

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 201272859  
Issue No.: 2009, 4031  
Case No.: [REDACTED]  
Hearing Date: October 4, 2012  
County: Monroe DHS

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was held on October 4, 2012 from Monroe, Michigan. Participants included the above named claimant; [REDACTED]. [REDACTED] appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist and [REDACTED], Specialist.

**ISSUE**

The issue is whether DHS terminated Claimant's ongoing eligibility for Medical Assistance (MA) and State Disability Assistance (SDA) on the basis that Claimant is not a disabled individual.

**FINDINGS OF FACT**

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

1. Claimant was an ongoing MA and SDA benefit recipient.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 1/11/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits A1-A2).
4. On 1/18/12, DHS mailed Claimant a Notice of Case Action (Exhibits B88-B90) terminating Claimant's MA benefit eligibility effective 2/2012.

5. On 1/23/12, Claimant requested an MA benefit hearing to dispute the MA and SDA benefit terminations (see Exhibits B85-B86).
6. On 3/6/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit A239), in part, by application of Medical-Vocational Rule 202.20.
7. The SHRT decision dated 3/6/12 was based, in part, on an evaluation of Claimant as an applicant for MA and SDA benefits rather than as an ongoing recipient of benefits.
8. On 5/3/12, an administrative hearing was held.
9. On 5/15/12, an administrative decision (Exhibits B8-B12) was issued ordering DHS to reinstate Claimant's MA and SDA benefit eligibility effective 2/2012 and for SHRT to redetermine Claimant's eligibility for MA and SDA benefits as an ongoing recipient.
10. On 6/29/12, (SHRT) determined that Claimant was not a disabled individual (see Exhibits B91-B92), in part, by application of Medical-Vocational Rule 202.21.
11. On 8/13/12, DHS mailed Claimant a Notice of Case Action (Exhibits B4-B6) terminating Claimant's MA and SDA benefit eligibility effective 9/2012.
12. On 8/23/12, Claimant requested a hearing to dispute the termination of SDA and MA benefit eligibility.
13. As of the date of the administrative hearing, Claimant was a [REDACTED] year old male with a height of 5'10" and weight of 150 pounds.
14. Claimant's highest education year completed was the 12th grade.
15. As of the date of the administrative hearing, Claimant had ongoing Medicaid coverage since approximately 5/2012.
16. Claimant claimed to be a disabled individual based on impairments of: appendix problems, scoliosis, cardiac dysrhythmia, chronic MRSA, epilepsy, hepatitis C, stroke side effects, cholelithiasis, back pain and dyslipidemia disorder.

### **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).

The analysis of Claimant's MA benefit eligibility differs based on whether Claimant was an applicant or an ongoing recipient. Once an individual has been found disabled for purposes of MA benefits, continued entitlement is periodically reviewed in order to make a current determination or decision as to whether disability remains in accordance with the medical improvement review standard. 20 CFR 416.993(a); 20 CFR 416.994.

The present case is somewhat unusual in that there appears to be no finding by DHS that Claimant was disabled. Though it was not disputed that Claimant received MA benefits, no evidence suggested that DHS ever found Claimant to be disabled. An administrative decision (Exhibits B73-B82) dated 11/15/11 verified a denial of an MA benefit application dated 9/23/10. Multiple MRT and SHRT decisions were presented; each decision concluded that Claimant was not a disabled individual. The evidence suggested that Claimant only received MA benefits because of a processing error. It could be reasonably contended that DHS never properly found Claimant to be disabled and therefore an application analysis should apply. The fact that DHS issued MA benefits to Claimant based on disability implies a disability finding. It is irrelevant whether the finding was within normal agency procedures, or not. It is found that Claimant is entitled to be evaluated for continuing disability benefits based on a redetermination analysis, not an application analysis.

In evaluating a claim for ongoing MA benefits, federal regulations require a sequential evaluation process be utilized. 20 CFR 416.994(b)(5). The review may cease and benefits continued if sufficient evidence supports a finding that an individual is still unable to engage in substantial gainful activity. *Id.* Prior to deciding an individual's disability has ended, the department will develop, along with the Claimant's cooperation, a complete medical history covering at least the 12 months preceding the date the individual signed a request seeking continuing disability benefits. 20 CFR 416.993(b). The department may order a consultative examination to determine whether or not the disability continues. 20 CFR 416.993(c).

The first step in the analysis in determining the status of a claimant's disability requires the trier of fact to consider the severity of the impairment(s) and whether it meets or equals a listed impairment in Appendix 1 of subpart P of part 404 of Chapter 20. 20

CFR 416.994(b)(5)(i). If a listing is met, an individual's disability is found to continue and no further analysis is required. Prior to the commencement of a disability analysis, the medical documents should be considered.

A Social Summary (Exhibits A193-A194) dated 1 [REDACTED] was presented. The form was completed by a supervisor patient rep. Claimed impairments included appendix burst, scoliosis, cardiac dysrhythmia, chronic MRSA, seizure disorder, hepatitis, CVA (presumably referring to a stroke), cholellthiasis and dyslipidemia disorder.

A Medical Social Questionnaire (Exhibits A195-A196) dated [REDACTED] was presented. The form allows for reporting of claimed impairments, treating physicians, previous hospitalizations, prescriptions, medical test history, education and work history. Claimant's form was completed by a patient rep. One hospitalization was noted from 10/2011 due to appendix problem.

Various lab results (Exhibits A221-A227, A232-A234) from 2010 were presented. The results were not notable other than verifying several measurements being within normal range and some that were abnormal. Some of the out-of-range results included: ALB measured at 3.1 (3.4-50 G/DL being normal), A/G rat measured at .7 (.8-1.4 ration being normal), HDL 39 (greater than 40 being normal).

An x-ray report of Claimant's lumbar spine (Exhibits A228) dated [REDACTED] was presented. The x-ray was taken in response to Claimant's complaints of lower back pain, possibly stemming from a 25 year old gun shot wound. Multi-level disc space narrowing and osteophytes were noted. Facet joint disease was noted. It was noted that there was suggestion of spinal canal narrowing. An impression of moderate degenerative changes throughout the lumbar spine were noted.

An x-ray report of Claimant's thoracic spine (Exhibit 229) dated [REDACTED] was presented. Mild degenerative changes in the spine were noted.

A thyroid ultrasound report (Exhibit A230) dated [REDACTED] was presented. The findings were noted as nonspecific. It was noted that further studies may be helpful.

A nuclear medicine thyroid scan report (Exhibit A231) dated [REDACTED] was presented. An impression was given of an unremarkable nuclear medicine evaluation of the thyroid gland.

An echocardiogram report (A235) dated 1 [REDACTED] was presented. A primary impression of a normal aortic valve, normal ventricular size, normal ventricular function and normal ejection fraction were given. It was noted that there was mild mitral regurgitation.

An EEG report (Exhibits A237-A238) dated [REDACTED] was presented. It was noted that the EEG was abnormal. It was noted that there was a presence of mildly active bifrontal epileptiform activity which could correlate with one of the primary generalized epilepsies.

A Medical Examination Report (Exhibits A208-A209) dated [REDACTED] was completed by Claimant's treating physician. It was noted that the physician first treated Claimant on 8/2010 and last examined Claimant on [REDACTED]. The physician provided diagnoses of seizure disorder, spondylosis of the cervical spine, moderate degenerative disc disease of the lumbar spine, hyperthyroidism treated to hypothyroidism and marijuana/tobacco abuse. An impression was given that Claimant's condition was stable and that Claimant needs insurance coverage for medical improvement.

A physician note (Exhibit A4) dated [REDACTED] was presented. It was noted that Claimant had not had any seizures but had unusual pre-seizure feelings.

Endocrine specialist documents (Exhibits A5-A7) dated [REDACTED] were presented. It was noted that Claimant reported fatigue and a loss of appetite. A physical examination revealed no abnormalities. An assessment was given of hypothyroidism, seizure disorder and a stroke. It was noted that Claimant should continue prescriptions for Dilantin, Synthroid and folic acid. It was also noted that Claimant should quit smoking.

A physician note (Exhibit A3) dated [REDACTED] was presented. It was noted that Claimant reported headaches, urinary difficulties and groin pain. Claimant was referred to a urologist for the urinary problems. Claimant was advised to take Motrin or Tylenol and to return if the headaches persist.

Documents (Exhibits A10-A192, Exhibits C7-C30) from a [REDACTED] hospital admission were presented. It was noted that Claimant reported abdominal pain. It was noted that Claimant had a history of cocaine and alcohol use (Exhibit 22) and that Claimant reportedly stopped both (Exhibit 23). It was noted that Claimant reported back pain, headaches, seizures and strokes (Exhibit 23). It was noted that an exploratory laparotomy and appendectomy was performed (Exhibit 29). A history of seizure disorder and hepatitis C was noted. Additional hospital documents (Exhibits B21-B43) verified a discharge date of [REDACTED].

An x-ray report (Exhibit B54) of Claimant's chest, dated [REDACTED], was given. An impression was given of mild adynamic ileus. Mild calcific densities were noted in the kidney.

Additional radiology reports (Exhibits B54-B62 and C41-C49) from 10/2011 were presented. The reports were relatively unremarkable and unrelated to Claimant's claim of disability.

An MRI report of Claimant's lumbar spine (Exhibits B63-B64 and C50-C51) dated [REDACTED] was presented. An impression of severe multi-level spondylosis and spondyloarthrosis resulting in moderate canal stenosis was noted at L2-L3, L3-L4 and L4-L5. Degenerative changes were also noted at L1-L2.

An MRI report (Exhibit B65 and C52) of Claimant's thoracic spine dated [REDACTED] was presented. Small disc protrusions were noted at several levels. Multilevel Schmorl's node formation was noted from T5-T6 through T11-T12. It was noted there was no significant spinal stenosis or neural foramina stenosis. An x-ray report of Claimant's thoracic spine dated [REDACTED] noted osteoarthritic changes with slight dextroscoliosis.

An x-ray report (Exhibit B67 and C54) of Claimant's cervical spine dated [REDACTED] was presented. It was noted there was disc space narrowing and degenerative arthritic endplate changes at C3-C4, C4-C5 and C5-C6.

Radiology reports of Claimant's right ankle (see Exhibit B69) and shoulder (see Exhibit B70) were presented. The 12/2011 reports noted no remarkable findings.

An x-ray report (Exhibit B71) dated [REDACTED] of Claimant's knees was presented. An impression of moderate osteoarthritis, more so on the right knee, was presented.

The second and third pages (Exhibits B16-B17) of a three page hospital document were presented. The document was approved by a physician on [REDACTED]. It was noted that an ultrasound of Claimant's liver was normal. The document referenced Claimant's appendix surgery and treating his "white count".

Various lab test results from 2012 (Exhibits B44-51 and C31-C38) were presented. All results appeared to verify normal ranges for all tested items.

A CT scan report (Exhibit B52 and C39-C40) of Claimant's abdomen dated [REDACTED] was presented. An impression was given of cholelithiasis (i.e. gallstones) was given.

An x-ray report (Exhibit B53) of Claimant's chest dated [REDACTED] was presented. The report noted normal heart size, clear lungs and no pleural effusion.

Claimant completed an Activities of Daily Living (Exhibits A197-A201) dated [REDACTED] this is a questionnaire designed for clients to provide information about their abilities to perform various day-to-day activities. Claimant noted he had no trouble sleeping at night. Claimant noted he takes naps because he gets tired easily. Claimant noted that he fixes his own microwave meals. Claimant noted he reads the Bible and visits his family daily.

Claimant alleged an impairment of seizure disorder. The listing for epilepsy is covered by 11.02 and 11.03 and reads:

**11.02 Epilepsy** - convulsive epilepsy, (grand mal or psychomotor), documented by detailed description of a typical seizure pattern, including all associated phenomena; occurring more frequently than once a month, in spite of at least 3 months of prescribed treatment. With:

A. Daytime episodes (loss of consciousness and convulsive seizures) or

B. Nocturnal episodes manifesting residuals which interfere significantly with activity during the day.

**11.03 Epilepsy** - nonconvulsive epilepsy (petit mal, psychomotor, or focal), documented by detailed description of a typical seizure pattern including all associated phenomena, occurring more frequently than once weekly in spite of at least 3 months of prescribed treatment. With alteration of awareness or loss of consciousness and transient postictal manifestations of unconventional behavior or significant interference with activity during the day.

Claimant testified that he was in the hospital in 2/2011, 7/2012 and 8/2012 due to seizures. Claimant also testified that there were days when he experienced non-stop seizures, which affected his concentration levels. No medical records were presented concerning the hospitalizations. The absence of documentation is troublesome for Claimant. Even accepting that the hospitalizations occurred as Claimant stated, there is insufficient information to make medical conclusions. There was evidence that Claimant has a history of alcohol and drug abuse; it is plausible that the hospitalizations were caused by such abuse. It is plausible that the seizures were a result of noncompliance with medication. It also does not appear that Claimant suffered seizures in such a quantity to meet either epilepsy listing. Based on the presented evidence, it is found that Claimant did not establish meeting the listings for epilepsy.

A listing based on Claimant's back problems was also considered. 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.

Of the spinal disorder subsections, the only applicable section appears to be Part C. It was documented by an MRI that Claimant had moderate canal stenosis at three different vertebrae. It is uncertain whether there is a compromised nerve root but it could be reasonably inferred from a physician impression of multi-level spondylosis, moderate stenosis at three vertebrae and bilateral foramina encroachment. The biggest question in meeting the listing is whether the stenosis results in an inability for Claimant to ambulate effectively.

Generally, "moderate" stenosis is suggestive of impairments that would restrict and limit activities but typically not to a debilitating degree. Radiology reports of the thoracic and cervical spine noted osteoarthritis and mild degenerative changes; though discomfort is probable, the osteoarthritis and degenerative changes are not supportive of a finding that Claimant has an inability to ambulate effectively.

Claimant used a cane but he also stated that he recently sprained his knee. The use of cane appeared to be more tied to the knee sprain than Claimant's back problems. Though Claimant testified that he was significantly restricted in walking, the medical evidence tends to support that Claimant can effectively ambulate. Based on the presented evidence, it is found that Claimant does not meet the listing for spinal disorders.

Based on the presented evidence, it is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step two.

The second step of the analysis considers whether medical improvement occurred. CFR 416.994(b)(5)(ii). Medical improvement is defined as any decrease in the medical severity of the impairment(s) which was present at the time of the most favorable medical decision that the individual was disabled or continues to be disabled. 20 CFR 416.994(b)(1)(i). If medical improvement is established, the analysis proceeds to step three to determine if the improvement relates to the ability to perform substantial gainful activity; if there is no medical improvement, the analysis proceeds to step four.

It is known that DHS did not find medical improvement because DHS evaluated Claimant's allegation of disability based on a new application, not as an ongoing recipient. Thus, no medical improvement was established and the analysis may proceed to step four.

Step four considers whether any exceptions apply to a previous finding that no medical improvement occurred or that the improvement did not relate to an increase in RFC. 20 CFR 416.994(b)(5)(iv). If medical improvement related to the ability to work has not occurred and no exception applies, then benefits will continue. CFR 416.994(b). Step four lists two sets of exceptions.

The first group of exceptions allow a finding that a claimant is not disabled even when medical improvement had not occurred. The exceptions are:

- (i) Substantial evidence shows that the individual is the beneficiary of advances in medial or vocational therapy or technology (related to the ability to work);
- (ii) Substantial evidence shows that the individual has undergone vocational therapy related to the ability to work;
- (iii) Substantial evidence shows that based on new or improved diagnostic or evaluative techniques the impairment(s) is not as disabling as previously determined at the time of the most recent favorable decision;
- (iv) Substantial evidence demonstrates that any prior disability decision was in error.  
20 CFR 416.994(b)(4)

If an exception from the first group of exception applies, then the analysis stops and the claimant is deemed not disabled if it is established that the claimant can engage in substantial gainful activity.

The second group of exceptions allow a finding that a claimant is not disabled irrespective of whether medical improvement occurred. The exceptions are:

- (i) A prior determination was fraudulently obtained;
- (ii) The individual failed to cooperate;
- (iii) The individual cannot be located;
- (iv) The prescribed treatment that was expected to restore the individual's ability to engage in substantial gainful activity was not followed.  
20 CFR 416.994(b)(4)

The second group of exceptions to medical improvement may be considered at any point in the process. *Id.* If an exception is found in the second group, it is not necessary to establish that the claimant can perform in substantial gainful activity. 20 CFR 416.994(b)(4). If an exception from the second group is applicable, the disability analysis stops and the claimant is to be found not disabled. 20 CFR 416.994(b)(5)(iv).

In the present case, the original disability determination appears to have been made in error. There is no evidence of an MRT or SHRT determination that Claimant is disabled. The absence of an MRT or SHRT finding of disability tends to support finding that Claimant's original disability finding was made in error.

Federal regulations elaborate that "substantial evidence shows on its face that the decision in question should not have been made". 20 CFR 416.994(b)(3)(iv)(A). One example provided by SSA was misapplying the vocation rules due to using a claimant incorrect age. A second example was mistakenly finding that a listing was met based on incorrectly interpreting the frequency of seizures. The present case is different in that there was no original analysis which led to a disability decision. Nevertheless, it cannot be denied that the original determination was based on a mistake. Accordingly, it is found that an exception from the first group applies and it must be determined whether

Claimant can perform in substantial gainful activity. This analysis can be performed in steps five through seven of the disability analysis.

Step five of the analysis considers whether all the current impairments in combination are severe. 20 CFR 416.994(b)(5)(v). When the evidence shows that all current impairments in combination do not significantly limit physical or mental abilities to do basic work activities, these impairments will not be considered severe and the claimant will not be considered disabled. *Id.* If the impairments are considered severe, the analysis moves to step six. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.921 (a). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921 (b). 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. (*Id.*)

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).

Claimant stated that he was limited to 100 yards of walking and 10 minutes of standing due to lower back pain. The medical records were silent as to specific restrictions to Claimant's ability to walk and stand. Based on the mere diagnoses of severe spondylitis and moderate spinal stenosis, it is reasonable to presume significant impairments to Claimant's walking and standing abilities. The extent of restriction need not yet be determined as long as the impairment is significant. Based on the presented evidence, it is found that Claimant has significant impairments to performing basic work activities.

It is known that Claimant's back problems were identified by radiography reports in 11/2011 and 12/2011. The impairments of stenosis and spondylitis are not reasonably

expected to heal on their own and there is no particular evidence of improvement of Claimant's back. It is presumed that the back problems will last for a period of 12 months or longer. Thus, Claimant met the durational requirements for establishing 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 proceed to step six.

The sixth step in analyzing a disability claim requires an assessment of the Claimant's RFC and past relevant employment. 20 CFR 416.994(b)(5)(vi). 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 appears to have zero past relevant employment over the past 15 years. Claimant testified that he swept floors at a construction site and stated that it was part-time work. However, as the work does not appear to meet the requirements for substantial gainful activity. With no SGA in the last 15 years, no analysis can be performed and it can only be concluded that Claimant cannot perform past relevant work. Accordingly, the analysis moves to the seventh step of the disability analysis.

In the seventh step, 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 an analysis of sedentary work shall be considered.

Claimant stated that he was hospitalized three times in 2012 due to seizures though no documentation was presented to verify that any hospitalizations occurred. As noted in step one, the lack of documentation is troublesome. It cannot be determined whether the hospitalizations occurred, and if they did, whether the seizures were triggered by Claimant's drug use or medication noncompliance.

Claimant testified that his seizures were so severe that he received State of Michigan correspondence notifying him of a lifetime ban of driving. Claimant quickly noted that he tore up the document as soon as he received it. Claimant's testimony concerning this issue was dubious. Claimant's unprovoked statement that he tore up the document was very strange in that he volunteered the statement without an inquiry. Perhaps Claimant anticipated an inquiry into the whereabouts of such a document; even conceding such anticipation, Michigan is not known to ban drivers for a lifetime due to seizures.

Claimant also stated that he has day long periods of non-stop seizures. Claimant stated that the day long seizures greatly restrict his ability to concentrate. Claimant's testimony was again dubious. Claimant's testimony implied a severely serious seizure obstacle, one that would surely have some medical documentation support. Again, no such documentation was presented.

Claimant's past medical history references seizure disorder. It was also verified in medical records that Claimant takes Dilantin, a known seizure medication. This evidence tends to support that Claimant has some problems with seizures, but it cannot be certain to what extent. Based on the presented evidence, it is found that Claimant is somewhat inhibited by seizures, but not to the extent testified by Claimant.

It was established that Claimant has severe spondylitis and moderate canal stenosis in the lumbar area of his back. Arthritis was noted in thoracic back radiology and degenerative arthritic change noted in cervical spinal radiology. In step one, it was determined that Claimant did not have the inability to ambulate effectively though it is very representative of ambulation obstacles.

Sedentary employment is a general sit-down employment which requires some standing and walking. Though Claimant is limited in those areas, it is believed that Claimant can perform the standing and walking necessary for sedentary employment. It is not believed that Claimant could perform the standing and walking needed for light work.

Claimant conceded that he is able to sit for extended periods. There was also no particularly persuasive evidence that Claimant could not perform the motor movements required of many sedentary levels of employment (e.g. typing, writing, making change...). It is found that Claimant is capable of performing a sedentary level of employment.

Upon a finding that a claimant is capable of performing at a certain exertional level, the claimant's circumstances are placed into a grid for a determination of whether he or she is disabled. A claimant's age need not be mechanically applied. SSA states, "If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case." 20 CFR 416.963(b).

The administrative hearing determining disability was held on 10/4/12; as of that date, Claimant is less than six months away from his 50<sup>th</sup> birthday. Based on Claimant's relative close proximity to his 50<sup>th</sup> birthday, Claimant will be credited with an age that is closely approaching advanced age.

Based on Claimant's age (closely approaching advanced age), education (high school graduate- no entry into skilled work) and employment history (none), Medical-Vocational Rule 201.12 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.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 at 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 at 1.

A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

It has already been found that Claimant is disabled for purposes of MA benefits based on application of Medical-Vocational Rule 201.12. The analysis and finding equally applies to Claimant's ongoing eligibility for SDA benefits. It is found that DHS improperly terminated Claimant's eligibility for SDA 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 and SDA benefit eligibility effective 9/2012
- (2) upon reinstatement, evaluate Claimant's eligibility for MA and SDA benefits on the basis that Claimant is a disabled individual;
- (3) supplement Claimant for any benefits not received as a result of the improper denial; and
- (4) if Claimant is found eligible for future MA and SDA benefits, to schedule a review of benefits in one year from the date of this administrative decision.

The actions taken by DHS are REVERSED.



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

Date Signed: 10/19/2012

Date Mailed: 10/19/2012

**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:

