

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

**IN THE MATTER OF:**



Reg. No. 20126730  
Issue No. 2009, 4031  
Case No. [REDACTED]  
Hearing Date: January 30, 2012  
Oakland County DHS (03)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on January 30, 2012 from Detroit, Michigan. The claimant appeared and testified; [REDACTED] appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

**ISSUE**

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

**FINDINGS OF FACT**

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

1. On 7/18/11, Claimant applied for MA benefits including a request for retroactive MA benefits for 4/2011-6/2011.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 9/30/11, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 10-11).
4. On 10/6/11, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 10/19/11, Claimant requested a hearing to dispute the denial of MA benefits.
6. On 12/10/11, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 39-40), in part, by application of Medical-Vocational Rule 202.20.
7. On 1/30/12, an administrative hearing was held to determine whether DHS properly denied Claimant's application for MA benefits.
8. Claimant presented additional medical documentation following the administrative hearing, which was sent to SHRT for reconsideration of a disability decision.
9. On 4/6/12, SHRT determined that Claimant was not a disabled individual (see Exhibits 97-98), in part, by application of Medical-Vocational Rule 202.17.
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 145 pounds.
11. Claimant has no known relevant history of tobacco, alcohol or drug abuse.
12. Claimant's highest education year completed was the 12<sup>th</sup> grade via obtainment of a general equivalency degree.
13. As of the date of the administrative hearing, Claimant had no health insurance coverage, and has not had medical coverage since he was 18 years old.
14. Claimant alleged being disabled based on impairments and issues including: bipolar disorder, torn rotator cuff and Complex Regional pain Syndrome (CRPS).

### **CONCLUSIONS OF LAW**

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

The controlling DHS regulations are those that were in effect as of 7/2011, the month of the application which Claimant contends was wrongly denied. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

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

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

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

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

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

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

Substantial gainful activity means a person does the following:

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

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

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

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2011 monthly income limit considered SGA for non-blind individuals is \$1,000.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions

- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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.

A psychiatric examination report (Exhibits 12-15; duplicated by Exhibits 47-50) dated [REDACTED] was presented. Claimant's complaints of CRPS were noted. Claimant stated that his right shoulder had excruciating pain. Claimant reported that he sees a case manager and psychiatrist monthly for therapy. It was noted that Claimant reported taking a prescription for Adderall helped him balance his mood. Claimant reported being diagnosed with bipolar disorder approximately 1.5 years prior. Claimant was described by the examiner as alert and orientated, spontaneous, with well organized thought process, goal directed and without homicidal and suicidal ideation.

The examiner provided a diagnosis based on Diagnostic and Statistical Manual of Mental Disorders (4<sup>th</sup> edition) (DSM IV). Axis I represents the acute symptoms that need treatment. Axis II is to note personality disorders and developmental disorders. Axis III is intended to note medical or neurological conditions that may influence a psychiatric problem. Axis IV identifies recent psychosocial stressors such as a death of a loved one, divorce or losing a job. Axis V identifies the patient's level of function on a scale of 0-100 in what is called a Global Assessment of Functioning (GAF) Scale.

The examiner diagnosed Claimant with somatoform and bipolar disorders. Axis II noted dependent personality trait. Axis II noted alleged right shoulder dislocation and a torn rotator cuff. Axis IV noted social occupational dysfunction and preoccupation with pain. Claimant's GAF was 45. A GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)."

A Psychiatric Evaluation (Exhibits 28-32; duplicated by Exhibits 61-65) dated [REDACTED] from Claimant's treating physician was presented. It was noted that Claimant reported having difficulty wearing clothes because of his CRPS due to sharp burning pains and swelling that resulted. Claimant also reported depression and ADHD. A history of on-and-off psychological treatment since Claimant was 16 years old was reported. Claimant reported being depressed and irritable. A history of alcohol use was also reported. The examining physician described Claimant as: anxious, without hallucination, showing good concentration and with adequate formal judgment. A DSM-IV diagnosis was provided. Claimant was diagnosed with bipolar disorder and ADHD. Axis III noted Claimant's CRPS. Axis IV noted occupational and other psychological and environmental problems. Claimant's GAF was 45.

A New Patient Evaluation (Exhibits 67-70) dated [REDACTED] from a treating physician was presented. A DSM-IV diagnosis was included as part of the evaluation. An Axis I diagnosis of bipolar disorder was provided. A history of alcohol and polysubstance abuse were noted. Claimant's GAF was 45-50. Claimant was referred for individual psychotherapy.

A physical examination was performed by a non-treating physician on [REDACTED] (see Exhibits 16-19; duplicated by Exhibits 51-55). It was noted that Claimant reported that he injured his shoulder performing martial arts and was subsequently diagnosed with a right shoulder strain. It was noted that Claimant reported additional trips to the emergency room in 2008 and 2009 to address ongoing pain to the right shoulder. Claimant reported a final diagnosis of CRPS to the examiner. It was noted that Claimant took Adderall, which appears to be related to a history of Attention Deficit Hyperactivity Disorder which was also reported by Claimant. Spasms and a slight tremor were noted in the right extremity when Claimant was lying down. It was also noted that the spasms and tremor stopped when Claimant stood up. It was noted that Claimant did not use a walking aid for ambulation. It was noted that Claimant performed tandem walk, heel walk and toe walk slowly. Claimant had limited range of motions in squatting (90%) and bending (60%). An impression of CRPS was given. It was noted that Claimant needed treatment for pain management and injuries. An impression of depression and ADHD was also noted.

A Medical Examination Report (Exhibits 45-46) dated [REDACTED] was completed by Claimant's treating physician. The only abnormality noted was a problem with Claimant's right shoulder. A clinical impression was given that Claimant was temporarily disabled for an unknown period longer than 90 days. Claimant was noted as incapable of performing any level of lifting and carrying. Claimant had no mental limitations. Claimant was restricted from performing repetitive reaching with his right arm.

A Medical Needs form (Exhibit 71) dated [REDACTED] from a treating physician was presented. It was noted that Claimant had limited range of motion in his upper shoulder. It was noted that Claimant could work as long as the job did not involve lifting or overhead reaching. It was also noted that Claimant could not continue work at his usual occupation until his range of motion improved.

A Medical Examination Report (Exhibits 72-74) was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on 6/2/09. The physician provided diagnoses of a rotator cuff injury and SLAP tear on the labrum verified by MRI. It was noted that Claimant's shoulder was unstable and that the joint needed surgical repair. An impression was given that Claimant's condition was deteriorating. A prognosis of improvement by treatment was given. Claimant was restricted from reaching, pushing and pulling repetitively with his right arm and shoulder. It was noted that Claimant could meet his household needs.

Hospital documents (Exhibits 75-96) concerning 10/2009 hospital encounters were included. It was noted that Claimant reported that his shoulder has become dislocated and increasing in pain. A diagnosis of CRPS was given. Claimant was given injections on 10/30/09 and 11/13/09 to address a right stellate ganglion block at C7. A hospital document (Exhibit 116) verified a third injection on [REDACTED]

Discharge instructions stemming from a muscle strain (see Exhibits 100-102) dated 8/24/08 and a ligamentous sprain (Exhibits 97-99) dated [REDACTED] were presented. Discharge instructions (see Exhibits 113-115) dated [REDACTED] were presented. Additional hospital discharge instructions (see Exhibits 103-106 dated [REDACTED] and [REDACTED] Exhibit 107 dated [REDACTED] and Exhibits 108-112 dated [REDACTED]) for chronic pain were presented. The instructions were not notable other than verifying Claimant's various complaints of shoulder pain.

An MRI report (Exhibit 120) dated [REDACTED] was presented. An impression was given of supraspinatus tendon anterior insertion fibers partial tears without full thickness tear or rupture. Subacromial-subdeltoid bursitis and acromioclavicular joint degenerative changes were also noted.

Information of CRPS was presented (see Exhibits 125-136). The documents were obtained from various websites and did not pertain directly to Claimant other than generic information about Claimant's diagnosis.

Claimant completed an Activities of Daily Living (Exhibits 33-36; duplicated by Exhibits 57-60) dated [REDACTED]; this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted that he has trouble sleeping at night due to pain. Claimant noted not needing help for personal needs such as bathing and grooming. Claimant noted that he fixes his own meals. Claimant noted has some days when he cannot write or wear a shirt due to the pain of CRPS. Claimant noted he no longer has hobbies or interests because he cannot physically do them.

Claimant testified that he was not limited in either walking or standing. Claimant stated that he is greatly limited in lifting. Claimant testified that he used to be able to bench press 225 pounds but now can only carry 5 pounds due to his right shoulder problems. Claimant noted his right side is very limited and that he has to perform functions with his non-dominant hand (his left). Claimant also noted a 45 minute sitting restriction because of shoulder pain, though it was not clear why shoulder pain impacted Claimant's sitting ability. Claimant stated that he could perform all daily activities, but that he had to perform them with his left arm and hand. Claimant also stated that he is able to drive.

Claimant verified a long history of right shoulder problems which also impacted Claimant's hand and arm function. Medical documentation from 2009 restricted Claimant from any lifting (see Exhibit 71). Other documentation verified that Claimant's shoulder was deteriorating (see Exhibit 72). Claimant's testimony concerning his inability was consistent with the submitted medical records. It is found that Claimant established significant impairment to the performance of basic work activities.

Claimant testified that he has suffered should and arm pain since approximately 2008 when he was injured performing martial arts. Claimant also stated that his injuries and pain have stayed with him through the years. Numerous documents verifying hospital encounters since 2009 verified Claimant's ongoing pain and impairments with his shoulder. It is found that Claimant established that his impairments meet the durational requirements for a severe impairment.

