

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-47052
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: September 25, 2013
County: Oakland (03)

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 25, 2013, from Walled Lake, 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) 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]/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]/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 (Exhibits 5-6) informing Claimant of the denial.
5. On [REDACTED]/13, Claimant's AHR requested a hearing disputing the denial of MA benefits (see Exhibit 7).
6. On [REDACTED]/13, SHRT determined that Claimant was not a disabled individual, in part, by application of Medical-Vocational Rule 202.14.
7. On [REDACTED]/13, an administrative hearing was held.
8. Claimant presented new medical documents (Exhibits A1-A44) at the hearing.
9. Claimant waived the right to receive a timely hearing decision.
10. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT, including the yet to be written 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 202.14.
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 5'1" and weight of 135 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 and additional vocational training as an emergency medical technician.
17. Claimant alleged disability based on impairments and issues including seizures, degenerative disc disease (DDD), left thumb problems, wrist problems, post-traumatic stress disorder (PTSD), depression, attention deficit disorder (ADD) and clostridium difficile (C-diff).

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family

Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105. Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM) and Department of Human Services Bridges Eligibility Manual (BEM) and Department of Human Services Reference Tables Manual (RFT).

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 (10/2010), p. 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

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

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

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

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

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

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

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

Claimant denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or

- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 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.

Claimant testified that she was in a motorcycle accident in 2009. Claimant testified that she suffered substantial back pain after the accident. No documents from the accident were presented.

A radiology report (Exhibits 200-201) dated [REDACTED]/12 was presented. The report noted that a CT of Claimant's lumbar was performed. An impression noted chronic L5 pars defect with probable compensatory hypertrophy and sclerosis of L5 lamina. Mild spinal canal stenosis was noted at L3-L4. Nerve root compression was also noted at L3-L4 and at L5-S1.

A radiology report (Exhibit 202) dated [REDACTED]/12 was presented. The report noted that views of Claimant's left hand were taken. A fracture of the scaphoid was noted. The report noted that the fracture appeared to be subacute.

Hospital documents (Exhibits 132-143) from an encounter dated [REDACTED]/12 were presented. The hospital noted that claimant presented with a complaint of abdominal pain radiating to Claimant's back, thumb pain and elbow pain. The hospital noted that Claimant reported nausea, ongoing for several months. The hospital noted that Claimant soon felt better and that Claimant could follow-up as an outpatient. Noted discharge diagnoses included viral gastroenteritis, wrist pain and ADD.

Hospital documents (Exhibits 18-21; 72-86; 90-124; 145-193) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant presented with complaints of nausea and vomiting. The hospital noted that lab results verified that Claimant had C.

diff. The hospital noted that Claimant was treated with medications and fluids. The hospital noted that while Claimant was leaving the hospital, she was found on the floor and appeared to be mildly disoriented. The hospital noted that Claimant's son reported that Claimant drank a bottle of vodka per day. The hospital noted a small abrasion on Claimant's elbow. The hospital noted that Claimant was on chronic pain medication or back injuries. The hospital diagnosed Claimant with adjustment disorder with anxiety; a GAF of 45 was noted. The hospital noted that Oxycodone was issued to Claimant in response to pain complaints, though it was advised that the narcotic medication use be minimized. The hospital noted that Claimant reported a 3/10 pain level while at rest. The hospital noted that Claimant could perform daily living activities independently. The hospital noted that Claimant was discharged on 1 [REDACTED]/12. Noted discharged diagnoses included acute C Diff., colitis, possible seizure with unclear etiology, abnormal liver function testing and history of alcohol abuse.

A radiology report (Exhibit 182) dated [REDACTED]/12 was presented. The report noted that a CT of Claimant's head was performed. An impression of no acute intracranial process was noted.

A radiology report (Exhibit 178,180) dated [REDACTED]/12 was presented. The report noted that views were taken of Claimant's pelvis. Degenerative changes at L3-L4 were noted. Incomplete ossification was noted at S1.

A radiology report (Exhibit 179) dated [REDACTED]/12 was presented. The report noted that views were taken of Claimant's left elbow. The report noted that no fracture, dislocation or foreign body. Displacement and spurring was noted.

A radiology report (Exhibit 181) dated [REDACTED]/12 was presented. The report noted that images were taken of Claimant's wrist. The report noted an impression of scaphoid fracture with uncertain chronicity.

A radiology report (Exhibit 183) dated [REDACTED]/12 was presented. The report noted that a CT of Claimant's pelvis was performed. The report noted possible colitis.

A 2D Echo Report (Exhibits 185-186) dated [REDACTED]/12 was presented. An impression noted normal ventricle size, normal wall thickness, normal systolic function and normal ejection fraction.

Hospital documents (Exhibits 22-71; 87-89) from an admission dated [REDACTED]/12 were presented. The hospital noted that Claimant complained of left arm pain, arm swelling and oozing from the arm. The hospital noted final diagnoses of left elbow septic bursitis and left elbow cellulitis. The hospital noted that Claimant received various antibiotics. The hospital noted that an incision and drainage was performed on Claimant's left elbow. Various other complaints of Claimant included chronic back pain, weakness, arthritis, depression and anxiety.

Hospital documents (Exhibits 194-199) from an admission dated [REDACTED]/13 were presented. It was noted that Claimant presented with complaints of abdominal pain, cramping, nausea and vomiting. The hospital noted that Claimant received Flagyl. The hospital noted that Claimant was negative for C Diff. The hospital noted discharge diagnoses of gastritis with dehydration and acute electrolyte imbalance. Hospital recommendations included use of PPI daily, avoiding NSAIDs, alcohol abstinence and follow-up. The hospital noted that Claimant took Norco for back pain but different medication was advised.

Hospital documents (Exhibits A25-A44) from an admission dated [REDACTED]/13 was presented. The hospital noted that Claimant presented with a complaint of abdominal pain, nausea, vomiting and left elbow pain following a fall. An impression was noted for left elbow contusion. The diagnosing physician noted that he previously treated Claimant and that Claimant was non-compliant for failing to follow-up after a previous hospital discharge.

Physician Progress Notes (Exhibits 203-204) dated [REDACTED]/13 were presented. It was noted that Claimant reported that Vicodin does not control pain. It was noted that Claimant was started on Oxycodone.

Hospital documents (Exhibits A1-A24) from an encounter dated [REDACTED]/13 were presented. The hospital noted that Claimant reportedly passed out, lost bladder control, foamed at the mouth before waking up at the hospital. It was noted that Claimant reported consuming three drinks of alcohol per day including drinking alcohol at the time of seizure. It was noted that a CT scan of Claimant's head was negative. It was noted that Claimant was placed under seizure precautions including a six month prohibition on driving.

Physician Progress Notes (Exhibits 205-206) dated [REDACTED]/13 were presented. It was noted that Claimant did not take seizure medication because she could not afford it. Claimant testified that she has not taken seizure medication since approximately [REDACTED]/2012.

Claimant alleged disability, in part, based on PTSD and depression. A diagnosis for depression was verified. No psychiatric treatment was verified. Presented documents did not appear to note any psychiatric impairments. Documents noted that Claimant's GAF was 45 which implies marked psychological symptoms, however, the GAF is only a snapshot of one time in Claimant's life and cannot be construed to presume ongoing symptoms.

Claimant's most compelling impairment was back pain. Radiology from 2012 verified that Claimant suffers nerve root compression at multiple vertebrae. Nerve root compression is sufficient to verify some degree of walking, standing and lifting restrictions. The degenerative nature of back pain, Claimant's lack of insurance and lack of intervention (e.g. surgery) make it probable that the nerve root compression has and

continues to impair Claimant. It is found that Claimant established a significant work impairment lasting longer than 12 months.

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 related to nerve root compression. Spinal disorders are covered by Listing 1.04 which reads as follows:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

Presented medical evidence verified that Claimant has multiple vertebrae discs with nerve root compression. The evidence also established mild stenosis at one of the vertebrae discs. The evidence did not verify any sensory loss, motor loss, arachnoiditis or an inability to ambulate effectively.

Listings for epilepsy (listings 11.02 and 11.03) were considered. The listings were rejected because a failure to establish a seizure pattern or history sufficient to meet the listing.

Mental disorder listings (Listings 12.00) were considered. The listings were summarily rejected due to a lack of medical evidence.

A listing for an upper body fracture (Listing 1.07) was considered based on Claimant's fractured wrist. The listing was rejected due to a failure to verify ongoing surgical management.

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 was employed for six years as a bus driver. Claimant testified that she cannot work as a bus driver due to ongoing seizures. Claimant also testified that she would be unable to pull the hand brake due to her hand weakness. Claimant's testimony that she could not perform her past duties was consistent with the presented evidence. It is found that Claimant cannot perform past employment and the analysis may proceed to the final step.

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.

Claimant presented some medical evidence which was compellingly supportive of a disability finding. Other medical evidence was compellingly unsupportive.

On 5/16/13, a neurologist noted that Claimant had a history of malingering including self-induced emesis (see Exhibit A8). A history of malingering strongly implies that Claimant exaggerates or fakes illness for the sole purpose of not working. The neurologist was not a treating physician, and presumably, not entirely familiar with Claimant's full medical history. The physician statement carries some weight, but is not accepted as a pivotal piece of evidence in determining disability for Claimant.

Claimant testified that she stopped drinking alcohol in [REDACTED]/2013. Hospital documents from 5/2013 verified that Claimant was drinking alcohol when she had a "questionable seizure". Claimant's false testimony concerning alcohol raises the question of accuracy for all of Claimant's testimony, particularly her walking capabilities. Claimant testified that she can only walk half of a block. If Claimant inaccurately testified about ceasing alcohol consumption, she could have easily done the same concerning ambulation capabilities.

As of the date of hearing, Claimant was a tobacco smoker. Claimant alleged that she smoked less than 20 cigarettes in the prior 30 days. Claimant's failure to testify accurately about alcohol also infected her testimony about tobacco usage. Cigarette smoking is known to exacerbate back pain. It could reasonably be presumed that Claimant's continued smoking exacerbates her pain.

It was established that Claimant had nerve root compression at multiple vertebrae. Compensatory sclerosis and hypertrophy were also noted. These factors tend to establish a probability that Claimant would have difficulty holding any employment requiring a majority of standing.

Claimant also alleged weakness in her wrist. Claimant's testimony was reasonably verified as radiology several months apart verified scaphoid fracture which likely causes thumb and wrist pain and weakness. Claimant testified that the scaphoid fracture makes it difficult for her to utilize any walking assistant device. Based on the presented evidence, Claimant is probably not capable of performing light employment.

Based on Claimant's exertional work level (sedentary), age (approaching advanced age), education (high school- does not provide for direct entry into skilled work), employment history (unskilled), Medical-Vocational Rule 201.12 is found to apply. This

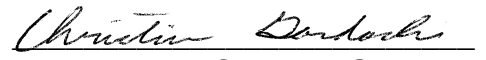
rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

DECISION AND ORDER

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

- (1) reinstate Claimant's MA benefit application dated [REDACTED]/[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: 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:

