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

IN THE MATTER OF:

[redacted]

Reg. No.: 2013-41792
Issue No.: 2009; 4009
Case No.: [redacted]
Hearing Date: September 5, 2013
County: Washtenaw

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, an in-person hearing was held on September 5, 2013, from Ypsilanti, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the 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) for the reason 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]0/12, Claimant applied for SDA and MA benefits.

2. Claimant's only basis for MA 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 4-5).

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's AHR requested a hearing disputing the denial of MA and SDA benefits.

6. On [redacted]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.20.

7. On [redacted]/13, an administrative hearing was held.

8. Claimant presented new medical documents (Exhibits A1-A7) at the hearing.

9. During the hearing, Claimant waived the right to receive a timely hearing decision.

10. During the hearing, Claimant and DHS agreed to allow the admission of any additional documents considered and forwarded by SHRT, including the SHRT decision.

11. On [redacted]/13, an updated hearing packet was forwarded to SHRT.

12. On [redacted]/13, SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 202.20.

13. On [redacted]/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

14. As of the date of the administrative hearing, Claimant was a [redacted]-year-old male with a height of 6'3'' and weight of 285 pounds.

15. Claimant has no known relevant history of alcohol or illegal substance abuse.

16. Claimant's highest education year completed was the 12th grade (via general equivalency degree).

17. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient.

18. Claimant alleged disability based on impairments and issues including left knee arthritis, back pain, depression, anxiety, anger problems, asthma, seizures and chronic headaches.

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 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.

Various therapy documents (Exhibits 58-63) from 2009 were presented. The documents were completed by a social worker who conducted group therapy sessions at Claimant's prison. The documents discuss various goals for Claimant and tend to show that Claimant was a cooperative and engaged therapy participant.

Intake documents (Exhibits 38-55) were presented. The documents appear to verify that Claimant enrolled in substance abuse rehabilitation on 3/30/10 as part of a recommendation by his parole officer.

A Psychological Evaluation (Exhbit A1) dated [redacted]/10 was presented. The evaluation was completed by a person noted as a psychological examiner. The examiner noted that the evaluation was based on the following: clinical interview with Claimant, Weschler Intelligence Scale- Fourth Edition (WAIS-IV), Sentence Completion Reading Comprehension Test (WRAT-4) and other tests. The examiner noted that Claimant's verbal comprehension, working memory and perceptual reasoning were average. The examinaer noted that Claimant's word recognition skills were in the low range and that Claimant's spelling fell into "low extreme" range. The examiner noted that Claimant had a learning disability and dyslexia. The examiner noted that there is question whether Claimant can be employed with his current level of neurological instability. The

examiner noted that Claimant could obtain a 2-4 year degree with the following accommodations: access to assistive technology, tests read aloud, access to a scribe or technology for written assignments. Claimant's GAF was noted to be 70.

Hospital documents (Exhibits A5) from an admission dated [redacted]/10 were presented. The hospital noted that Claimant presented with complaints of lower back pain, ongoing for five years. The hospital noted that Claimant was treated with Flexeril, ibuprofren and acetaminophen.

Hospital documents (Exhibits 13-14; 29-37; A5) from [redacted]/2011 were presented. The hospital noted that Claimant presented with complaints of seizures and headaches. The hospital noted that Claimant's strength was 5/5 and that reflexes were 2+. The hospital noted that Claimant had brain surgery to remove an abscess in 1984. The hospital noted that Claimant reported that he began getting headaches the following year. The hospital also noted that expected post-operative changes were shown but there was no evidence of acute intra-cranial pathology. The hospital noted that an EEG from [redacted]/2011 showed no epileptiform activity. The hospital noted that Claimant was admitted to rule out epilepsy versus spells. The hospital noted that a typical tremor was captured and that Claimant's EEG was normal. The hospital noted that Claimant's reported tremors were non-epileptic in nature.

Hospital documents (Exhibit A5) dated [redacted]/11 were presented. The hospital noted that Claimant continued complaining of daily headaches. The hospital noted that Claimant had not had staring spells in the prior six months. The hospital noted that Claimant had not had seizures of generalized shaking for the last two years. The hospital noted that Claimant has not taken medication since [redacted]/2011 due to a lack of finances. The hospital noted that Claimant could drive due to the lack of seizures in the prior six months.

A radiology report (Exhibit 16) of Claimant's brain dated [redacted]/12 was presented. The report noted that there was no evidence of hydronephrosis.

A radiology report (Exhibit 17) dated [redacted]/12 was presented. The reported noted that views were taken of Claimant's left knee. The report noted there was probable small joint effusion.

A Chart Note (Exhibit 12) dated [redacted]/12 was presented. The note was completed by Claimant's physician. It was noted that Claimant reported ongoing persistent and severe headaches. The physician opined that Claimant's lack of motivation was a symptom of depression, not a medication side effect.

A Medical Needs (Exhibit 18; A7) form dated [redacted]/12 was presented. The form was completed by Claimant's physician who noted an approximate 31-month history of treating Claimant. Claimant's physician noted the following diagnoses: atypical migraines, depression, anxiety, visual disturbance and pseudoseizures. Claimant's

physician noted that Claimant does not have a need for assistance with completion of daily activities. Claimant's physician noted that Claimant could not work.

A Medical Examination Report (Exhibit 23) dated [redacted]/12 was presented. The form was completed by Claimant's treating physician. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs.

A Psychiatric/Psychological Examination Report (Exhibits 7-8; A3) dated [redacted]/12 was presented. The form was completed by Claimant's treating physician. The physician noted Claimant had a fear of riding on the bus out of fear of lashing out in anger. The physician noted that being among people triggers anxiety for Claimant. The physician noted that Claimant exhibited the following: orientation x3, submissiveness, gentle behavior, fair grooming, good thought process, normal speech cadence and logic. The physician noted a diagnosis of mood disorder. Claimant's GAF was noted to be 40.

Claimant's treating physician also completed a Mental Residual Functional Capacity Assessment (Exhibit 8; A4) dated [redacted]/12. It was noted that Claimant was markedly limited in the ability to interact with the public and the ability to work with others. Claimant was found moderately limited in four other social-related work abilities and two other concentration-related abilities.

A Medication List (Exhibits 9-10) was presented. The list was undated but was noted as printed on [redacted]/12. It was noted that Claimant continued to take Flexeril, diclofenac sodium, flonase, zyrtec and fluoxetine.

A Psychiatric/Psychological Medical Report (Exhibits 24-28) dated [redacted]/13 was presented. The report was completed by a consultative psychologist who examined Claimant only once. The examining psychologist noted that Claimant reported feeling unhappy and staying home all the time. The examining psychologist noted the following Axis I diagnoses: panic disorder with agoraphobia, major depressive disorder (single episode, severe with mood congruent psychotic features), reading disorder and disorder of written expression. The examining psychologist noted that Claimant's GAF was 55. The examining psychologist noted that Claimant's prognosis was guarded and that he needed medical and medical health treatment.

A Disability Determination Explanation (Exhibits 79-95) was presented. The final page noted a physician signature dated [redacted]/13 and a disability adjudicator signature dated [redacted]/13. Presumably, the document was prepared by persons associated with SSA. A determination of not disabled was noted.

Various psychiatric treatment and medication documents (Exhibits A2) were presented. The documents ranged from [redacted]/2013 to [redacted]/2013.

Claimant alleged disability, in part, due to seizures. It was established that Claimant had a history of seizures. As of [redacted]/2012, the first month when Claimant alleged disability, there was little evidence that Claimant was significantly impaired by seizures. One year

earlier, a hospital noted that Claimant was legally allowed to drive because he had not suffered a seizure in six months. Claimant's treating physician noted a diagnosis for pseudoseizures but there was no evidence that Claimant had a seizure after [redacted]/2011. Presumably, Claimant's seizures are controlled by medication. It is found that Claimant does not have a severe impairment based on seizures.

Claimant alleged disability, in part, due to back and knee pain. Radiology from [redacted]/2012 verified small joint effusion in Claimant's left knee. Documents from 2010 verified that Claimant reported ongoing back pain; the documents also verified that Claimant took medication for the pain. No evidence of spinal radiology was submitted. The evidence was sufficient to justify a finding that Claimant is precluded from performing heavy lifting (50 pounds), though Claimant should be able to lift lighter weights.

Claimant alleged disability, in part, due to chronic headaches. Claimant's physician noted chronic headaches as a problem for Claimant. The evidence failed to verify any cause for the headaches. Claimant's testimony and presented medical evidence was sufficient in establishing chronic headaches as a problem for Claimant, but the evidence does not justify a finding that the headaches preclude Claimant from performing all forms of employment. Reasonably, the headaches would preclude Claimant from performing employment requiring a modest amount of concentration.

Claimant also alleged disability, in part, due to psychological problems. Claimant's physician noted that Claimant had particular difficulties with social interaction and concentration. The degree of Claimant's impairments will be discussed later in the analysis.

Based on the presented evidence, Claimant established significant social interaction, concentration and lifting impairments. It was established that the impairments have and/or will last for 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 concentration and social problems related to depression. Depression is an affective disorder covered by Listing 12.04 which reads as follows:

> **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.

Starting with Part B, there was no evidence of episodes of decompensation and very little evidence to suggest that Claimant has difficulty performing daily activities. There was some evidence of social difficulties for Claimant.

Claimant's physician determined Claimant had a GAF of 40. The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 31-40 is described as "some impairment in reality testing or communication OR major impairment in several areas, such as work or school, family relations, judgment, thinking, or mood." There was no persuasive evidence that Claimant was out-of-touch with reality.

Two relevant anecdotes were noted in Claimant's treatment records. On [redacted]/13, it was noted that Claimant thought about killing a neighborhood cat that kept knocking over garbage. On [redacted]/13, it was noted that Claimant reported walking and being startled by a man running behind him; it was noted that Claimant knocked the man to the ground before realizing that the man was probably a jogger. The anecdotes are representative of psychological symptoms, might not to the degree required to meet the affective disorder listing. There was no evidence of hallucinations, major judgment or mood impairment. Claimant's GAF is not found to be representative of Claimant's impairments.

Claimant's physician noted that Claimant has no restrictions in the following work-related abilities in carrying out simple instructions and sustaining an ordinary routine without supervision. Claimant's physician noted that Claimant was not significantly limited in the following abilities: carrying out detailed instructions, making simple work-related decisions and performing activities within a schedule while maintaining attendance and punctuality. The physician's findings are consistent with less than marked concentration restrictions to concentration and social interaction.

Claimant's physician noted that Claimant was markedly limited in interacting with the general public and working in coordination with others while not being distracted. Accepting the restrictions as accurate would restrict Claimant's employment to a type that requires a minimum of socializing, but is not construed to be a marked restriction to Claimant's ability to concentrate or socially interact. It is found that Claimant does not meet Part B of the listing for affective disorders.

The presented evidence failed to verify that Claimant meets Part C of the listing for affective disorders. Accordingly, it is found that Claimant does not meet the listing for affective disorders.

A listing for spinal disorders (Listing 1.04) was considered based on Claimant's back pain complaints. This listing was rejected due to a lack of radiology and a failure to establish a nerve root compromise, arachnoiditis or an inability to ambulate effectively.

Listings for epilepsy (Listings 11.02 and 11.03) were considered. The listings were summarily rejected due to a failure to verify any seizure pattern since the application claiming disability was submitted to DHS.

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 his only job in the last 15 years was as a dishwasher. Claimant testified that he lost the job due to tremors. Claimant also testified that his left knee and back pain would prevent him from performing the employment again. For purposes of this decision, it will be accepted that Claimant cannot perform the lifting or standing necessary to perform his prior dishwashing employment. Accordingly, the disability 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, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary or light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. 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.

Claimant's treating physician determined that Claimant could not work (See Exhibit 18). A statement by a medical source that a patient is "disabled" or "unable to work" does not mean that SSA will determine that the patient is disabled. 20 CFR 416.920(d)(1) Claimant's physician also failed to note the length of Claimant's supposed period of being unable to work. Thus, it is possible that Claimant was unable to work on the date that his physician completed the medical document, but that Claimant could work shortly thereafter. The treating physician's statement concerning Claimant's inability to work is not persuasive evidence of disability.

Claimant's treating physician noted that Claimant was able to perform household needs. The physician's statement is consistent with a finding that Claimant can perform sedentary or light employment.

It was determined in step two that back pain prevented Claimant from performing heavy employment. Based on the presented evidence, it is found that Claimant is capable of performing at least a light level of employment. Despite this finding, Claimant's non-exertional impairments must be considered.

As noted in step three of the analysis, Claimant was markedly impaired in interacting with the public and in working with others. Claimant's headaches are surely painful and distracting for Claimant. Presumably, Claimant's physician factored Claimant's headaches in determining his capabilities because the physician treated Claimant's for physical and psychological complaints.

Claimant's cognitive restrictions must also be factored. Claimant's poor spelling and dyslexia would preclude Claimant from performing employment requiring substantial reading and/or writing.

Claimant has some restrictions with his ability to perform light employment. These restrictions would limit Claimant's potential employment, but not significantly enough to

presume that Claimant does not have ample employment opportunities to perform many types of light or sedentary employment.

Based on Claimant's exertional work level (light), age (younger individual), education (high school equivalency), employment history (unskilled), Medical-Vocational Rule 202.20 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.

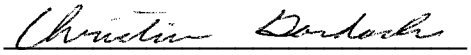
A person is disabled for SDA purposes if the claimant (see BEM 261 at 1):

- 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 11/20/12 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: 12/6/2013

Date Mailed: 12/6/2013

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: [redacted]