the ability to maintain socially appropriate behavior while adhering to standards of

cleanliness and neatness. Claimant was found moderately limited in the abilities of interacting with the public and accepting instructions while responding appropriately to criticism. Claimant's witness testified that Claimant acts paranoid and will cuss out people at times. The witness also noted that Claimant has a poor memory. The testimony was credible, but no such incidents were noted in Claimant's treatment history. There was no other evidence of a notable anger or communication problem which would be suggestive of marked social interaction restrictions.

As noted in step two, the restrictions identified by the MRFCA seemed inconsistent with a GAF of 60. More consideration will be given to Claimant's GAF than the specific restrictions identified on the MRFCA because the GAF was supplied by a physician. The GAF of 60 is suggestive that Claimant is not markedly limited in any work-related ability areas and certainly not more than any one single area.

The evidence was greatly lacking in establishing that Claimant had repeated episodes of extended duration (i.e. psychological hospitalizations) or marked restrictions in performing daily activities. Claimant failed to meet Part B of the above listing.

Looking at Part C, there was no evidence suggesting that Claimant requires a particularly supportive living arrangement or that an increase in mental demands would result in psychological regression. Based on the presented evidence, it is found that Claimant failed to establish meeting the listing for affective disorders.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's back pain and sciatica complaints. All that could be established is that Claimant has a problem at L5-S1. There was no evidence of nerve root compression, stenosis or arachnoiditis. 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 joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of leg pain. This listing was rejected due to a lack of medical evidence verifying that Claimant is unable 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 R 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 R 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 testified that he had three different full-time jobs in the past 15 years. Claimant testified that he delivered hand-bills door-to-door approximately five years ago; Claimant testified that the job required constant walking which he can no longer perform. Claimant also stated that he had a job where he would assemble U-Haul trucks. Claimant stated he also held a 3 month job where he made car starters. Claimant stated that he could not do the U-Haul truck or car starter assembly jobs due to the heavy lifting restrictions required by each job. The medical evidence tended to establish that Claimant could not perform heavy lifting or continuous walking. It is found that Claimant is 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).

Looking first at Claimant's psychological restrictions, the medical evidence suggested that Claimant would have some obstacles. Claimant's GAF is suggestive of moderate obstacles but is also at the high end of functioning for persons with such obstacles. The MRFC completed by Claimant's presumed therapist strongly suggested concentration and social restrictions but the medical evidence failed to establish restrictions to the extent noted on the MRFC. The medical evidence is suggestive of psychological obstacles, but nothing that would prevent the performance of most types of SGA.

Claimant's physical abilities must also be considered. For purposes of this decision, only a consideration of light work will be considered. Neither Claimant nor the medical evidence suggested that Claimant was incapable of lifting 20 pounds occasionally or ten pounds frequently. Claimant stated that his hands cramp, but there was no evidence suggesting that Claimant could not perform the hand maneuvers required for light work.

The analysis of Claimant's ability to perform light work will rest on Claimant's walking and standing abilities.

Claimant stated that leg pain prevented more than one block of walking and five minutes of standing. The medical records noted that Claimant has been to the hospital multiple times due to leg pain. It was noted that Claimant's wife reported that Claimant cries and limps due to the pain. The lack of radiology to diagnose the pain is problematic for Claimant in establishing walking or standing restrictions. However, even in the absence of a specific diagnosis, Claimant's leg pain was established. The inability by the emergency room to treat Claimant tends to establish that Claimant's pain is constant and untreatable under Claimant's current circumstances.

The overall evidence was not necessarily verified proof of Claimant's stated restrictions, however, the overall evidence tended to verify that Claimant could not realistically perform the walking or standing required for light work due to pain and/or walking restrictions. It is found that Claimant is limited to performing sedentary 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 1/18/12 including Claimant's request for retroactive MA benefits from 10/2011-12/2011;
- (2) 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) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

The actions taken by DHS are REVERSED.


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

Date Signed: 10/2/2012

Date Mailed: 10/2/2012

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

CG/hw

cc:



C. Gardocki
MAHS