

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

IN THE MATTER OF:



Reg. No.: 201258973
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: November 14, 2012
County: Wayne DHS (18)

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 November 14, 2012 from Taylor, Michigan. Participants included the above-named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

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 4/3/12, Claimant applied for MA benefits including retroactive MA benefits back to 1/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 6/1/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 4-5).
4. On 6/7/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 6/14/12, Claimant requested a hearing disputing the denial of MA benefits (see Exhibit 3).
6. On 7/27/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 48), by determining that Claimant was capable of performing past relevant work.
7. On 11/14/12, an administrative hearing was held.
8. Following the hearing, Claimant presented new medical documents (Exhibits A1-A133), which were forwarded to SHRT along with previously presented documents.
9. On 1/18/13, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits A143-A144), in part, by determining that Claimant was capable of performing past relevant work.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'7" and weight of 152 pounds.
11. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
12. Claimant's highest education year completed was the 12th grade.
13. As of the date of the administrative hearing, Claimant had no ongoing medical insurance coverage, but received some free prescriptions through a hospital program.
14. Claimant alleged that he is disabled based on impairments and issues including: chest pain, mini-strokes, migraine headaches, eye infections, hip pain, leg pain, back pain and hand restrictions.

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 income limit is \$1010/month.

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 relevant submitted medical documentation.

Claimant testified that he has constant chest pain and has many bad days. Claimant stated that he believes that cardiac surgery would help him but that he is not a candidate because he has narrow arteries.

A Medical- Social Questionnaire (Exhibits 15-17) dated [REDACTED] and completed by Claimant was presented. Claimant noted that he had a heart attack and stroke. Claimant noted the following recent hospitalizations: one in 2/2012, two in 1/2012 and one from 10/2011 due to a stroke.

Various heart test documents (Exhibits A2-14) from 2011 and 2012 were provided. The tests were not significant to a non-physician but are noted as having been performed.

Medical documents (Exhibits A15-A37 A95-A120) from Claimant's treating cardiologists were presented. The documents were from various dates in 2011. It was noted that Claimant presented to a hospital with acute myocardial infarction in 12/2010 which was complicated by apical thrombus; it was noted that the apical thrombus was resolved within a year with Coumadin therapy. It was noted that claimant had small vessels with diffuse disease. It was noted that Claimant had 80% stenosis in the circumflex.

Medical documents (Exhibits 24-28) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. Claimant's hyperlipidemia was noted as controlled. It was noted a neurological exam was normal. It was noted that Claimant reported chest pain in spite of multiple stents.

Hospital documents (Exhibits 30-36; A92-A94) were presented. The documents verified a hospital admission from [REDACTED]. A diagnosis of pneumonia was provided. Claimant was given a prescription for [REDACTED] and was discharged in stable condition.

Hospital documents (Exhibits 37-40) were presented. The documents noted an emergency room visit on [REDACTED]. A diagnosis of chest pain with uncertain cause was provided.

Medical documents (Exhibits 19-23; A38-A41) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. It was noted that Claimant reported feeling weak, chest pain and falling down. Claimant's left ventricle ejection fraction was noted at 50% as of 3/2011. It was noted that Claimant would benefit from psychiatric help because of significant anxiety. It was noted that Claimant reported chest pain but there was no evidence of myocardial infarction or ischemia. It was noted that Claimant had a myriad of neurological symptoms with a normal exam.

Hospital documents (Exhibits 18 and 41-47) were presented. The documents noted a hospital admission dated [REDACTED] and following day discharge. A discharge diagnosis of chest pain (NOS) was provided. Claimant was given a prescription for promethazine and documents about angina upon discharge.

Medical documents (Exhibits A42-A46; A88-A91) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. It was noted that Claimant continued reporting chest pain. It was opined that the pain was related to small vessel disease. Claimant's hyperlipidemia was noted as controlled.

A Holter Report (Exhibit 29) dated [REDACTED] was presented. The report contained medical information but no accompanying analysis.

Medical documents (Exhibits A47-A51) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. It was noted that Claimant had no documented ischemia.

A Medical Examination Report (Exhibits 13-14) 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 unstable angina, hyperlipidemia and arteriosclerotic heart disease (ASHD) with multiple stents. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

Medical documents (Exhibits A52-A55) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. It was noted that Claimant's chest pains continue to diminish.

Medical documents (Exhibits A79-A87) dated 4/2012 were presented. It was noted that Claimant complained of recurrent chest pain. It was noted that an EKG revealed no ischemia. It was noted that Claimant did not have deep vein thrombosis.

Medical documents (Exhibits A56-A59) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. It was noted that Claimant needed to be weaned off of pain medication. Claimant was diagnosed with ASHD with persistent chest pain "probably due to a cardiac neurosis". Coumadin was noted as a lifelong requirement for Claimant.

Medical documents (Exhibits A60-A64) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. A left ventricle ejection fraction of 55% was noted from an echocardiogram dated [REDACTED]. It was noted that Claimant stopped taking narcotics and has not been to the emergency room for two months.

Medical documents (Exhibits A65-A68) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. Claimant's hypertension was noted as controlled. A recent hospital trip due to a periorbital abscess was noted; it was noted that the abscess was drained.

A chest x-ray report (Exhibits A123-A124) dated [REDACTED] was presented. An impression of no active chest diseases was provided.

Hospital notes (Exhibits A75-A77) dated [REDACTED] were presented. It was noted that Claimant's recurrent pain symptoms were very challenging to address. It was noted that the symptoms complex overlapped with anxiety.

An MRI Report (Exhibits A73-A74) of Claimant's cervical spine was presented. The report was dated [REDACTED]. It was noted that C3-C4 demonstrated bulges with spondylosis. Canal narrowing was also shown at C4-C5.

Chest x-rays (see Exhibit A125) were taken on [REDACTED] based on Claimant's report of shortness of breath. The x-rays were negative. Claimant's vitals were also noted as stable (see Exhibit A133).

Medical documents (Exhibits A69-A72) from Claimant's treating cardiologists were presented. The documents were dated [REDACTED]. A left ventricle ejection fraction of 50% from [REDACTED] was noted. It was noted that Claimant's chest pain could not be treated. It was noted that Claimant had normal stress testing. It was noted that there was a belief that Claimant's chest pain is related to accidental prescription drug addictions based on Claimant's numerous emergency room trips.

A letter (Exhibit A1) from Claimant's treating physician dated [REDACTED] was presented. The physician noted that Claimant was treated for coronary artery disease. The physician opined that Claimant had frequent angina and was unable to work in any capacity forever because any physical activity would exacerbate the angina.

Claimant completed an Activities of Daily Living (Exhibits 8-12) dated [REDACTED]. Claimant noted difficulty sleeping because of angina. Claimant noted that he cleans and does his laundry but that it exhausts him. Claimant noted that he does his own shopping. Claimant testified that he uses a cane to help his ambulation.

No records concerning treatment of Claimant's hand abilities were presented. A visual inspection of Claimant's hand confirmed that Claimant's fingers were gnarled. A reference to a right hand fracture is noted in Claimant's trauma history (see Exhibit

A67). Claimant testified that he had a childhood accident which permanently damaged his hand.

The medical records established that Claimant has serious heart related problems. The records verified numerous hospitalizations and treatments from 2011 and 2012. As of [REDACTED], Claimant was taking 15 different medications though Claimant testified that two have since been discontinued. It was established that Claimant will have to take Coumadin for as long as he lives. Claimant's heart problems were serious enough to presume significant exertional restrictions to Claimant's abilities to lift, walk and handle stress. All of these abilities are work-related.

Claimant's restrictions have been ongoing since at least 12/2010, when Claimant was hospitalized following a heart attack. Claimant established the durational requirements of 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 angina. Angina is most closely related to 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.

On [REDACTED], it was documented that Claimant performed a stress test with normal results. Normal stress test results essentially eliminates Parts A and C from consideration. Claimant does not meet Part B of the above listing because he has not undergone three revascularizations within a 12 month period. Claimant does meet the listing for ischemic heart disease.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. There was an MRI which verified that Claimant suffers spondylosis and canal narrowing of his spine. However, there is little other evidence to support that Claimant meets the listing. Neither the degree of canal narrowing nor the spondylosis were described in degrees; thus, it cannot be stated to what extent that Claimant is impacted. Claimant is able to perform all of his daily activities; this tends to support that Claimant has mild back problems. Claimant testified that he uses a cane but no medical evidence supports the need for a cane. Even if Claimant requires use of a cane, this does not lead to a finding that Claimant is unable to effectively ambulate, a requirement to meet the spinal disorder listing. Based on the presented evidence, Claimant failed to establish meeting the listing for spinal disorders.

A listing for anxiety-related disorders (Listing 12.06) was considered based on physician speculation that Claimant's chest pain was caused by anxiety. 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 suffered repeated episodes of decompensation or that Claimant is unable to function outside of his home.

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 provided some testimony concerning his past employment. Claimant also provided documentation (Exhibits A134-143) of his past employment.

Claimant testified that he worked for over twenty years with parts. Claimant stated that his duties involved paperwork and light lifting. Claimant stated that his boss had to help Claimant with lifting parts due to Claimant's hand restrictions.

Following Claimant's "parts" employment, Claimant worked at a desk job performing accounting work. Claimant noted that he performed the job 40 days per week; it is presumed that Claimant intended to write that he worked 40 hours/week. Claimant's job description of his duties tended to support that the job was very sedentary in nature.

Claimant also worked full-time as a parts manager in the last 15 years. This job involved some light lifting duties.

Claimant testified that he performs occasional self-employment repairing computers. Claimant testified that the work is irregular and that he only makes approximately \$20 per repair. The work will not be considered in the step four analysis because Claimant's pay is far below the gross income level which presumes substantial gainful activity.

In determining whether Claimant can perform his past relevant employment, Claimant's accounting job appears to be the least physically strenuous. Though Claimant has some restrictions due to his heart, there is little reason to believe that Claimant cannot perform

the sedentary job duties required of his accounting job. However, it is concerning that Claimant has ongoing chest pain which is essentially untreatable. Claimant's treating heart doctor opined that the chest pain may be related to prescription addiction and/or stress. In either case, the pain is real and very distracting for Claimant. It is expected that people will have to deal with a certain degree of discomfort when working. However, accounting-type work would seem to be employment that requires a large degree of concentration. Based on the presented evidence, Claimant is not capable of performing his past employment involving accounting.

Claimant also has a history of light employment involving parts. Claimant's job duties were not well described but were found to involve "light" duties by a vocational examiner. Due to Claimant's chronic angina/chest pain, it is reasonable to conclude that even light duties would be dangerous for Claimant to perform. The conclusion was also provided by a treating physician (see Exhibit A1). It is found that Claimant is not capable of performing his past relevant 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).

At step four, it was determined that Claimant could perform sedentary employment (but not accounting or other jobs requiring a high level of concentration). It was also determined that light work would likely be dangerous for Claimant to perform.

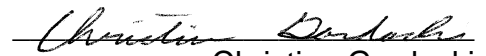
Based on Claimant's exertional work level (sedentary), age (advanced age), education (high school; does not provide entry into skilled work), employment history (semi-skilled but not transferrable), Medical-Vocational Rule 201.06 is found to apply. This rule dictates a finding that Claimant is disabled. 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 4/3/12 including retroactive MA benefits back to 1/2012;
- (2) evaluate Claimant's eligibility for MA benefits on the basis that Claimant is a disabled individual;
- (3) 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: February 6, 2013

Date Mailed: February 6, 2013

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:

