

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20132956
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: March 20, 2013
County: Washtenaw DHS (20)

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 March 20, 2013, from Ypsilanti, Michigan. Participants included the above-named claimant. [REDACTED]

[REDACTED] testified and appeared as Claimant's authorized hearing representative. [REDACTED] testified on behalf of Claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

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

FINDINGS OF FACT

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

1. On 4/20/12, Claimant applied for MA and SDA benefits.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On 8/2/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On 8/8/12, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On 10/1/12, Claimant requested a hearing disputing the denial of MA and SDA benefits.
6. On 11/15/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibits 330-331), in part, by application of Medical-Vocational Rule 202.21
7. On 3/20/13, an administrative hearing was held.
8. At the hearing, Claimant presented new medical documentation (Exhibits A1-A13), which was forwarded to SHRT for review.
9. On 5/25/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 201.21.
10. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'6" and weight of 145 pounds.
11. Claimant has a remote history of alcohol abuse and no known relevant history of tobacco or illegal substance abuse.
12. Claimant's highest education year completed was the 12th grade, via general equivalency degree.
13. As of the date of the administrative hearing, Claimant received a county-issued coverage giving her access to prescriptions and doctor visits.
14. Claimant alleged that she is disabled based on impairments and issues including: lupus, migraine headaches, irritable bowel syndrome (IBS), fatigue and various psychological disorders.

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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that the request noted that Claimant required special arrangements to participate in the administrative hearing. The request noted that an in-person hearing was requested. Claimant's request was granted.

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. 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.

A letter (Exhibit 60) giving Claimant notice of an unfavorable administrative decision was presented. The letter was dated 3/13/12. Though the letter was not medical evidence, a final unfavorable SSA decision is definitive evidence that Claimant was not disabled as of 3/2012. The presented medical records will be considered in light of the unfavorable decision as of 3/2012.

The analysis will begin with the relevant submitted medical documentation. The evidence will be summarized distinguishing between physical and psychological impairment-related documents.

Medical documents (Exhibits 206-329) from 2008 were presented. The documents noted repeated complaints of epigastric pain and depression.

Medical treatment documents (Exhibits 82-158) were presented. The documents ranged in date from 1/11/10 through 6/23/11. The records noted various complaints which included: fatigue, anxiety, chronic abdominal pain, possible fibromyalgia, joint pain (relieved by medication) problems related to an IUD, excessively dry hands due to excessive washing, benign lesions, appendix-related pain, painful bowel movements, frequent yeast infections, chronic pancreatitis, toothache pain and chest pain.

Various radiology documents (Exhibits 159-176) were presented. The documents ranged in date from 3/2010-6/2011. One of the documents verified appendix problems, presumably resolved by a subsequently performed appendectomy. Radiography of each of the following was presented: heart, abdomen, head, breasts and pelvis; all noted no abnormalities.

Various lab results and EKG results (Exhibits 177-198) were presented. The documents ranged in date from 8/2010-6/2011. The most recent EKG (from 6/2011) noted normal sinus rhythm.

A medical treatment document (Exhibit 84) dated [REDACTED] was presented. It was noted that Claimant reported complaints of lower abdominal pain. A significant history of endometriosis was noted. A physical exam was performed, which was noted as positive for bowel sounds and positive Carnett's sign. A pelvic exam noted tenderness. It was noted that Claimant showed significant pain during the examination. It was noted that Claimant was referred to physical therapy.

A medical treatment document (Exhibits 82-83) dated [REDACTED] was presented. It was noted that Claimant complained of abdominal pain, constipation, low grade fever and chills. It was noted that Claimant adjusted her diet, but that it did not stop the constipation. It was noted that Claimant felt her anxiety and depression were well controlled.

Medical records (Exhibits 14-20) from 10/2011-12/2011 were presented. It was noted that Claimant presented with complaints of general fatigue in 12/2011; it was noted that Claimant's blood tests revealed no abnormalities. It was noted that Claimant complained of abdominal pain and vaginal bleeding on 1 [REDACTED]; it was noted that Claimant had Stage III endometriosis and was given medication.

Medical records (Exhibits 21-22) from [REDACTED] were presented. It was noted that Claimant reported suffering daily headaches over the previous month. It was noted that Claimant reported phonophobia and photophobia. It was noted that Claimant took Tylenol, but it took a few hours for headache symptoms to dissipate. It was noted that Claimant was prescribed Imitrex to control the headaches.

Medical records (Exhibits 23-27) from [REDACTED] were presented. It was noted that Claimant appeared for an IUD removal. It was noted that Claimant had intolerable gynecological bleeding patterns which then ceased after a five day period. It was noted that Claimant reported problems with bowel movements which resulted in medical prescriptions. It was noted that Claimant also complained of a flare-up of back pain.

A physician letter (Exhibit 56) dated [REDACTED] was presented. It was noted that Claimant had a lengthy history of psychological treatment and would be unable to work for 2-3 months while ongoing prescription treatment took effect.

A physician letter (Exhibit 57) dated [REDACTED] was presented. It was noted that Claimant was being treated for endometriosis.

Medical records (Exhibits 30-31) from [REDACTED] were presented. It was noted that Claimant's abdomen problems resolved, but that her headaches returned. It was noted that Claimant was given new medication.

A consultative physical examination report (Exhibits 3-9) dated [REDACTED] was presented. It was noted that Claimant reported radiating back pain and depression. It was noted that back pain increased following a physical attack in 2009. It was noted that Claimant denied a problem with headaches. It was noted that Claimant's range of motion in lumbar and hips was normal. It was noted that the lower back showed tenderness on palpitation. It was noted that a CT scan and x-rays showed no degenerative changes and that Claimant most likely had muscle pain. Claimant was not found restricted in any of 23 listed abilities which included: walking, standing, bending and sitting.

There were references (see Exhibits A7-A11) to a list of diagnoses made by a nurse practitioner, which included some physical ailments. These diagnoses were not factored because, for purposes of Social Security benefits, a nurse practitioner is not an acceptable medical source (see below).

The presented evidence established a lengthy history of pain complaints and ailment complaints from Claimant. For the most part, the evidence failed to establish a physical basis for Claimant's complaints. Most of Claimant's presented documentation was created prior to Claimant's most recent SSA denial from 3/2012 and the MA application at issue in the present case. Alleged claims of lupus and fibromyalgia were not verified by a diagnosis from a medical source.

Documents from 4/2012 and 5/2012 showed complaints of chronic headaches, and that Claimant received medication for the headaches. Presented radiology of Claimant's brain verified no physical cause for the headaches. There were suggestions in documents that Claimant's headaches were psychological-based. Claimant testified that she has 9-12 headaches per month and that she is debilitated for several hours until her medication takes effect. It was established that Claimant receives Imitrex, a medication known to treat headaches.

There was also evidence from a consultative examiner that Claimant has back pain, somewhat verified by a physical examination which showed tenderness. The pain is not considered to be a significant impairment to performing basic work activities as the examiner noted no restrictions for Claimant.

Based on the presented evidence, the only problem verified by a medical physician was reoccurring headaches. It can be concluded that concentration would be reduced as a result of the reoccurring headaches. Claimant also claimed work ability impairments due to psychological impairments.

A letter (Exhibit 89) from Claimant's therapist dated [REDACTED] was presented. It was noted that Claimant received treatment for PTSD related to child abuse. It was noted that psychological symptoms were worsened by physical pain.

An undated Psychological/Psychiatric Examination Report (Exhibits 43-45) was presented from Claimant's treating physician. It was noted that Claimant was first examined on [REDACTED] and last examined on [REDACTED]. It was noted that Claimant had a

decrease in motivation and energy. It was noted that Claimant received prescription treatment, weekly therapy and biweekly case management. An Axis I diagnosis of bipolar disorder was given. Claimant's GAF was noted as 51.

A Mental Residual Functional Capacity Assessment (Exhibits 46-47) dated [REDACTED] was completed by Claimant's treating physician. This form lists 20 different work-related activities among four areas: understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". It was noted that Claimant was markedly limited in 8 abilities including: maintaining concentration for extended periods, getting along with coworkers or peers without psychological interruptions and the ability to perform a full workday without psychological interruption.

A consultative psychological examination report (Exhibits 10-13) dated [REDACTED] was presented. It was noted that Claimant received treatment for PTSD related to childhood abuse. It was noted that Claimant was anxious in crowds. It was noted that Claimant displayed no unusual behavior while being interviewed. An attempted suicide in 2007 was noted. Axis I diagnoses included PTSD associated with depression and anxiety. Claimant's GAF was 58. It was noted that Claimant related positively, reciprocally and effectively to others. It was noted that Claimant's ability to remember, understand and carry-out instructions was generally intact. It was noted that Claimant's ability to cope with stresses was impaired by anxiety.

A Mental Impairment Questionnaire (Exhibits A1-A6) dated [REDACTED] was presented. The questionnaire was completed by a treating nurse practitioner. Diagnoses were noted for: non-hyperactive attention deficit, bipolar disorder, alcohol dependence in full remission and post-traumatic stress disorder. It was noted that Claimant had poor and interrupted sleep of 9-11 hours per evening. It was noted that Claimant had flashbacks of past trauma. It was noted that Claimant had difficulty performing daily activities. It was opined that Claimant had no useful ability to: travel in unfamiliar places, understand and remember detailed instructions, remember work-like procedures, maintain regular job attendance and punctuality, work in coordination with others, completing a normal workday without interruption from symptoms or to deal with work stress. It was opined that Claimant was unable to meet competitive standards of: carrying out simple instructions, sustaining a routine without supervision, making simple work-related decisions, performing at a consistent pace, asking simple questions or responding appropriately to changes. It was noted that Claimant was extremely disorganized and had difficulties with concentration and motivation. Noted symptoms included: anhedonia, decreased energy, mood disturbance, difficulty thinking or concentrating, flashbacks, recurrent obsessions or compulsions, bipolar syndrome, irrational fears, physical symptoms with no organic findings, disorientation to time and place, memory impairment and sleep disturbance.

A Medication Review Note (Exhibits A7-11) from a treating nurse practitioner dated [REDACTED] was presented. It was noted that Claimant's GAF was 50. A list of 13 active

diagnoses was provided. It was noted that Claimant was denied four times by SSA. It was noted that Claimant had: spontaneous speech, good eye contact, normal kinetics, cooperative manner and logical thought process

A letter (Exhibits A12-A13) from Claimant's licensed therapist (a social worker) dated [REDACTED] was presented. It was noted that the therapist first saw Claimant over one year ago. It was noted that Claimant had ongoing problems with flashbacks of abuse. It was noted that Claimant had problems with chronic pain. It was noted that Claimant's memory was worsening. It was noted that Claimant was unable to perform basic math or remember appointments. It was noted that Claimant struggled with basic work activities. It was also noted that Claimant reported a fear of being hurt by others.

SSA does not list nurse practitioners or licensed therapists as acceptable medical sources (see CFR § 404.1513). Thus, most of Claimant's presented evidence cannot be considered as medical evidence. Despite this finding, some degree of weight can be given to statements made by persons primarily responsible for treating Claimant-particularly when the statements are consistent with medical evidence.

The presented documents established that Claimant received psychological treatment at least since 2011. As of 2011, Claimant was diagnosed with PTSD and bipolar disorder by a treating physician. The diagnoses were confirmed by a consultative examiner in 6/2012. The presented evidence tended to establish that Claimant suffers anxiety in social functioning and maintaining concentration. Specifics concerning the degree to which Claimant is affected will be discussed below. The evidence concerning anxiety and concentration difficulties sufficiently established that Claimant is significantly restricted from performing some basic work abilities, based on a de minimus standard.

The evidence showed that Claimant's headaches, anxiety and concentration difficulties persisted for more than 12 months. It is found that Claimant meets the durational requirements for a severe impairment.

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

The third step of the sequential analysis requires a determination whether the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920 (a)(4)(iii). If Claimant's impairments are listed and deemed to meet the 12 month requirement, then the claimant is deemed disabled. If the impairment is unlisted, then the analysis proceeds to the next step.

Claimant's most prominent impairment appears to be psychological problems related to bipolar disorder and/or depression. Both disorders are covered by Listing 12.04 which reads:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or
 - g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
 - h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

- B. Resulting in at least two of the following:
1. Marked restriction of activities of daily living; or
 2. Marked difficulties in maintaining social functioning; or
 3. Marked difficulties in maintaining concentration, persistence, or pace; or
 4. Repeated episodes of decompensation, each of extended duration

OR

- C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability

to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or
2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Looking at Part B, Claimant's treating nurse practitioner strongly suggested that Claimant met the affective disorder listing. It was specifically opined that Claimant was markedly restricted in daily living activities and maintaining concentration, persistence or pace. It was also opined that Claimant had four or more episodes of decompensation of extended duration in a 12 month period. SSA states the following concerning episodes of decompensation:

Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence, severity, and duration of the episode.

There was no evidence of a significant changing of medication or of hospitalizations. The nurse practitioner's conclusion that Claimant had four or more episodes of decompensation within a 12 month period is wholly unsupported by the medical evidence. This also presents a problem in accepting any of the practitioner's statements concerning Claimant. Claimant's basis for disability primarily rests on accepting the opinions and conclusions of the treating nurse practitioner, even though SSA tends to not support such deference. The temptation to defer to the nurse practitioner's opinions is significantly diminished after discovering a lack of evidence for at least one of practitioner's statements.

It was established that a consultative examiner who qualified as a medical source found Claimant's GAF was 58. A GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning. A GAF of 58 would also be considered on the high end of functioning for a person with moderate symptoms. The evidence of a non-treating medical source carries more weight than the statements of multiple treating non-medical sources. Based on the presented evidence, it is found that Claimant has no more than moderate difficulties in maintaining concentration, performing daily activities and/or maintaining social functioning.

There was a lack of evidence from medical sources that Claimant meets either Parts B or C of the listing for affective disorders. Accordingly, it is found that Claimant does not meet the listing for affective disorders.

A listing for anxiety disorders (Listing 12.06) and somatoform disorders were considered based on Claimant's complaints of anxiety and headaches. These listings were rejected based on the same reasoning as noted above and a failure to establish that Claimant lacked the ability to function outside of the 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 testified to performing past employment in customer service and as an assistant teacher. Claimant testified that her psychological symptoms would prevent her from performing any of her past employment. For purposes of this decision, Claimant's testimony will be accepted as accurate. It is found that Claimant cannot perform her 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).

The presented evidence failed to establish any basis for exertional restrictions. The presented evidence failed to establish that Claimant suffers any exertional impairments. Psychological treatment records established that Claimant has moderate difficulties with social anxiety and concentration, partially due to chronic headaches. Despite those obstacles, Claimant should be able to perform a sufficiently wide range of jobs so that employment is a reasonable option for Claimant. Accordingly, it is found that Claimant is not disabled and that DHS properly denied Claimant's application for 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 not disabled for purposes of MA benefits based on a finding that Claimant's impairments do not sufficiently restrict employment opportunities so that a disability finding is appropriate. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS properly denied Claimant's application for SDA benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA and SDA benefit application dated 4/20/12 based on a determination that Claimant is not disabled.

The actions taken by DHS are AFFIRMED.


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

Date Signed: 6/21/2013

Date Mailed: 6/21/2013

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:

