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

IN THE MATTER OF:

Reg. No.: 2013-38782
Issue No.: 2009, 4031
Case No.:
Hearing Date: August 8, 2013
County: Ionia (00)

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 8, 2013, from Detroit, Michigan. Participants included the above-named Claimant. testified and appeared as Claimant's legal counsel and authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included Specialist.

ISSUE

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

FINDINGS OF FACT

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

1. On /12, Claimant applied for MA benefits.

2. Claimant's only basis for MA benefits was as a disabled individual.

3. On /13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 8-9).

4. On /13, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action informing Claimant of the denial.

5. On /13, Claimant's AHR requested a hearing disputing the denial of MA benefits.

6. On /13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.14.

7. On /13 an administrative hearing was held.

8. On /13, an Interim Order Extending the Record was mailed to Claimant's AHR, allowing 30 days from the date of hearing allowing submission of physician statements adopting previously submitted occupational therapist statements of restriction.

9. On /13, Claimant submitted additional documents (Exhibits A1-A9)

10. On /13, an updated hearing packet was forwarded to SHRT.

11. On /13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.13.

12. On /13, the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

13. As of the date of the administrative hearing, Claimant was a -year-old female with a height of 5'2'' and weight of 200 pounds.

14. Claimant is an ongoing tobacco smoker.

15. Claimant's highest education year completed was the 12th grade, via general equivalency degree.

16. As of the date of the administrative hearing, Claimant had no medical insurance coverage.

17. Claimant alleged disability based on impairments and issues including lower back restrictions.

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).

Prior to the hearing, it should be noted that DHS requested an adjournment for the purpose of obtaining attorney representation. Typically, DHS requests attorney representation whenever a Claimant is represented by an attorney at an administrative hearing. The DHS request for adjournment was denied because DHS was aware of Claimant's representation before the hearing and had ample time to secure representation.

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 CRF 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.

Office visit documents (Exhibits 41-43) dated ███/12 were presented. It was noted that Claimant presented with a complaint of vaginal itching. An assessment of bacterial vaginosis was noted.

Office visit documents (Exhibits 37-40) dated ███/12 were presented. It was noted that Claimant presented with complaints of radiating back pain. It was noted that Claimant's right leg occasionally gives out, and that she almost fell that day. An MRI was referenced which noted nerve root compression.

A physician letter (Exhibit 93) dated ███/12 was presented. It was noted that Claimant presented with complaints of lower back pain. It was noted that Claimant could walk a modest distance. It was noted that surgical options were discussed.

Office visit documents (Exhibits 32-36) dated ███/12 were presented. It was noted that Claimant presented for surgery clearance.

Orthopedic clinic documents (Exhibits 59-60; 81-82) dated ███/12 were presented. It was noted that Claimant complained of radiating back pain, ongoing for ten years, but worse over the last nine months. Pain was reported as 10/10 with standing and walking

exacerbating the pain. Claimant's gait was noted with a mild limp. An MRI from /12 was referenced; the MRI noted impressions including disc space narrowing and endplate changes at L5-S1 and annular tear and disc bulging and foraminal narrowing at L5.

Orthopedic clinic documents (Exhibits 57-58; 79-80) dated /12 were presented. It was noted that Claimant presented with complaints of lumbar pain It was noted that Claimant's symptoms were mild. It was noted that Claimant complained of her right leg giving out. It was noted that Claimant did not use walking assistance devices. It was noted that Claimant might benefit from injections or weight loss, neither of which Claimant tried. It was noted that nerve block was recommended but Claimant declined. It was also noted that Claimant would benefit from quitting smoking.

Various medical documents (Exhibits 44-49; 61-65; 78; 83-84; 94-97) referencing a hospital admission dated /12 were presented. It was noted that Claimant underwent a lumbar laminectomy and fusion. Various noted discharge instructions included not sitting longer than 20-30 minutes, no smoking, no bending or twisting, no lifting over 10 pounds and to walk as much as possible. It was noted that Claimant was discharged on /12.

A physician letter (Exhibit 77) dated /12 was presented. It was noted that lumbar spine x-rays reveal that surgical hardware was in good position.

A letter from Claimant's treating neurologist (Exhibits 10; 66; 92) dated /12 was presented. It was noted that Claimant was seen for a post-operational appointment. It was noted that a lumbosacral decompression with facetectomies and instrumental fusion was performed on /12. It was noted that Claimant reported incisional ache which was noted as expected. It was noted that Claimant is doing some walking and is down to one or fewer Norco tablets daily.

Orthopedic clinic documents (Exhibits 55-56; 75-76) dated /12 were presented. It was noted that Claimant appeared for a surgical follow-up appointment. Claimant's pain was reported as 0/10. A diagnosis of lumbar stenosis with "neurogenic claudication, improving" was noted.

A treating physician letter (Exhibit 91) dated /13 was presented. It was noted that Claimant was making a satisfactory recovery following surgery with reasonable relief from most of her radicular discomfort. It was noted that Claimant does a fair bit of walking.

Orthopedic clinic documents (Exhibits 53-54; 73-74) dated 1 /13 were presented. It was noted that Claimant appeared for a three-month surgical follow-up. It was noted that Claimant's pain was 0/10. It was noted that Claimant was doing well and that she may return to work with limitations in approximately six weeks.

A Therapy Referral (Exhibit 24) dated /13 was presented. A diagnosis of lumbar stenosis with neurogenic claudication was noted. Noted exercises included Williams flexion, McKenzie extension and dynamic lumbar stabilization; presumably, the exercises were recommendations for Claimant to perform.

A Medical Work Release (Exhibit 25) dated /13 was presented, It was noted that Claimant could not perform lifting over 50 pounds. It was noted that Claimant could not physically restrain clients.

Occupational therapist documents (Exhibits A2-A9) dated /13 were presented. Claimant's AHR testified that the testing was paid for by the firm representing Claimant in the SSA benefit process. It was noted that Claimant was neck pain free following cervical fusion surgery in 2008. It was noted that Claimant reported pain while in physical therapy for her lower back. It was noted that Claimant's symptoms included muscle spasms and pain. It was noted that Claimant reported difficulty writing due to carpal-tunnel syndrome. A history of depression and anxiety was also noted. Claimant's gait was noted as slow and guarded. Moderate deficits were noted in cervical rotation and extension. It was noted that Claimant had poor fine motor coordination, worse on the left; it was noted that Claimant was left-handed. Claimant's floor-to-waist lifting was noted as limited to 25 pounds. Significant fatigue was noted. Hip flexor strength was noted as 4/5. It was noted that Claimant could walk 30 minutes without interruption, sit 10 minutes without interruption and standing for a 15-minute period. It was noted that Claimant could sit, stand and walk for about two hours per eight hour shift. It was noted that Claimant could occasionally lift 20 pounds and frequently lift up to 10 pounds. For lifting from floor-to-waist, Claimant was restricted to occasional 20 pound lifting but no amount of frequent lifting. It was estimated that Claimant would be late or tardy three times per month due to bad days. It was noted that Claimant would have frequent concentration interruptions to performing simple work tasks. It was noted that Claimant was restricted from performing all exertional levels of employment.

A physician letter (Exhibit A1) dated 13 was presented. The physician noted that Claimant was examined on /13 and most recently before then, on /12. The physician noted a five-year history with Claimant. The physician stated that she agreed with the restrictions provided by the occupational therapist.

Claimant presented evidence of specific work restrictions. Occupational therapist documentation verified lifting, sitting, standing and walking restrictions. The restrictions were subsequently confirmed by a treating physician. Based on the presented evidence, some degree of permanent lifting, standing and ambulation restrictions can be inferred from Claimant's surgical history. An analysis of the degree of restrictions will be reserved for later in the analysis. It is found that Claimant established significant basic work activity restrictions for a period of 12 months or longer.

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 spinal pain, cervical and lumbar. Spinal disorders are covered by 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.

It was established that Claimant underwent multiple fusion surgeries prior to applying for MA benefits. It was not established by medical documentation that Claimant was unable to ambulate effectively, as defined by SSA, following either fusion surgery. Medical evidence also did not verify nerve root compression causing motor or sensory loss, arachnoiditis or stenosis following either surgery. Claimant failed to meet the listing for spinal disorders.

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 that she previously worked as a nursing assistant. Claimant testified that her employment required her to occasionally restrain patients, which she can no longer perform due to back restrictions.

Claimant also testified that she worked as an assembler in a factory. Claimant testified that her job required substantial bending, which she can no longer perform.

Claimant’s testimony was consistent with the medical evidence. 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).

A "treating" physician and occupational therapist determined that Claimant was restricted to about two hours each of standing, walking and sitting within an eight hour period. If accepted, such restrictions would prevent Claimant from performing all exertional levels of employment. It must be determined whether such restrictions should be accepted.

Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers v. Commissioner,* 486 F. 3d

234 (6th Cir. 2007)*; Bowen v Commissioner.* The impairments found by the occupational therapist and Claimant's physician justify discounting.

It was not clear that the "treating" physician who signed-off on the occupational therapist's restrictions was a treating physician. The physician claimant to have a five year history with Claimant but had not examined Claimant in the ten months prior to an examination. There was also an absence of what kind of examination was performed to justify an endorsement of the impairments. Further, if the "treating" physician had a history with Claimant, no records were presented from past treatment for Claimant.

It was also odd that Claimant had back surgery in 2012 and neck surgery in 2008 and the only evidence presented until the occupational therapist's statements verified that Claimant was recovering well. If Claimant injured her neck during therapy for her back, medical records should have verified the injury; no such records were presented.

Further, neither the occupational therapist nor "treating" physician referenced any problems with Claimant's lower back. If Claimant's problem is neck pain, it should be more clear why Claimant's ambulation was restricted. Some lifting, bending and ambulation restrictions can be presumed from Claimant's relatively recent back surgery, but not to the extent as stated by the therapist and physician. This is particularly true when factoring that a physician that consistently saw Claimant following surgery noted that Claimant could return to work in █/2013 though with restrictions. The noted restriction was lifting no more than 50 pounds, a restriction which would not immensely limit Claimant's employment opportunities.

Based on surrounding evidence, the ambulation and standing restrictions as indicated by the occupational therapist and physician were not persuasive reflections of Claimant's abilities. The restrictions found by the treating physician in █/2013 are accepted to be more reflective of Claimant's abilities.

The 50-pound restriction would allow Claimant to perform light employment. The absence of ambulation restrictions outside of the occupational therapist's restrictions justifies a finding that Claimant can perform the necessary standing for light employment.

Based on Claimant's exertional work level (light), age (approaching advanced age), education (high school), employment history (unskilled), Medical-Vocational Rule 202.13 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly 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.

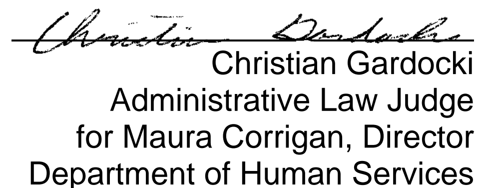
A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- 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 not disabled for purposes of MA benefits based on application of Medical-Vocational Rule 202.13. 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 12/26/12 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: 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: