

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

**IN THE MATTER OF:**



Reg. No.: 2013-44194  
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) 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], 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]/13, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 9-10).

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 202.11 (see Exhibits B25-B26).
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A85; B1-B25) at the hearing.
9. During the hearing, Claimant's AHR waived any rights of timeliness to a hearing decision.
10. On [REDACTED]/13, an Interim Order Extending the Record was mailed giving Claimant 30 days from the date of hearing to submit treating neurologist and/or neurologist records.
11. On [REDACTED]/13, Claimant submitted additional documents (Exhibits C1-C12).
12. On [REDACTED]/13, an updated hearing packet was forwarded to SHRT.
13. On 1[REDACTED]/13, SHRT determined that Claimant was disabled, effective [REDACTED]/2013, in part by application of Medical Vocational Rule 202.01; SHRT also determined that Claimant was not disabled before 8/2013, in part, by application of Medical Vocational Rule 202.10 (see Exhibits D6-D7).
14. On [REDACTED]1/13 the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.
15. As of the date of the administrative hearing, Claimant was a [REDACTED]-year-old female with a height of 5'7" and weight of 215 pounds.
16. Claimant is an ongoing tobacco user and has a relevant history of heroin and cocaine abuse.
17. Claimant's highest education year completed was the 7<sup>th</sup> grade.
18. As of the date of the administrative hearing, Claimant was an Adult Medical Program recipient since [REDACTED]/2013.
19. Claimant alleged disability based on impairments and issues including depression and body pain.

### 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).

Prior to a disability analysis, it should be noted that SHRT determined that Claimant was a disabled individual beginning [REDACTED]/2013. Thus, only a disability analysis need be undertaken for the period of [REDACTED]/2012 (the first month where MA benefits are sought) through [REDACTED]/2013 (the last month where disability is disputed).

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. The presented documents included those from prior claims for disability. Dates of previous MRT denials included [REDACTED]/12 (see Exhibits 103-104), [REDACTED]/12 (see Exhibits 38-39), [REDACTED]/12 (Exhibits 9-10), [REDACTED]/12 (Exhibits A76-A77) and [REDACTED]/13 (see Exhibits A1-A2). Due to Claimant's multiple applications, many presented medical documents were duplicates.

A consultative psychological examination report (Exhibits 120-122) dated [REDACTED]/11 was presented. It was noted that Claimant reported the following problems: anhedonia, crying spells, irritability and poor sleep. It was noted that Claimant was twice treated for substance abuse, but that she was never treated for psychological symptoms. It was noted that Claimant's thinking process was well organized. It was noted that Claimant's speech was clear. It was noted that Claimant's psychomotor activity was normal. It was

noted that Claimant's affect was appropriate. The examiner noted the following about Claimant: she gets along well with people, no memory problems and she understands directions. Diagnoses of dysthymic disorder and a history of alcohol dependence were noted. Claimant's GAF was 60. A guarded prognosis was noted.

A consultative internal medicine examination report (Exhibits 123-128) dated [REDACTED]/11 was presented. It was noted that Claimant complained of back problems, arthritis and drug dependency. It was noted that Claimant smokes one pack per day. It was noted that Claimant reported not being able to walk more than one hour or sitting for more than 10 minutes due to back pain. Subnormal ranges of motion were noted in Claimant's lumbar, shoulders, elbows, hips, knees and ankles. The examiner noted without further comment that Claimant could walk, sit, stand and lift

Medical clinic documents (Exhibits 149-151) dated [REDACTED]/11 were presented. It was noted that Claimant had no prior history with the clinic. It was noted that Claimant requested examination documents for a disability application.

Radiography reports (Exhibits 18-22; 78-82; 97-101; 142-146; 148; 152-155; A45-A49; A68-A72; A81-A85; B19-B23) dated [REDACTED]/11 were presented. It was noted that x-rays of Claimant's cervical spine revealed facet hypertrophy at multiple levels. It was noted that x-rays of Claimant's lumbar spine revealed multilevel spondylotic changes.

Hospital documents (Exhibits 73-77; A79-A80) dated [REDACTED]/11 were presented. It was noted that Claimant presented with complaints of injuries related to an assault. It was noted that Claimant reported getting punched below her eye; it was noted that Claimant had a visual hematoma under her eye. It was noted that CT views of Claimant's facial/sinus area showed noted no fracture.

A Medical Examination Report (Exhibits 13-14 67-68; 95-96; 140-141) dated [REDACTED]/11 was presented. The report was completed from a physician based on one examination with Claimant. The physician noted diagnoses of facet arthropathy and arthritis in Claimant's cervical and lumbar spine. It was noted that Claimant's condition was stable and that she can meet household needs.

Psychological treatment document (Exhibits 23-29; 62-66; 69-72; 91-94; A31-A35) dated [REDACTED]/12 were presented. It was noted that Claimant reported abusing heroin for a three-year period with her last use occurring [REDACTED]/2011. It was also noted that Claimant reported drinking alcohol daily. It was noted that Claimant's longest time being sober was one year. It was noted that Claimant declined ongoing psychological treatment.

A consultative internal medicine examination report (Exhibits 40-44; 52-56) dated [REDACTED]/12 was presented. It was noted that Claimant reported complaints of chronic neck pain, low back pain, hip pain, depression and anxiety. The presented report appeared to be missing an unspecified amount of pages; missing information included some ranges of motions, a medical source statement and noted impression. It was noted that

Claimant can sit and stand. It was noted that Claimant's bending and stooping had limited range of motion due to hip pain.

A radiology report (Exhibit A43; A67; B18) dated [REDACTED]/12 was presented. It was noted that 3 views were taken of each of Claimant's knees. An impression of a normal study was noted for each knee.

A radiology report (Exhibit A43; A66; A78; B17) dated [REDACTED]/12 was presented. It was noted that 5 views were taken of Claimant's left ankle. An impression of minor degenerative spurring was noted. It was also noted that the radiology was otherwise unremarkable.

Hospital documents (Exhibits A23-A30) dated [REDACTED]/12 were presented. It was noted that Claimant complained of chest pain. It was noted that a view of Claimant's chest was performed; an impression of no acute process was noted.

Psychological treatment documents (Exhibits A36-A40) dated [REDACTED]/12 were presented. It was noted that Claimant sought to see a psychiatrist and therapist. Diagnoses included major depressive disorder, anxiety disorder and four drug dependence disorders. Claimant's GAF was noted as 55.

Medical documents (Exhibits A13-A14; A54-A55) dated [REDACTED]/12 were presented. It was noted that Claimant presented with a complaint of chest pain, which is relieved by rest. A plan to schedule Claimant for stress testing was noted. It was noted that Claimant was counseled on stopping her smoking.

A Psychiatric Evaluation (Exhibits B5-B13) dated [REDACTED]/12 was presented. Claimant's GAF was noted as 55.

A Medical Examination Report (Exhibits A41-A42) dated [REDACTED]/12 was presented. The form was completed by a treating physician who first treated Claimant on [REDACTED]/12. Noted diagnoses included neck pain, LBP, hip pain, leg pain, left shoulder pain and thoracic pain. It was noted that Claimant had crepitis in both knees. It was noted that Claimant ambulated with a cane. It was noted that Claimant could meet her household needs.

Hospital documents (Exhibits A15-A22; A50-A51) dated [REDACTED]/12 were presented. It was noted that Claimant underwent a stress test. It was noted that a myocardial exam was also performed. An impression of a normal Myoview was noted. It was also noted there was no evidence of ischemia.

A radiology report (Exhibit B16) dated [REDACTED]/13 was presented. It was noted that Claimant complained of left side tingling. It was noted that a CT of Claimant's head was performed. An impression of no acute intracranial process was noted.

Medication review notes (Exhibits B1-B4) dated [REDACTED]/13 from a psychiatrist were presented. It was noted that Claimant received various prescription refills.

A Medical Examination Report (Exhibits B14-B15) dated [REDACTED]/13 was presented. It was noted that the form was completed by a physician who first examined Claimant on [REDACTED]/12 and last examined Claimant on [REDACTED]/13. Noted diagnoses included chronic pain, headaches, tobacco use and depression. It was noted that Claimant was ambulating with a cane. It was noted that Claimant had limited range of motion in back. The physician noted that Claimant needs occupational or physical therapy. It was noted that Claimant can meet household needs.

Various lab results (Exhibits C9-C12) from [REDACTED]/13 were presented. The results were not considered due to an absence of physician analysis.

Various medical documents from a rheumatology clinic (Exhibits C1-C2) dated [REDACTED]/13 were presented. It was noted that Claimant appeared for an examination. It was noted that Claimant complained of body ache following a motor vehicle accident in 2010. An impression of minimal degenerative change and mild hyperinflation was noted following views of Claimant's chest. It was noted that radiography of Claimant's hands and wrists was performed; an impression of early degenerative joint changes was noted. An impression of mild left and moderate right osteoarthritis was noted following radiography of Claimant's feet and ankles. Claimant's strength was noted as 5/5 throughout. It was noted that other examinations were conducted; an interpretation of an "essentially normal examination" was noted for all other examinations.

A consultative psychological examination report (Exhibits D1-D5) dated 1[REDACTED]/13 was presented. The examiner noted Claimant suffered an unspecified mood disorder. Claimant's GAF was 47. It was noted that Claimant continues to benefit from county-issued mental health therapy. It was noted that employment did not seem to be a viable option in light of Claimant's physical health. A prognosis of guarded to serious was noted.

Claimant alleged disability, in part, based on psychological symptoms. For purposes of this decision, it will be found that Claimant is disabled because of psychological symptoms.

When alcohol and/or drug abuse is relevant to an impairment then an additional analysis must be performed. SSA provides guidance on disability findings that may be impacted by substance abuse. Social Security Rule 82-60 states:

Where the definition of disability is met in a title XVI claim, and there is evidence of drug addiction or alcoholism, a determination must also be made as to whether the drug addiction or alcoholism was a factor material to the finding of disability for purposes of applying the treatment and representative payee provisions. In making this decision the key issue is whether the individual would continue to meet the definition of disability

even if drug and/or alcohol use were to stop. If he or she would still meet the definition, drug addiction or alcoholism is not material to the finding of disability and the treatment and representative payee provisions do not apply. The drug addiction and alcoholism requirements are imposed only where (1) the individual's impairment(s) is found disabling and drug addiction and/or alcoholism is a contributing factor material to the determination of disability, and (2) the same impairment(s) would no longer be found disabling if the individual's drug addiction or alcoholism were eliminated, as, for example, through rehabilitation treatment.

As recently as [REDACTED]/12, Claimant was diagnosed with four different dependence disorders: cannabis, cocaine, opioids and alcohol. Claimant testified that she still drinks "a couple" of times per week. Presented medical records verify recent daily alcohol drinking. The presented records tend to verify that alcohol and/or drugs are material to Claimant's psychological dysfunction.

Another problem with Claimant's psychological symptoms is that Claimant failed to establish seeking regular treatment until [REDACTED]/12. There were no records of mental health therapy or hospitalizations. Claimant would have benefitted by presenting treating source documents stating that Claimant's drug use is immaterial to her symptoms. The consultative examination findings are not persuasive because Claimant had better evidence available, her own psychologist. It is found that Claimant failed to establish disability based on psychological restrictions.

Claimant's medical history also verified treatment for several reported physical complaints. Presented radiology reports verified either no abnormalities or slight abnormalities in Claimant's chest, heart, hands, knees and wrists.

It was verified by radiography that Claimant had more serious problems with her hands and feet. Claimant's physician also verified back problems for Claimant. The evidence was consistent with ambulation and lifting restrictions. Based on the presented evidence, Claimant established severe impairments with her feet and back.

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

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

Claimant's most prominent impairment appears to be back pain. Spinal problems are covered by Listing 1.04, which states that's disability is established by the following:

**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.

Claimant's treating physician noted back problems for Claimant, but radiology was not presented to verify the degree of problems. Claimant's physician noted that Claimant ambulates with a cane a physician statement that Claimant needs a cane is more persuasive evidence of ambulation restriction. It was verified that Claimant had limited range of back motion but there was no verification of nerve root compression, arachnoiditis or stenosis. Claimant failed to establish meet the listing for spinal disorders.

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's complaints of knee and foot pain. The listing was rejected as presented radiology was inconsistent with an inability to ambulate effectively.

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 has not performed any SGA in the last 15 years. Claimant testified that her only employment involved being a caregiver in exchange for room and board. Based on Claimant's lack of employment amounting to SGA, it can only be found that Claimant cannot perform past relevant employment. 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).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform 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.

The most persuasive evidence that Claimant cannot perform light employment came from her physician who cited Claimant's restricted back motion. The examiner also noted that Claimant can meet household needs. Meeting household needs is consistent with an ability to perform light employment.

The only presented records specifically addressing Claimant's exertional restrictions came from a consultative examiner; the examiner noted Claimant had bending and stooping restrictions due to hip pain. The failure to note restrictions to walking and/or sitting is consistent with a finding that Claimant can perform light employment.

Rheumatology clinic documents noted that Claimant had full strength (5/5) in all extremities. The clinic also verified an “essentially normal examination”. These statements are consistent with performing light employment.

Based on the presented evidence, it is found that Claimant can perform light employment. Prior to a “grid” analysis, it should be noted that Claimant’s age is considered to be “approaching advancing age” for purposes of disability prior to 8/2013.

Based on Claimant’s exertional work level (light), age (approaching advanced age), education (less than high school), employment history (unskilled), Medical-Vocational Rule 201.20 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 concerning MA benefit eligibility before 8/2013.

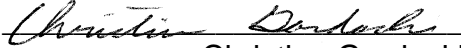
### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant’s MA benefit eligibility for the period of 9/2012 through 7/2013 based on a determination that Claimant was not disabled. The actions taken by DHS are **PARTIALLY AFFIRMED**.

The Administrative Law Judge, based on the determination by SHRT dated [REDACTED]/13 finds that Claimant is a disabled individual, effective [REDACTED]/2013. It is ordered that DHS perform the following actions:

- (1) reinstate Claimant’s MA benefit application dated [REDACTED]/12;
- (2) evaluate Claimant’s eligibility for MA benefits, effective [REDACTED]/2013, 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 **PATIALY 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:

