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

IN THE MATTER OF:

[redacted]

Reg. No.:	2014-21905
Issue No.:	2009
Case No.:	[redacted]
Hearing Date:	June 9, 2014
County:	Wayne (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on June 9, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [redacted] estified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted] Medical Contact Worker.

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] (see Exhibits 69-70).

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

3. On [redacted], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 18-19).

4. On [redacted], 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], Claimant's AHR requested a hearing disputing the denial of MA benefits.

6. On [redacted], SHRT determined that Claimant was not a disabled individual, in part, by reliance on a Disability Determination Explanation (Exhibits 71-85)and application of Medical-Vocational Rule 204.00

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

8. Claimant presented new medical documents (Exhibits A1-A276) at the hearing.

9. During the hearing, 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 additional documents considered and forwarded by SHRT.

11. On [redacted], an updated hearing packet was forwarded to SHRT and an Interim Order Extending the Record for Review by State Hearing Review Team was subsequently issued which extended the record 90 days from the date of hearing.

12. On [redacted], SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.

13. On [redacted], 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 39-year-old male with a height of 6'2'' and weight of 170 pounds.

15. Claimant has a relevant history of alcohol abuse.

16. Claimant's highest education year completed was the 12th grade.

17. As of the date of the administrative hearing, Claimant was an ongoing Medicaid or Healthy Michigan Plan recipient since [redacted].

18. Claimant alleged disability based on impairments and issues including schizoaffective disorder, seizures, and back 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).

Prior to a substantive analysis of Claimant's hearing request, it should be noted that Claimant's AHR noted special arrangements in order to participate in the hearing; specifically, an in-person hearing was requested. Claimant's AHR's subsequently amended the request to a telephone hearing request. The hearing was conducted according to Claimant's amended request.

It should be noted that a portion of the hearing was not recorded due to administrative judge error. The error was caught during the hearing and a summary of testimony was noted on the record. Claimant's AHR initially objected to the summary of testimony as insufficient. Claimant's AHR was reminded that he could elicit any testimony from Claimant before the record was closed. Claimant's AHR subsequently withdrew his objection.

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

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

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).
  BEM 260 (7/2012) pp. 1-2

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

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

Substantial gainful activity means a person does the following:
- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id*. at 9.

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

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

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

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2013 monthly income limit considered SGA for non-blind individuals is $1,040.

Claimant credibly denied performing any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Based on the presented evidence, it is found that Claimant is not performing SGA and has not performed SGA since the date of MA application. Accordingly, the disability analysis may proceed to step two.

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

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

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

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen,* 880 F2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with a summary of the relevant submitted medical documentation.

Hospital documents (Exhibits 34-36) from an encounter dated [redacted] were presented. It was noted that Claimant presented with vomiting episodes and severe epigastric pain described as 10/10. A history of pancreatitis was noted. It was noted that Claimant felt better and was discharged.

Hospital documents (Exhibits 37-39) from an encounter dated [redacted] were presented. It was noted that Claimant presented with episodes of vomiting and epigastric pain. It was noted that Claimant drank an unspecified amount of alcohol in the 24 hours since his last emergency room visit. It was noted that radiology showed no acute process. Claimant was advised to cease smoking and alcohol consumption. It was noted that Claimant felt better and was discharged.

Hospital documents (Exhibits 40-41) from an admission dated [redacted] were presented. It was noted that Claimant presented with episodes of vomiting and epigastric pain. An admitting diagnosis of acute alcohol pancreatitis was noted. It was noted that Claimant was showing signs of fatty liver disease due to alcohol abuse. It was noted that Claimant's condition eventually stabilized. It was noted that Claimant was given a limited amount of Norco for pain. A discharge date of [redacted] was noted.

Hospital documents (Exhibits 32-33) from an encounter dated [redacted] were presented. It was noted that Claimant had a long history of alcohol use, blackouts, and withdrawal. It was noted that Claimant had no history of psychosis or mania. An impression of alcohol dependence was noted.

Hospital documents (Exhibits 42-44) from an encounter dated [redacted] were presented. It was noted that Claimant presented with episodes of vomiting and epigastric pain. It was noted that Claimant drank alcohol to settle his stomach. It was noted that Claimant felt better and was discharged.

Hospital documents (Exhibits 45-47) from an encounter dated [redacted] were presented. It was noted that Claimant presented with episodes of vomiting and epigastric pain. It was noted that Claimant had a glass of wine in the previous evening. It was noted that Claimant received a GI cocktail and was discharged. A discharge prescription of Zantac was noted.

Hospital documents (Exhibits 48- 50) from an encounter dated [redacted] were presented. It was noted that Claimant presented epigastric pain and vomiting complaints after drinking alcohol. It was noted that Claimant was upset that narcotics were not immediately given. It was noted that Claimant was discharged and to follow-up with his primary physician.

Hospital documents (Exhibits 51-53) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant reported drinking 6 cans of beer per week and two bottles of wine per day. Following radiology, an impression of mild or early pancreatitis was noted. An assessment of severe protein-calorie malnutrition was noted.

Hospital documents (Exhibits A123-A276) were presented. The documents verified emergency room treatment on [redacted], [redacted], and [redacted]. An admission from [redacted]-[redacted] was also verified. Each encounter involved a complaint of abdominal pain.

Hospital documents (Exhibits A100- A122) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of emesis, nausea, and abdominal pain. It was noted that radiology demonstrated small bowel loops in the upper quadrant. A diagnosis of peptic ulcer disease was noted. It was noted that Claimant was discharged on [redacted] after he began tolerating his diet.

Hospital documents (Exhibits A89-A99) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that labs were unremarkable. It was noted that Claimant received a GI cocktail. A final impression of acute abdominal pain was noted.

Hospital documents (Exhibits A59-A88) from an encounter dated [redacted] were presented. It was noted that Claimant presented 2 hours after a motor vehicle accident. It was noted that Claimant complained of a head injury after hitting his head on the steering wheel. It was noted that Claimant was "clearly intoxicated". It was noted that Claimant had a chest bruise. It was noted that a CT of Claimant's cervical spine, abdomen, pelvis, and lumbar were each negative. Mild cerebral atrophy was noted following brain radiology.

Hospital documents (Exhibits A43-A58) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant drank alcohol after vomiting in the morning. It was noted that Claimant was noncompliant with all treatment and that Claimant gave various excuses why he was noncompliant. A final impression of acute alcohol gastritis, medication noncompliance, manipulative behavior, and chronic abdominal pain were noted.

Hospital documents (Exhibits A38-A42) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that Claimant was noncompliant with triple antibiotic treatment for a peptic ulcer. It was noted that Claimant "got up and left" after it was expressed there was concern about dispensing narcotics.

Hospital documents (Exhibits A24-A37) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of abdominal pain. It was noted that a CT of Claimant's abdomen showed no significant abnormalities. It was noted that a physician was suspicious that Claimant appeared only to seek narcotic medication. The suspicion was noted to be based on Claimant's different symptomology and previous history. A final diagnosis of acute abdominal pain was noted.

Hospital documents (Exhibits A16-A23) from an encounter dated [redacted] were presented. It was noted that Claimant presented with complaints of severe abdominal pain. It was noted that Claimant was evasive in answering questions concerning alcohol and drug abuse. It was noted that Claimant conceded drinking alcohol before admission. A final impression of chronic abdominal pain secondary to alcohol and opiate abuse was noted.

Claimant alleged disability, in part, based on a history of seizures. Claimant testified that he suffered a grand mal seizure and that he has had 5 seizures since a motor vehicle accident in [redacted]. Seizures were referenced in Claimant's medical history but treatment for seizures was not verified. Presented documents failed to sufficiently verify a severe impairment based on seizures.

Claimant alleged disability, in part, due to back pain. Presented documents failed to sufficiently verify a severe impairment based on back pain.

Presented documents strongly suggested that Claimant had impairments related to abdominal pain. The records also strongly suggested that Claimant's medical noncompliance and alcoholism were significant factors in causing the impairments.

Social Security Rule 82-60 states that an individual shall not be considered to be disabled for purposes if alcoholism or drug addiction would (but for this subparagraph) be a contributing factor material to the Commissioner's determination that the individual is disabled. SSA states that when drug or alcohol use is a medically determinable impairment, it must be determined whether the claimant would continue to be disabled if he or she stopped using drugs or alcohol; that is, SSA will determine whether DAA is *"material"* to the finding that the claimant is disabled. 20 CFR 404.1535 and 416.935.

Claimant's AHR contended that Claimant does not have the burden to prove a lack of materiality. Claimant's AHR contended that such a burden is too difficult to meet because it requires proving a negative. The AHR contention is inconsistent with SSA Rule 13-2p which describes how SSA evaluates the materiality of drug or alcohol abuse:

> The claimant has the burden of proving disability throughout the sequential evaluation process. Our only burden is limited to producing evidence that work the claimant can do exists in the national economy at step 5 of the sequential evaluation process (see 20 CFR 404.1512, 404.1560, 416.912, and 416.960). When we apply the steps of the sequential evaluation a second time to determine whether the claimant would be disabled if he or she were not using drugs or alcohol, it is our longstanding policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. There does not have to be evidence from a period of abstinence for the claimant to meet his or her burden of proving disability. We describe various considerations that may apply when we decide whether we must consider the issue of *materiality* and, if so, whether *DAA* is material to the determination of disability. *Id*.

SSA applies a "*DAA* evaluation process" in a series of six steps. *Id*. Noted considerations made by SSA concerning drug materiality include the following:

- Does the claimant have DAA?
- Is the claimant disabled considering all impairments, including DAA?
- Is DAA the only impairment?

- Is the other impairment disabling by itself while the claimant is dependent upon or abusing drugs and/or alcohol?
- Does the DAA cause or affect the claimant's medically determinable impairments?
- Would the other impairments improve to the point of non-disability in the absence of DAA

Id.

Objective medical documents overwhelmingly established that Claimant's recurrent abdominal pain was primarily caused by Claimant's alcohol use and medical noncompliance. Circumstantial evidence further supports finding that Claimant's alcohol use was material.

Claimant testified that approximately 9 months ago, he reduced his alcohol use to once per week. Claimant's testimony was credible in that there appeared to be no hospital treatments since Claimant allegedly reduced his alcohol intake. A diagnosis of peptic ulcer disease was verified and could cause some degree of abdominal pain. In light of Claimant's persistent alcohol use, ulcer disease is insufficient to infer a severe impairment related to abdominal pain. It is found that Claimant's abdominal pain was solely caused by Claimant's alcohol consumption. Accordingly, Claimant is not disabled due to abdominal pain.

Claimant also alleged disability based on psychological impairments. Presented psychological treatment documents were more suggestive of severe impairments than presented hospital documents.

A handwritten psychiatric evaluation (Exhibits A5-A6) dated [redacted] was presented. It was noted that Claimant was referred by a hospital after he attempting suicide by walking in the middle of the street. It was noted that Claimant lived by himself. It was noted that Claimant denied perceptual disturbances. Notable observations included the following: good verbal skills, alert, hyper-verbal, and labile affect. Axis I diagnoses of schizoaffective disorder and alcohol abuse were noted. Claimant's GAF was noted to be 48. A treatment plan of Celexa and substance abuse were noted.

Chart notes (Exhibits A13-A14) dated [redacted] from Claimant's treating counselor were presented. It was noted that Claimant reported suicidal thoughts from 2 months ago when he tried to drink himself to death. It was noted that Claimant reported audio and visual hallucinations.

A handwritten psychiatric evaluation (Exhibits A7-A8) dated [redacted] was presented. Noted observations included the following: good memory, orientation x3, poor judgment, partial insight, alert, coherent and talkative speech, labile affect, and distrustful. Axis I diagnoses of schizoaffective disorder and alcohol abuse were noted. Claimant's GAF was noted to be 43. A treatment plan of Celexa and substance abuse counseling were noted.

A Progress Note (Exhibits A11-A12) dated [redacted] from Claimant's treating counselor was presented. It was noted that Claimant wore sunglasses and refused to remove them because "it would be known what he had done". It was noted that Claimant reported that he took "a lot of pain killers" and drank nine beers. It was noted that Claimant fled the premises after a hospital was contacted.

A Progress Note (Exhibits A9-A10) dated [redacted] from Claimant's treating counselor was presented. It was noted that Claimant had difficulty sleeping after drinking 7 beers. It was noted that Claimant wants to do something positive with his life.

A Mental Residual Functional Capacity Assessment (Exhibits A3-A4) dated [redacted] was presented. The assessment was noted as completed by Claimant's treating psychiatrist. Claimant was found markedly restricted in the following abilities:
- Remembering locations and other work-like procedures
- Understanding and remembering detailed instructions
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Completing a normal workday without psychological symptom interruption
- Working in coordination or proximity to other without being distracting
- Accepting instructions and responding appropriately to criticism

Claimant's testimony that he reduced his alcohol intake nine months before the hearing does not justify finding that continued alcohol abuse is immaterial to psychological impairments. Two counseling sessions from the 9 month period were documented; Claimant conceded drinking alcohol before both sessions.

Claimant received two psychiatric evaluations. Both noted diagnoses of alcohol abuse. This consideration is suggestive that Claimant's continued alcohol abuse is material to psychological symptoms.

It is also concerning that every documented counseling session noted how alcohol abuse was harmful to Claimant. Claimant's most recent psychological treatment document implied that Claimant was in denial over his drinking as it was noted that Claimant was resistant to addressing substance abuse problems. These considerations are supportive in finding that alcohol abuse is material to psychological restrictions.

For purposes of this decision, it will be found that Claimant's drinking is material but that if Claimant stopped drinking, he would still have some degree of psychologically-based restrictions. Claimant's symptoms have lasted at least 12 months. Accordingly, Claimant established having a severe impairment and 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 alleged disability, in part, based on schizoaffective disorder. The SSA listing for schizoaffective disorders reads as follows:

> **12.03 *Schizophrenic, paranoid and other psychotic disorders***: Characterized by the onset of psychotic features with deterioration from a previous level of functioning.
> 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 or more of the following:
> 1. Delusions or hallucinations; or
> 2. Catatonic or other grossly disorganized behavior; or
> 3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech if associated with one of the following:
> a. Blunt affect; or
> b. Flat affect; or
> c. Inappropriate affect; OR
> 4. Emotional withdrawal and/or isolation;
> 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 schizophrenic, paranoid, or other psychotic 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.

Claimant's psychiatrist noted that Claimant had marked memory, concentration, and social restrictions. Presented GAF scores are also supportive in finding that Claimant has marked restrictions.

At step two it was noted that Claimant's alcohol abuse was a factor in exaggerating Claimant's symptoms. Because Claimant continually abuses alcohol, it cannot be stated to what degree Claimant would be restricted if he stopped abusing alcohol. A lack of psychological hospitalizations, failure to verify one counseling session where Claimant had not recently drank, and the small amount of verified therapy sessions each suggest that Claimant would not have marked restrictions if Claimant ceased alcohol abuse.

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.

In determining whether Claimant could perform past relevant employment, concerning symptoms of Claimant include hallucinations, poor judgment and multiple marked concentration restrictions. If Claimant ceased alcohol abuse, continued counseling, remained medication compliant, it is probable that Claimant could perform simple and repetitive employment not requiring significant decision making.

Claimant testified that he performed past employment as a nursing assistant and security guard. A Disability Determination Explanation also noted that Claimant was a dishwasher (see Exhibit 79). Dishwasher is a type of employment that Claimant could perform if not for alcohol abuse.

It is found that Claimant can perform past relevant employment, if he quit abusing alcohol. Accordingly, Claimant is not disabled and it is found that DHS properly denied Claimant's MA application.

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 application dated [redacted], including retroactive MA benefits from [redacted], based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.

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

Date Signed: 7/29/2014

Date Mailed: 7/29/2014

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc: [redacted]