

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2013-42329  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: August 21, 2013  
County: Monroe

**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 August 21, 2013, from Monroe, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. 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) 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]/[REDACTED]/12, Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED]/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED]/[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 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 benefits.
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 203.28.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A22) at the hearing.
9. On [REDACTED]/13, an Interim Order Extending the Record was mailed to Claimant and Claimant's AHR allowing 30 days from the date of the hearing for Claimant to present a Medical Examination Report.
10. On [REDACTED]/13, Claimant submitted new medical documents (Exhibits B1-B6)
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 203.28 (see Exhibit C1).
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 female with a height of 5'5" and weight of 200 pounds.
15. Claimant has no known relevant history of tobacco, alcohol or illegal substance abuse.
16. Claimant's highest education year completed was the 12<sup>th</sup> grade and additional certification as a nurse's aide was subsequently obtained.
17. As of the date of the administrative hearing, Claimant had no health insurance coverage, and last had medical coverage approximately two years before the hearing.
18. Claimant alleged disability based on impairments and issues including irritable bowel syndrome (IBS), right shoulder restrictions, neck pain, depression, memory loss related to a stroke and lower back pain (LBP).

### **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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1<sup>st</sup> Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1<sup>st</sup> Cir. 1986).

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.

Physician letters (Exhibits A2-A8) from [REDACTED]/2007 were presented. It was noted that Claimant reported a popping noise in her neck after she and a coworker were pulling a 300-pound tote and her coworker walked away. It was noted that x-rays of Claimant's cervical spine revealed narrowing at C4-C5 and C6-C7. It was noted that Claimant had limited pushing, pulling and lifting abilities. A diagnosis of residual disuse atrophy was noted based on measurements of the upper right extremity.

A radiology report (Exhibit 10) dated [REDACTED]/09 of Claimant's cervical spine was presented. An impression of a disc protrusion at C5-C6 was noted. It was noted that Claimant had mild and multi-level spondylosis of the cervical spine.

A physical therapy discharge summary (Exhibits 12-14) was presented; a date of discharge of [REDACTED]/09 was noted. It was noted that Claimant had decreased shoulder and neck range of motion; decreased strength was also noted. It was noted that Claimant reported constant pain. It was noted that Claimant did not meet the following long-term goals: reduced pain to 3/10, normal ROM in neck and increased strength of upper right extremity.

A radiology report (Exhibits 35) dated [REDACTED]/11 was presented. It was noted that a view was taken of Claimant's chest. An impression of no acute process was noted.

Cardiologist documents (Exhibits 52-54) dated [REDACTED]/11 were presented. It was noted that Claimant complained of pain under her left arm and in her left shoulder; a physician noted the pain was likely caused by fibromyalgia. It was noted that Claimant also reported chest pains and a history of mini strokes. It was noted that a stress test would be scheduled for Claimant.

Cardiologist documents (Exhibits 46-51) dated [REDACTED]/11 were presented. It was noted that a stress test and EKG were performed. An impression of normal perfusion study with no evidence of ischemia or infarction was noted. It was noted that Claimant's EF was 64% and that Claimant had normal left ventricle functioning.

A Medical Examination Report (Exhibits 7-8) dated [REDACTED]/11 was presented. The form was noted as completed by a physician with a 12-year history with Claimant. Noted ongoing diagnoses included depression, fibromyalgia, neck osteoarthritis, neck pain, hypertension and hyperlipidemia. It was noted that Claimant's condition was deteriorating. It was noted that Claimant could meet household needs.

A treating physician letter (Exhibit A1) dated [REDACTED]/12 was presented. It was noted that Claimant was diagnosed with the following problems: fibromyalgia, sleep apnea, depression, degenerative disc disease of the cervical and lumbar spin right rotator cuff syndrome and vitamin D deficiency. It was noted that Claimant needs medication to treat her conditions.

Radiology reports (Exhibits 33-34; 108-109) dated [REDACTED]/12 were presented. It was noted that views were taken of Claimant's left foot and ankle. A noted impression of "no fracture" was noted for Claimant's foot and ankle.

A treating physician document (Exhibit B4) dated [REDACTED]/13 was presented. It was noted that Claimant reported an increase in OCD behavior.

Hospital documents (Exhibits 81-107) from an admission dated [REDACTED]/12 were presented. It was noted that Claimant presented with complaints of chest pain, ongoing for two days. It was noted that views of Claimant's chest revealed no acute process. It was noted that a lung perfusion scan was performed and an impression of low probability for pulmonary embolism was noted.

