

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

IN THE MATTER OF:



Reg. No.: 2013-38325
Issue No.: 2009, 4031
Case No.: [REDACTED]
Hearing Date: August 14, 2013
County: Gratiot

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on August 14, 2013, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Lead Worker.

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 [REDACTED]/12, Claimant applied for SDA and MA benefits, including retroactive MA benefits from [REDACTED]/2012.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
4. On [REDACTED] 13, DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On [REDACTED]/13, Claimant requested a hearing disputing the denial of MA benefits.
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.13.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A54) at the hearing.
9. On [REDACTED]/13, an updated hearing packet was forwarded to SHRT.
10. On [REDACTED]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.13.
11. On [REDACTED]/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
12. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'7" and weight of 182 pounds.
13. Claimant is an ongoing tobacco smoker.
14. Claimant's highest education year completed was 12th grade.
15. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since approximately [REDACTED]/2013.
16. Claimant alleged disability based on impairments and issues including back pain, stomach pain, fibromyalgia and various psychological disorders.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

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 (10/2010), p. 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:

- 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).

BEM 260 (7/2012) pp. 1-2

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 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

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

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints

are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

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

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

Claimant denied performing 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 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience

were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended “to do no more than screen out groundless claims.” *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant’s impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the relevant submitted medical documentation.

Various documents (Exhibits 341-562) related to prior MA benefit applications were presented. The documents either duplicated below noted documentation and/or were irrelevant to Claimant’s current claim of disability. The most relevant information in Claimant’s history was a gastric bypass surgery performed in 2002 (see Exhibit A13).

Medical treatment records (Exhibits 260-265) from a sleep disorder center were presented. An impression of obstructive sleep apnea was noted. Various noted assessments included: heartburn, hypertension, thyroid disorder, allergic rhinitis and COPD.

Diagnostic Radiology reports (Exhibit 247-249) dated [REDACTED]/11 were presented. It was noted that Claimant presented after falling. It was noted that a view of Claimant’s right knee showed degenerative changes. It was noted that a view of Claimant’s right wrist was taken; a normal right wrist impression was noted.

Neurology treatment documents (Exhibits 25-26) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of vision loss, vertigo, severe anxiety, depression, generalized weakness, memory loss and falling. It was noted that Claimant had adequate strength in all extremities. It was noted that Claimant had classical features of fibromyalgia.

Medical center lab results (Exhibits 237-246) dated [REDACTED]/12 were presented. The results were not accompanied by medical analysis.

Medical center documents (Exhibits 222-236; 258-259) dated [REDACTED] 12 were presented. It was noted that Claimant presented with chronic neck and lower back pain. An MRI report (Exhibit 29) of Claimant’s lumbar was presented. Scoliosis and degenerative changes throughout the spine were noted. Severe spinal canal stenosis was noted at L4-L5. Mild spinal canal stenosis was noted at L2-L3 and L3-L4. Radiology was noted to demonstrate “advanced degenerative changes” and “severe facet joint degenerative change” from L3-S1. A conclusion of advanced osteoarthritic changes with grade 1 anterolisthesis of L4. It was noted that radiology of the cervical spine revealed degenerative changes including disc space narrowing at C5-C6; moderate marked right foraminal narrowing was noted at C6-C7.

Medical center documents (Exhibits 77-79; 181-221) dated [REDACTED]/12 was presented. It was noted that Claimant presented with chest pain complaints. A diagnosis of acute reactions to stress was noted. A course of medical treatment was not provided.

Diagnostic Radiology reports (Exhibit 179-180) dated [REDACTED]/12 were presented. It was noted that views were taken of Claimant's right foot. An impression of no evidence of fracture or dislocation was noted.

Diagnostic Radiology reports (Exhibit 176-177) dated [REDACTED]/12 were presented. It was noted that views were taken of Claimant's right and left shoulders. A noted impression of mild degenerative changes was given for each shoulder. It was also noted that no fractures or dislocations were seen.

Urgent care documents (Exhibits 75-76, 80) dated [REDACTED]/12 was presented. It was noted that Claimant presented with complaints of chest pain, arm pain and phlegm. A diagnosis of acute bronchitis was noted. It was noted Claimant should stop smoking. A course of medical treatment was not provided.

Neurology treatment documents (Exhibits 15, 18-19) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of chronic neck pain. A history of fibromyalgia was noted. It was noted that nerve conduction study was performed. It was noted there was no evidence of significant cervical radiculopathy (see Exhibits 27-28). CTS on the right was noted.

Neurology treatment documents (Exhibits 14, 16-17) dated [REDACTED]/13 were presented. It was noted that Claimant presented with complaints of pain and headaches. It was noted that nerve conduction study was performed. Impressions were noted that there was evidence of lumbosacral radiculopathy at L5 and L4. Possible neuropathy was also noted.

Medical documents (Exhibits 81-83; 127-171) dated [REDACTED]/12 and [REDACTED]/12 were presented. A discharge diagnosis of abdominal pain was noted. It was noted that Claimant should continue taking 17 different medications and stop taking dicyclomine and omeprazole. A discharge diagnosis of acute abdominal pain secondary to constipation was noted. It was noted that Claimant was treated with magnesium citrate and IV fluids. It was noted that a CT of abdomen and pelvis showed fecal impaction but no other abnormalities. An impression of a normal examination was noted following chest x-rays.

Medical treatment documents (Exhibits 11-13) dated [REDACTED]/12 were presented. It was noted that Claimant complained of radiating cervical and lumbar spine pain. It was noted that Claimant stopped taking Lyrica because she could not afford it.

Medical treatment documents (Exhibits 7-10) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of ongoing headaches. It was noted that

Claimant complained of a moderate degree of neck pain, which was noted to moderately restrict Claimant's activities.

Medical treatment documents (Exhibits 84-126) dated [REDACTED]/12 were presented. It was noted that Claimant presented after falling down stairs with a complaint of ankle pain. It was noted that radiology was taken and there was no fracture. A diagnosis of a sprained ankle was noted.

Medical treatment documents (Exhibits 3-6) dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of neck pain, LBP and headaches. Decreased range of spine motion was noted. Claimant's gait was noted as unsteady. Strength was noted as 5/5. The treating physician noted that Claimant was prescribed Lyrica to treat pain. It was noted that Claimant was a smoker. Cervical, thoracic and lumbar pain on palpation was noted.

A Medical Examination Report (Exhibits 49-50) dated [REDACTED]/12 was presented. It was noted that the form author was Claimant's neurology physician. Diagnoses included: chronic pain syndrome, headache, lower back pain, neck pain, bipolar disorder, dizziness, neuropathy, radiculopathy, CTS and paresthesia. It was noted that Claimant took six different medications including Vicodin. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

A Medical Examination Report (Exhibits 43-44) and attachments (Exhibits 45-47) dated [REDACTED]/12 from a physician was presented. It was noted that the physician first treated Claimant on [REDACTED]/11 and last examined Claimant on [REDACTED]/12. The physician provided various diagnoses including anxiety disorder, COPD, high blood pressure, constipation, severe tooth decay, osteoarthritis and others. An impression was given that Claimant's condition was deteriorating. It was noted that Claimant could meet household needs. It was noted that Claimant reported a previous weight of 400 pounds, which may be affecting her bones now.

A Final Report (Exhibit A36) dated [REDACTED]/13 was presented. It was noted that five views of the lumbar spine were taken. Impression of advanced degenerative changes and marked hypertrophic facet arthropathy were noted.

Medical center documents (Exhibits A13-A18) dated [REDACTED]/13 were presented. It was noted that Claimant was a new patient. Noted active problems included: acute bronchitis, anemia, anxiety, arthritis, asthma, back pain, bipolar disorder, CTS, chronic bronchitis, chronic fatigue syndrome, COPD, depression, diverticulosis and 14 others.

Medical center documents (Exhibits A2-A12) dated [REDACTED]/13 were presented. It was noted that Claimant presented complaining of right shoulder pain following a fall when her chair broke. It was noted that Claimant had limited range of motion in the right shoulder. Tenderness and diffuse weakness were also noted. A drop-arm test was noted as negative. A generic assessment of right shoulder pain was noted. A plan noted various medication including codeine.

Medical center documents (Exhibits A32-A34) dated [REDACTED]/13 were presented. It was noted that Claimant presented with complaints of lower back pain. It was noted that conservative treatments have failed. It was noted that Claimant's pain patterns affect ADLs. It was noted that injections to treat Claimant's pain would be scheduled.

A Medical Exception Request (Exhibits A28) dated [REDACTED]/13 was presented. It was noted that Claimant sought a referral for migraine headaches.

Medical documents (Exhibits A24-A27) dated [REDACTED]/13 were presented. It was noted that Claimant presented with a 9/10 lower back pain complaint. It was noted that Claimant struggles with ADLs including sitting or standing. It was noted that Claimant could benefit from physical therapy but such therapy was not covered by Claimant's insurance.

A Medical Exception Request (Exhibit A31) dated [REDACTED]/13 was presented. It was noted that Claimant sought a referral for lower back pain relief. A treatment plan for epidural injections was sought. It was noted that Claimant's condition was not life-threatening but significantly affected her quality of life.

A bone mineral density report (Exhibit A35) dated [REDACTED]/13 was presented. It was noted that Claimant has moderate osteopenia especially involving the hip. It was noted that a 10-year probability for major osteoporotic fracture was 9.5%.

A Medical Exception Request (Exhibit A1) dated [REDACTED]/13 was presented. The document was completed by a treating physician. It was noted that Claimant sought referrals to a physician that would accept Claimant's insurance (presumably AMP). It was noted that Claimant needed lifetime treatment. The following diagnoses were noted: chronic back pain, COPD, Vitamin D and B-12 deficiencies, anemia, IBS and diverticulosis.

A Medical Exception Request (Exhibit A48) dated [REDACTED]/13 was presented. It was noted that Claimant requested a referral for CTS surgery. Claimant's PCP responded that CTS surgery is recommended and would have been performed but Claimant lost insurance.

Claimant's medication list (Exhibits A19-A21) as of [REDACTED]/13 was presented. It was noted that Claimant took 29 medications. Claimant testified that she is unable to take NSAIDs because of her gastric bypass surgery. Claimant's testimony was consistent with presented documents, which verified a bariatric surgery in Claimant's medical history and allergies to NSAIDs in many treatment documents.

Psychiatric treatment documents (Exhibits 269-317) were presented. The documents ranged from [REDACTED]/2011-[REDACTED]/2012. It was noted that Claimant received ongoing treatment for bipolar disorder. It was noted that Claimant took Seroquel, lamictal and klonopin. On [REDACTED]/12, Claimant's GAF was 50. Documents consistently noted that Claimant was

markedly limited in problem solving with others and recognizing and expressing emotions appropriately. Claimant's concentration was noted as moderately impaired.

Various eye institute documents (Exhibits 172-173; 318-327) were presented. The documents ranged from [REDACTED]/2011-[REDACTED]/2012. It was noted that Claimant complained of headaches and vision loss. It was noted that an MRI of Claimant's brain was taken on [REDACTED]/12. A noted impression of abnormal increased T2 signal was noted; it was also noted that the MRI was otherwise unremarkable.

Claimant alleged disability based on a litany of problems. Claimant's most prominent problems appear to be cervical and lumbar pain.

Claimant testified that she does not use a walking aid but is limited to a block or less of walking due to back pain. Claimant also testified that she has a five-pound lifting restriction, though Claimant conceded that she carried approximately ten pounds of items to the hearing. Claimant testified that she can drive but that she is losing her ability perform other ADLs, such as dressing and showering.

Radiology from [REDACTED]/2013 verified advanced degenerative changes and marked hypertrophic facet arthropathy. "Advanced" and "marked" degeneration compared to Claimant's previous lumbar radiology verified that Claimant would have severe ambulation and lifting restrictions. It is found that Claimant established significant impairment to performing basic work activities.

Claimant seeks a finding of disability from [REDACTED]/2012. Presented medical records tended to verify that Claimant's lumbar problems existed before [REDACTED]/2012 and continued through to the date of hearing. It is found that Claimant established impairments lasting 12 months or longer beginning in [REDACTED]/2012.

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 back pain. Spinal disorders are covered by Listing 1.04 which reads as follows:

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.

Looking at Part C, presented radiography from 2012 verified that Claimant suffered "severe" stenosis at multiple disc space levels. Claimant's chronic complaints of radiating back pain is sufficient to establish pseudoclaudication.

Claimant failed to establish any weakness despite the severe stenosis. As recently as 11/2012, Claimant was noted as having full strength. Further, Claimant failed to establish an inability to ambulate ineffectively, as required by SSA. It is found that Claimant does not meet the listing for spinal disorders.

The following listings were also considered joint dysfunction (Listing 1.02), asthma (Listing 3.03), sleep apnea (Listing 3.10) and anxiety disorder (Listing 12.06). These listings were rejected due to a lack of medical evidence.

It is found that Claimant failed to establish meeting a SSA listing. Accordingly, the analysis moves to step four.

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if it is determined that a claimant can perform past relevant work. *Id.*

Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3). RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

Claimant provided a list of her jobs from the past 15 years (Exhibit 55). Claimant worked for four days in ■/2008 as a shipping clerk. Claimant listed a job over a three month period in 2005 in accounts. Claimant listed performing bookkeeping employment over a 16 month period through 2002.

Claimant testified that she is unable to perform the gross motor movements required of her past jobs due to CTS. Claimant's testimony is consistent with the medical evidence. It is found that Claimant is unable to perform 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).

Given Claimant's age (at the time of application), education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

As noted in step two. Claimant was diagnosed with back problems of a "severe" and advanced" nature. As noted in step three, the severity is not so far that it prevents Claimant from ambulating effectively. It would be reasonable to presume that Claimant is capable of performing the ambulating requirements to perform sedentary employment; however, has more impairments than just ambulation.

Claimant was diagnosed with fibromyalgia. It is understood to be a painful disease. It is reasonable to presume concentration difficulties, particularly when acting in conjunction with verified marked stenosis of Claimant's lumbar.

Claimant was also diagnosed with CTS. The degree of pain and/or restrictions caused by CTS was not clear but it was established that Claimant needed surgery to address CTS. This is sufficient to presume a relatively high degree of CTS.

It is also concerning that Claimant's problems make it more difficult for her to adapt to her problems. For example, Claimant would have difficulty using a cane or walker because of CTS. Claimant's gastric bypass surgery prevents her from taking some NSAIDs. Not being able to take certain pain medications may affect Claimant's ability to live with less pain.

It was further established that Claimant had cervical spine problems, anxiety and sleep apnea. Thus, Claimant has minimum lifting and ambulation abilities, limited hand dexterity, severe pain and anxiety.

DHS did not provide vocational evidence of jobs that Claimant could perform. Based on the presented evidence, there are likely no such jobs. Accordingly, it is found that Claimant is not able to perform any type of employment and is a disabled individual. Therefore, DHS improperly denied Claimant's MA benefit application.

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 a finding that Claimant's impairments prevent her from performing and maintaining any type of employment. The analysis and finding equally applies to Claimant's application for SDA benefits. It is found that DHS improperly 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 improperly denied Claimant's application for MA and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED]/12, including retroactive MA benefits from [REDACTED]/2012;
- (2) evaluate Claimant's eligibility for MA and SDA benefits subject to the finding that Claimant is a disabled individual;
- (3) initiate a supplement for any benefits not issued as a result of the improper application 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 and SDA benefits.

The actions taken by DHS are REVERSED.


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

Date Signed: 11/13/2013

Date Mailed: 11/13/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