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

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed

and deemed to meet the 12 month requirement, then the claimant is to be deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's primary impairment was CRPS. CRPS is not covered by a SSA listing. Claimant's CRPS impacts his right shoulder, arm and hand. Thus, a listing for joint dysfunction will be the primary consideration whether Claimant meets a SSA listing. The listing for joint dysfunction reads:

- 1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;
  - OR
  - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Part A of the above listing involves lower joints and the ability to ambulate. It was not disputed that Claimant's ambulation is unaffected by CRPS. Thus, the analysis is limited to Part B.

The medical documentation verified that Claimant's right shoulder, arm and hands are impacted by CRPS. Claimant testified that his left shoulder Claimant stated that his left side is becoming problematic as he states his left shoulder sometimes is numb and that his left hand is increasingly hypersensitive. Claimant's testimony was not verified by any medical records. All presented records only consider right shoulder pain. Because the medical records only verify physical problems with Claimant's right side, it cannot be found that Claimant has joint dysfunction in each upper extremity. Accordingly, it is found that Claimant does not meet the listing for joint dysfunction.

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

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It is found that Claimant failed to establish meeting an SSA listed impairment. Accordingly, the disability 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 a list of his employment history (Exhibit 27). Claimant only listed employment in landscaping from 7/2008-8/2008. Claimant stated that he could not perform his previous landscape work because it involved lifting and pushing, which he is unable to do with his right arm.

Claimant testified that he also worked from 2006-2007 as a stockperson. Claimant stated that his job duties including stocking and reorganizing store shelves, mixing paint and various customer service duties. Claimant stated he was expected to lift up to fifty pounds and climb ladders as part of his employment;

Claimant also testified that he was part of the Army Reserves from 2000-2004. This employment was part-time and did amount to SGA.

Claimant testified that he can no longer do the lifting necessary to perform his prior employment of landscaper or stockperson. Claimant's testimony was credible and consistent with the medical documentation. Accordingly, it is found that Claimant is unable to perform past relevant employment.

In the fifth and last 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 at Claimant's psychological impairments, there was sufficient evidence that Claimant suffers from ADHD and bipolar disorder as multiple physicians gave diagnoses for each impairment. It was also established that the disorders affect Claimant's ability to work based on consistent GAF scores of 45-50 which are representative of serious impairments. Other than the GAF scores, little evidence was presented to show how Claimant's psychological problems impacted his work ability. Claimant conceded being able to perform all daily activities. There was no evidence of episodes of decompensation. There was also little evidence of social dysfunction. One treating physician noted that Claimant was limited in concentration and focus (see Exhibit 72); this was in 2009. The evidence also showed that Claimant has sought psychological treatment since 2009, however, the evidence was generally lacking in symptoms that would significantly impact Claimant's ability to work. There was no evidence of: homicidal or suicidal ideations, paranoia, delusions, isolation, psychological hospitalization or other evidence that Claimant's psychological impairments affect Claimant's ability to work. It is found that Claimant failed to establish any psychological impairments that would affect his ability to perform any level of work.

Looking at Claimant's exertional restrictions, it was well established that Claimant suffers CRPS based on the diagnoses from multiple physicians. The most recent medical documentation came from a non-treating source in a Physical Examination Report dated [REDACTED] (see Exhibits 16-19), which noted some limited ranges of motion in Claimant's squatting and bending abilities. Other physicians noted Claimant's inability to lift items due to Claimant's right shoulder, arm and hand problems. Because the medical evidence lacked any references to problems with Claimant's left arm, it is presumed that Claimant has the ability to lift and carry items with his left arm. Based on Claimant's youth and history of martial arts, there is reason to believe that Claimant should be comfortably capable of lifting items weighing no more than 20 pounds with his left arm. This restriction would place Claimant at a level of sedentary or light employment.

Though Claimant is seemingly capable of some levels of exertional work, the pain and discomfort associated with CRPS would likely make any work intolerable. Claimant testified credibly that it is sometimes painful for him to wear a shirt. It would be reasonable to presume that no occupations would be tolerant of Claimant's sometime inability to wear a shirt. More importantly, the evidence is indicative of a pain that no person could be expected to reasonably tolerate over the course of employment.

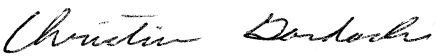
Based on the presented evidence, it is found that Claimant is not capable of performing any level of employment due to CRPS. Thus, it is found that Claimant is a disabled individual and that DHS erred in finding that Claimant was not a disabled individual. As there was no dispute that Claimant's application for MA benefits was only denied because Claimant was found to be not disabled, it is also found that DHS erred in denying Claimant's application for 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 7/18/11 including Claimant request for retroactive MA benefits from 4/2011-6/2011;
- (2) evaluate Claimant's eligibility for MA benefits subject to the finding 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: April 17, 2012

Date Mailed: April 17, 2012

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**NOTICE:** Administrative Hearings 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. Administrative Hearings 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.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

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