Cardiologist documents (Exhibits 43-45) dated [REDACTED]/12 were presented. Noted impressions included the following: normal coronary arteries, normal LV systolic function and 55% ejection fraction.

A treating physician document (Exhibit 20) dated [REDACTED]/12 was presented. It was noted that Claimant's HTN was uncontrolled despite prescribed medication. It was noted that Claimant's medications were switched.

A treating physician document (Exhibit B5) dated [REDACTED]/13 was presented. It was noted that Claimant reported continuing difficulty managing OCD symptoms.

A radiology report (Exhibit A11) dated [REDACTED]/12 was presented. It was noted that views of Claimant's lumbar spine were taken. An impression of mild degenerative changes at L5-S1 and no acute process was noted.

A medication list (Exhibit 11) dated [REDACTED]/12 was presented. It was noted that Claimant took 7 medications including tramadol, Cymbalta and Tricor.

A consultative psychiatric examination report (Exhibits 3-6) dated [REDACTED]/12 was presented. It was noted that Claimant reported problems including loss of memory, anxiety, depression, difficulty sleeping, crying spells and concentration difficulties. Some psychomotor retardation was noted. Noted diagnoses included mood disorder. Claimant's GAF was 40. A guarded prognosis was noted. It was noted that Claimant could understand, retain and follow simple instruction. It was noted that Claimant was restricted to performing simple routine tasks. It was also noted that due to depression with restricted mobility, Claimant was restricted to work with supervision with coworkers in public.

A psychological consultative examination report (Exhibits A15-A18) dated [REDACTED]/12 was presented. It was noted that Claimant complained of anxiety, depression and OCD. It was also noted that claimant reported symptoms of racing thoughts, short-term memory loss, periods of disorientation, panic attacks, irritability, anhedonia, dysphoria, mood swings and feelings of hopelessness. Diagnoses were noted for major depressive disorder (recurrent, moderate), generalized anxiety disorder and OCD. Claimant's GAF was assessed to be 48. A guarded prognosis was noted. It was noted that Claimant is restricted from performing long-term employment. It was noted that Claimant could carry out basic or simple daily living tasks. It was noted that Claimant is in need of mental health treatment and was not presently a candidate for employment.

A physician letter (Exhibits A19-A20) dated [REDACTED]/12 was presented. It was noted that Claimant reported falling down stairs seven weeks prior. It was noted that Claimant had a toe fracture and that Claimant reported ongoing pain. It was noted that Claimant was placed in a weight-bearing cast and advised to follow-up in 2-3 weeks.

Gastroenterologist documents (Exhibits A8-A9) dated [REDACTED]/13 and [REDACTED]/13 were presented. As of [REDACTED]/13, Claimant was diagnosed with IBS, diverticulosis and GERD. It was noted Claimant needed a repeat colostomy in 2015. It was noted that Claimant received various medications.

A treating physician document (Exhibit B3) dated [REDACTED]/13 was presented. It was noted that Claimant reported psychological symptoms but that she could not afford medication due to a lack of insurance. It was noted that Claimant goes through a bottle of sanitizer

in two days. It was noted that Claimant seemed obsessed with bugs and insects as she spent the appointment looking around for them.

A Medical Examination Report (Exhibits B1-B2) dated [REDACTED]/13 was presented. The form was completed by a physician with a 13-year history with Claimant. Noted diagnoses for Claimant included HTN, lumbar arthritis, depression, OCD, allergic rhinitis, diverticulosis, right ankle arthritis, C5-C6 disc protrusion and hyperlipidemia.

Claimant alleged disability, in part, based on psychological symptoms. Multiple sources diagnosed Claimant with depression while noting OCD symptoms. Presented medical records verified multiple ongoing symptoms for Claimant, any of which would adversely impact Claimant's abilities to perform work activities.

Claimant testified that she does not attend any kind of psychotherapy. Claimant's lack of treatment is problematic in that it cannot be determined with certainty how well medication and or counseling would improve Claimant's condition. Theoretically, with counseling and/or medication, Claimant's symptoms and restrictions would diminish. It is understood that Claimant lacks health insurance, however, free mental health treatment is known to exist. Claimant expressed willingness to attend treatment but failed to allege any attempts to obtain free psychological treatment. Based on the presented evidence, Claimant's failure to pursue treatment is deemed to be more due to lack of insurance rather than a purposeful refusal by Claimant.

Claimant also alleged disability based on exertional restrictions. Claimant testified that she is unable to raise her arms due to shoulder and joint pain. Claimant testified that she is unable to walk while shopping and that she relies on scooters to get around. Claimant alleged that she is restricted in walking, standing and lifting. The presented evidence verified that Claimant has some lumbar problems, more serious cervical spine problems and uncontrolled HTN. The verified diagnoses verify some degree of ambulation restrictions, partially due to pain and partially due to dyspnea.

It is found that Claimant has exertional and non-exertional restrictions to performing basic work activities. It is also found that Claimant's restrictions have lasted, and will last 12 months or longer and at least since 8/2012, the first month from when disability is sought. Accordingly, it is found that Claimant established suffering severe impairments and the analysis may proceed to step three.

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

Claimant's most prominent impairment appears to be psychological symptoms related to depression. Depression is an affective disorder. The applicable listing states that disability is established by the following requirements:

**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 A, it was established that Claimant suffers symptoms of anhedonia, sleep disturbance, psychomotor dysfunction and decreased energy. It is found that Claimant meets Part A of the listing for affective disorders.

Turning to Part B, there was no evidence of any episodes of decompensation (i.e. psychological hospitalizations). It was verified that multiple examiners determined Claimant's GAF to be in the 41-50 range. The Diagnostic and Statistical Manual of Mental Disorders (4<sup>th</sup> edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Though Claimant's GAF is consistent with marked restrictions, there was little evidence of marked restrictions outside of concentration restrictions. OCD is consistent with an obstacle to completing activities of daily living, but overuse of sanitizer is not persuasive proof of a marked restriction. A diagnosis of depression might adversely affect Claimant's social functioning, but there is no evidence to justify such speculation. It is found that Claimant does not meet Part B of the above listing.

Claimant cannot meet Part C of the affective disorder listing due to her lack of psychological treatment. Claimant lacks the documentation to establish a two year history or that her symptoms are attenuated by treatment.

Listings were also considered for joint dysfunction (Listing 1.02), spinal disorders (Listing 1.04), inflammatory bowel disease (Listing 5.06), anxiety disorder (Listing 12.06). Claimant failed to present evidence for each listing to justify a finding of disability.

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 performed two full-time jobs in the last 15 years, as a factory worker and as a medical biller. Claimant testified that she hurt her neck as a factory worker and that her job required heavy lifting and pulling, which she can no longer perform. Claimant also testified that she does not have the required concentration levels to work again as a medical biller. Claimant's testimony was consistent with the medical evidence. Accordingly, 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).

In the step two analysis, it was noted that Claimant's GAF is consistent with marked restrictions. It was verified by multiple examiners that Claimant has depression and OCD. A consultative examiner also noted psychomotor dysfunction; this is consistent with relatively serious psychological symptoms. The evidence established that Claimant has reduced concentration levels.

It was also established that Claimant had cervical pain in 2009 and that Claimant finished physical therapy with very little improvement. Generally, four-year-old evidence is not persuasive evidence of ongoing impairments. Claimant's lack of insurance and

ongoing medical treatment are circumstances suggesting probable ongoing pain. Cervical pain also is degenerative by nature; thus, the diagnosis makes it likely that Claimant's condition has not improved, at least not barring some kind of therapy or surgery.

Claimant's physician diagnosed Claimant with fibromyalgia. The severity of fibromyalgia was not confirmed but the mere diagnosis is consistent with pain discomfort. This is further evidence of body pain for Claimant.

Claimant's uncontrolled HTN is also consistent with exertional restrictions. Claimant's physician did not explicitly identify that HTN affects Claimant's ambulation, but HTN was regularly noted as uncontrolled (see Exhibits 20-29).

In addition to the above, it was established that Claimant was diagnosed with GERD, IBS and diverticulosis. It was also noted that Claimant would need a colostomy in the near future. These factors each suggest an improbability that Claimant can perform any type of employment.

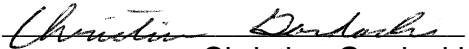
Consultative examiners opined that Claimant is capable of performing simple and repetitive tasks. Based on all of Claimant's ailments and symptoms, it does not appear possible that Claimant could perform even the simplest of tasks for SGA. It is found that Claimant is not capable of obtaining or maintaining any kind of employment. Accordingly, it is found that Claimant is a disabled individual.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds that DHS improperly denied Claimant's application for MA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED]/12, including retroactive MA benefits from [REDACTED]/2012;
- (2) evaluate Claimant's eligibility for MA 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 benefits.

The actions taken by DHS are **REVERSED**.

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

Date Signed: 11/22/2013

Date Mailed: 11/22/2013

**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: 

