

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201250547
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: July 2, 2012
County: Macomb DHS (12)

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, a telephone hearing was held on July 2, 2012 from Detroit, Michigan. Participants included the above named 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) 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 2/28/12, Claimant applied for MA benefits including retroactive MA benefits from 11/2011-1/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 4/13/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 35-34).
4. On 4/20/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.
5. On 5/1/12, Claimant requested a hearing disputing the denial of MA benefits.

6. On 6/7/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual, in part, based on application of Medical-Vocational Rule 203.29 (see Exhibits 36 and 36a).
7. On 7/2/12, an administrative hearing was held.
8. Claimant presented new medical documentation (Exhibits 37-72) at the administrative hearing.
9. The newly presented documents were forwarded to SHRT.
10. On 8/17/12, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.
11. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'0" and weight of 138 pounds.
12. As of the date of the administrative hearing, Claimant had no known relevant history of tobacco, alcohol or other substance abuse.
13. Claimant's highest education year completed was the 12th grade.
14. Claimant obtained certification as a medical assistant.
15. As of the date of the administrative hearing, Claimant had no ongoing health coverage and last received coverage in 5/2011 through a former employer.
16. Claimant alleged that impairments including: depression, post-traumatic stress disorder (PTSD), seizures and headaches.

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. It should be noted that exhibits presented at the hearing are numbered high-to-low going from top-to-bottom while exhibits presented at the hearing are numbered beginning with Exhibit 37 in low-high fashion.

A Social Summary (Exhibits 33-32) dated [REDACTED] was presented. The summary was completed by an unknown "rep". It was noted that Claimant alleged impairments of seizures and a nerve disorder. Interview notes with the Claimant were documented but are not considered reliable due to their hearsay nature.

A Medical Social Questionnaire (Exhibits 31-30) dated [REDACTED] was presented. The form was completed by the same rep that completed the Social Summary. The only hospitalization noted was from 2/2012 due to recurring seizures.

A Medical Request Form (Exhibit 37) dated [REDACTED] was presented. A primary diagnosis of cervical myeloradiculopathy was provided. Claimant's treating physician noted that Claimant was restricted from: lifting heavier than 15 pounds, bending and crawling. It was noted that Claimant could return to work in 3 months without restrictions.

Hospital documents (Exhibits 21-1) from an admission from [REDACTED] were presented. It was noted that Claimant was discharged on [REDACTED]. It was noted that Claimant's chief complaint was continuous seizures. It was noted that Claimant began "recently" getting seizures which are getting worse. The seizures were described as leaving Claimant gasping for breath. It was noted that Claimant was without Keppra due to a lack of insurance but that she restarted the medication the month prior to hospital admission. It was noted that Claimant's history was a little suspect because it changed often. An EEG was performed but was noted as suboptimal due to an excessive amount of artifact. The readable portion of the EEG was unremarkable. It was noted that Claimant also complained of headaches, neck pains and upper left extremity pain. It was noted that Claimant suffered a closed-head injury 16 months earlier which included a C5-C6 prolapse and rupture. A neurological and physical examination were performed but with unremarkable findings.

A Physical Ability Assessment (Exhibits 42-43) dated [REDACTED] was presented. It was noted that Claimant could perform frequent sitting of 2.5-5.5 hours, occasional standing and walking of 2.5 hours, constant reaching unless overhead and occasional grasping and fine manipulation. Claimant was restricted to occasional lifting and carrying of 10 pounds but no more.

A Bio-Psycho-Social Assessment (Exhibits 47-65) dated [REDACTED] was presented. It was noted that Claimant was referred to the agency performing the assessment based on complaints of anxiousness. It was noted that Claimant experienced: guilt, hopelessness, anxiousness, grief, panic attacks, anger and impulsiveness. It was noted that Claimant attempted suicide on two occasions in the 1980s. The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV). Axis I diagnoses of depression, anxiety and PTSD were given. A GAF of 56 was 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.

Various progress notes (Exhibits 66-72) from Claimant's psychological treating agency were presented. On [REDACTED] it was noted that Claimant did not have access to medication due to a lack of insurance (Exhibit 66). On [REDACTED] it was noted that Claimant was stressed from health related problems with her spouse and had difficulty concentrating due to a migraine headache (see Exhibit 69). On [REDACTED] it was noted that Claimant was upset due to a poor prognosis given to her spouse (see Exhibit 71).

Claimant completed an Activities of Daily Living (Exhibits 28-25) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted trouble sleeping due to seizures, leg jerking, choking and respiratory problems. Claimant noted that she fixes her own meals but her husband often helps her. Claimant noted that she performs various household duties including: laundry, cleaning the bathroom, making the bed and washing dishes; Claimant noted that she breaks up her cleaning duties to minimize the physical pain involved with the duties. Claimant noted that she shops but that her sister will often go for her. It was noted that Claimant does not drive due to her seizures. It was noted that Claimant watches television, plays game on the internet and reads. It was noted that Claimant visits with friends and family. Claimant testified that she bathes and grooms herself.

Claimant testified that she has a 1-2 block walking limit before her legs begin to give-out and/or cramp. Claimant stated that she is restricted in sitting due to back pain. Claimant stated that she has a weak hand grip, presumably related to her cervical problems. Claimant noted periodic headaches related to her cervical problems. Claimant stated the headaches sometimes last two days. Claimant estimated that 20 out of 30 days in a month she would consider "bad days"- days when her physical problems are increased.

The evidence established that Claimant suffered a closed head injury and serious damage to her neck approximately two years ago. Hospital documents from 2/2012 established ongoing problems with seizures and neck pain despite a fair passage of

time since the closed head injury. Claimant testified that she has walking and standing restrictions stemming from the cervical injuries; Claimant's testimony is supported by the medical documentation, at least to the point of presuming some restrictions. Based on the presented evidence, it is found that Claimant established significant impairments to performing basic work activities.

The evidence established that Claimant has had significant health problems at least since 2/2012. Based on the presented evidence, it would be reasonable to presume that Claimant had the same impairments for some period prior to 2/2012 and that she will continue to have such problems for a period of 12 months or longer. It is found that Claimant met 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.

Claimant's most prominent impairment appears to be her neck problems. Musculoskeletal issues are covered by Listing 1.00. Back problems are covered by SSA Listing 1.04 which reads:

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

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

OR

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

OR

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

Though Claimant's pain was well documented, the basis of the pain was less clear. It is known that Claimant was injured in 11/2011 resulting in surgery to affect her C6-C7 function. No radiograph evidence was presented to verify nerve root compression, arachnoiditis or stenosis. Due to a lack of evidence, Claimant does not meet the listing for spinal disorders.

A listing for affective disorder (Listing 12.04) was considered based on Claimant's treating therapist's diagnosis of depression. This listing was rejected due to a failure to establish marked restrictions in either social functioning, completion of daily activities or concentration. There was some evidence of concentration problems but not enough to establish marked difficulties with 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. A listing for anxiety disorders (Listing 12.06) was rejected for similar reasoning.

SSA listings for epilepsy (Listings 11.02 and 11.03) were considered based on Claimant's complaints of seizures. The listings were rejected due to a failure to verify a seizure pattern and that the seizures occurred despite prescribed treatment for a three month period.

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 testified that she was previously employed full-time as a medical assistant. Claimant stated that she was unable to perform the walking necessary for the employment. It was verified that Claimant was restricted to occasional standing and walking of 2.5 hours. The verified restrictions, along with Claimant's testimony, are sufficient to find that Claimant could not return to her work as a medical assistant.

Claimant also testified that she previously worked as a pet store manager; Claimant stated that she would be unable to deal with the stress of a management position. It was verified that Claimant was depressed and felt stressed. Claimant's GAF of 56 was consistent of a person that had functioning difficulties. Though the evidence was vague concerning whether Claimant could perform her previous management employment, there was a sufficient amount to support a finding that Claimant could not return to her previous work.

Based on the presented evidence, it is found that Claimant is unable to return to her past relevant employment. Accordingly, 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).

For purposes of this decision, only a consideration of sedentary employment will be made. Sedentary employment requires an analysis of Claimant's sitting, walking and lifting abilities.

Claimant testified that she is limited to 1-2 block of walking due to leg cramps and weakness. Despite Claimant's stated leg weakness, Claimant does not use any walking aids such as a cane or walker. It was verified in 2/2012 that Claimant was restricted to 2.5 hours of walking and standing though it was also noted that Claimant had normal range of motions, normal strength, no tenderness, no swelling and no deformity. Based on the presented evidence, it is found that Claimant has walking and standing restrictions but not enough to justify a finding that Claimant cannot perform the standing and walking necessary for sedentary employment.

It was also established in 2/2012 that Claimant was restricted to lifting no more than 10 pounds. The restriction would make Claimant capable of performing sedentary employment, but only just.

Claimant alleged that she cannot sit for extended periods of time. As noted above, Claimant was cleared to perform frequent sitting of 2.5-5.5 hours, presumably per 8 hour work-shift. The hours of walking and standing when combined with a 2.5 hour restriction in standing and walking would make sedentary employment performable. It is found that Claimant is capable of performing the sitting required for sedentary employment.

Claimant testified that she has a weak hand grip. Claimant's testimony implied she might have difficulties with the grasping or fine movements that may be required for sedentary employment. A physical examination dated [REDACTED] noted that Claimant had a 5/5 handgrip. No other evidence directly pointed to a finding that Claimant was unable to perform the hand movements required of sedentary employment.

Claimant's seizures were well documented. Claimant's seizures resulted in one hospitalization at a time when Claimant was not taking seizure medication. Claimant's psychological treatment record implied that Claimant had more access to the seizure medication following the hospitalization. Claimant testified that she currently takes Neurontin. The single hospitalization at a time when Claimant was not taking seizure medication is insufficient to justify a finding that Claimant is unable to perform employment due to seizures though it does not rule out that Claimant still has ongoing problems with seizures.

Claimant's neck pain was alleged as a basis to prevent Claimant from performing past employment. Claimant testified that she took a prescription for Vicodin which is supportive of a finding that Claimant has a need for pain medication. The evidence was insufficient to establish that the neck pain, by itself, is so severe that Claimant would be prevented from performing sedentary employment.

The documentation concerning Claimant's psychology tended to support that Claimant has psychological obstacles. Claimant's GAF of 56 is supportive of moderate psychological obstacles. Hardships such as her spouse's poor health were noted in psychological treatment records. Moderate psychological obstacles, though problematic, are generally not enough to establish a basis for disability. It was found above that Claimant could not perform her previous management position because of her psychological difficulties, though this would not preclude employment involving less responsibility.

The totality of findings are: Claimant can perform the walking necessary for sedentary employment but with some difficulties, Claimant can perform the lifting necessary for sedentary employment but just barely, Claimant has psychological issues and pain management issues. Though Claimant can theoretically perform the physical requirements for sedentary employment, she would do so with little margin for further restrictions. When also considering Claimant's seizures, pain management and psychological issues with her physical restrictions, it would seem that the margin for performing sedentary employment pushes a more realistic expectation of less than

sedentary employment. Based on the totality of the evidence, it is found that Claimant is not capable of performing sedentary employment.


It is theoretically possible that less than sedentary employment which accommodates Claimant's issues exists somewhere in the economy. Without vocational evidence verifying the existence of such employment, it must be found that Claimant is not capable of substantial gainful activity and that Claimant is a disabled individual. Accordingly, it is found that DHS properly 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 2/28/12 including Claimant's request for retroactive MA benefits from 11/2011-1/2012;
- (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: September 5, 2012

Date Mailed: September 5, 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:

