

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-26670
Issue No.: 2007; 2009; 4000
Case No.: [REDACTED]
Hearing Date: April 24, 2014
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 April 24, 2014, from Monroe, Michigan. Participants included the above-named Claimant. [REDACTED] appeared as Claimant's authorized hearing representative (AHR). [REDACTED], Claimant's daughter, and [REDACTED], testified on behalf of Claimant. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUES

The first issue is whether Claimant requested a hearing to dispute a denial of cash assistance benefits.

The second issue is whether DHS properly denied Claimant's MA eligibility through Group 2 Caretaker (G2C) due to a termination of Claimant's parental rights.

The third 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 an unspecified date before [REDACTED], a court order terminated Claimant's parental rights.

2. On [REDACTED], Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED].
3. Claimant's application reported that she was a caretaker to her 16 year old daughter.
4. Claimant's application also alleged that she was a disabled individual.
5. On an unspecified date, DHS requested proof of Claimant's daughter's school attendance.
6. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 9-10).
7. On [REDACTED], DHS denied Claimant's application due to an alleged failure by Claimant to verify her daughter's school attendance and/or based on a determination that Claimant was not disabled.
8. On [REDACTED] Claimant's AHR requested a hearing to dispute the denial of MA benefits (see Exhibit 2).
9. Claimant's medical packet was not forwarded to SHRT.
10. On [REDACTED], an administrative hearing was held.
11. Claimant presented a new medical document (Exhibits A1) at the hearing.
12. During the hearing, Claimant waived the right to receive a timely hearing decision.
13. During the hearing, Claimant and DHS waived any objections to allow the admission of additional documents considered and forwarded by SHRT.
14. 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.
15. On [REDACTED] SHRT determined that Claimant was not disabled, in part, by application of Medical-Vocational Rule 204.00.
16. On [REDACTED] the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

17. As of the date of the administrative hearing, Claimant was a 45 year old female with a height of 5'5 ½ " and weight of 170 pounds.
18. Claimant has a relevant history of substance abuse.
19. Claimant's highest education year completed was the 10th grade.
20. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan (HMP) recipient.
21. Claimant alleged disability based on impairments and issues including hernia, memory lapses, concentration difficulties, COPD, carpal-tunnel syndrome (CTS), and hypertension (HTN).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10 and Mich Admin Code, R 400.3151-.3180. 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).

Claimant testified that a hearing was requested in part to dispute a denial of cash assistance benefits. Claimant's hearing request made no mention of a cash assistance dispute. Claimant provided no notice to DHS of a cash assistance dispute. It is found that Claimant failed to request a hearing concerning a cash assistance dispute.

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).

Claimant's hearing request listed a dispute concerning MA eligibility. Claimant's AHR's primary contention was that Claimant was eligible for Medicaid as a caretaker to a minor child. A secondary claim of Medicaid based on disability was alleged. This decision will first analyze Claimant's Medicaid eligibility based on caretaker status.

DHS did not address in their Hearing Summary why Claimant was not evaluated for Medicaid based on caretaker status. Based on presented testimony, DHS presented several explanations for denying Claimant's MA eligibility as a caretaker.

First, there was evidence suggesting that Claimant's daughter did not live with Claimant. One requirement for Medicaid based on caretaker status is that a child live with the caretaker (see BEM 135 (1/2011), p.1).

Claimant presented a letter (Exhibit 2-7) from a Friend of the Court (FOC) attorney stated that "it is my understanding" that Claimant's daughter lived with Claimant in the summer of 2013. This is consistent with Claimant's reporting to DHS. DHS presented no evidence to suggest that Claimant's daughter did not live with Claimant. It is found that Claimant's daughter lived with Claimant as of [REDACTED]

The FOC letter later stated that Claimant lost her parental rights in [REDACTED]. The letter also stated that Claimant did not have standing to become a guardian to her child. Thus, as a parent who lost her parenting rights, it could be reasonably contended that Claimant may not receive Medicaid benefits as a caretaker.

Termination of parental rights is a court order that ends a parent's rights and responsibilities to the child. *Id.*, p. 5. A person whose parental rights are terminated by a court is not a specified relative. *Id.*

Much effort during the hearing was spent attempting to determine why DHS did not evaluate Claimant as a caretaker. Discussions of Claimant's daughter's school attendance in [REDACTED] and whether Claimant timely submitted verification of her daughter's school attendance were thought to be relevant. Claimant's daughter's school attendance, verification of school attendance and whether Claimant lived with her daughter in [REDACTED] are all irrelevant issues. Claimant's loss of parental rights disqualifies her from status as a caretaker for purposes of MA eligibility.

It is found that DHS properly did not evaluate Claimant for MA benefits as a caretaker because of Claimant's loss of parental rights. Despite the above finding, Claimant may still be potentially eligible for Medicaid 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.*, p. 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. "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 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 a summary of the relevant submitted medical documentation.

Various counseling records (Exhibits 44-113; 131-176; 213-218) from [REDACTED] were presented. The documents verify sporadic psychiatric treatment for bipolar disorder and post-traumatic stress disorder (PTSD). Multiple diagnoses of cocaine and cannabis dependence were also noted. It was noted that Claimant last worked in [REDACTED] (see Exhibit 50). It was regularly noted that Claimant reported entanglements in criminal proceedings, abusive relationships, and dependency on drugs.

Various counseling records (Exhibits 22-43; 114-130; 177-212) from [REDACTED] 3 were presented. Numerous appointments between Claimant and various mental health staff were documented. It was regularly noted that Claimant reported difficulties with the following: anxiety, insomnia, depression, easily agitated, mood changes, and difficulty with concentration. Regular observation of Claimant included poor judgment and poor impulse control. Multiple incidents of being a victim of sexual abuse were noted; an "extensive" abuse history since Claimant was the age of 7 was noted (see Exhibit 22). Diagnoses of bipolar disorder, PTSD, and anxiety disorder, cannabis dependence, cocaine abuse, and borderline personality disorder were regularly noted. On [REDACTED], it was noted that Claimant was chronically medication noncompliant and had poor therapeutic engagement (see Exhibits 115). It was further noted that Claimant seldom returned to her treating clinic as scheduled. It was also noted that Claimant seldom was compliant with previously prescribed medications.

Various medical encounter documents (Exhibits 230-242) from [REDACTED] were presented. It was noted that Claimant reported various complaints including: arm pain, gunky eyes, and leg pain. Assessments included CTS, conjunctivitis, leg pain, COPD, nicotine dependence and sciatic neuritis.

A radiology report (Exhibit 2256) dated [REDACTED] was presented. It was noted that hip views were taken in response to complaints of hip pain. An impression of a normal right hip examination was noted.

A radiology report (Exhibit 255) dated [REDACTED] was presented. It was noted that chest views were taken in response to complaints of chest pain. An impression of normal chest appearance was noted.

Various documents (Exhibits 257-284) for ovarian cyst treatment were presented. It was noted on [REDACTED], Claimant had a 1 year history of abdominal bloating and pain. A radiology report (Exhibit 254) dated [REDACTED] noted that Claimant had multiple small ovarian cysts. On [REDACTED] it was noted that Claimant underwent a hysterectomy.

A radiology report (Exhibit 253; 299) dated [REDACTED] was presented. It was noted that lumbar views were taken in response to complaints of back pain. An impression was given of mild degenerative changes with no evidence of spondylosis or compression.

A mental status examination report (Exhibits 14-18) dated [REDACTED] was presented. The report was completed by a licensed psychologist with no history of treating Claimant. Axis I diagnoses of adjustment disorder, chronic cannabis dependence, and cocaine dependence (in remission) were noted. Claimant's GAF was noted as 60. A fair prognosis was noted.

A neuro-diagnostic result (Exhibit A1) dated [REDACTED] was presented. An impression of right-sided CTS markedly affecting sensory fibers was noted.

SSA 06-03p provides guidance on what SSA accepts as “acceptable medical sources”. Licensed physicians and licensed or certified psychologists are acceptable medical sources. Nurse practitioners and social workers are not “acceptable medical sources”. SSA 06-03p goes on to state why the distinction between medical sources and non-medical sources is important.

First, we need evidence from “acceptable medical sources” to establish the existence of a medically determinable impairment. Second, only “acceptable medical sources” can give us medical opinions. Third, only “acceptable medical sources” can be considered treating sources, as defined in 20 CFR 404.1502 and 416.902, whose medical opinions may be entitled to controlling weight.

Claimant presented a glut of documents from psychological counseling sessions. None of the documents were known to be signed by a licensed psychologist or psychiatrist. Counseling documents can be factored to document reported symptoms; they cannot be used to establish diagnoses.

A prevailing theme in presented documents was Claimant’s drug abuse and medical noncompliance. Social Security Rule 82-60 states that an individual shall not be considered to be disabled for purposes of this title 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.

Claimants have the burden of proof to establish disability. SSR 13-2p. When drug and/or alcohol abuse (DAA) is applicable, SSA applies 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. *Id.* It is a longstanding SSA policy that the claimant continues to have the burden of proving disability throughout the DAA materiality analysis. *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

SSA applicants must follow treatment prescribed by their physician in order to get benefits if the treatment can restore the ability to work. 20 C.F.R. 404.1530 (a). If the applicant does not follow the prescribed treatment without a good reason, SSSA will not

find the applicant disabled or, if already receiving benefits, SSA will stop paying benefits. 20 C.F.R. 404.1530 (b). Good reason may be factored into whether someone refuses treatment. The following are examples of a good reason for not following treatment:

- (1) The specific medical treatment is contrary to the established teaching and tenets of an applicant's religion.
- (2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye resulting in a severe loss of vision and is not subject to improvement through treatment.
- (3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.
- (4) The treatment because of its magnitude (e.g., open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky; or
- (5) The treatment involves amputation of an extremity, or a major part of an extremity.

Claimant credibly testified that she last used drugs approximately 6 months before the hearing. Psychological treatment documents were not presented from the time after Claimant stopped using drugs. It was also well documented that Claimant was chronically noncompliant with medication and treatment attendance and sobriety. For these reasons little weight will be given to Claimant's history of psychological complaints.

The one document completed by a licensed psychologist was fairly supportive that Claimant has few restrictions. The examiner noted that Claimant does not show evidence of any major depression or disturbances of thought. The examining psychologist further opined that Claimant could perform work-related activities at a sustained pace.

Based on the presented evidence, Claimant failed to establish severe psychological impairments where drug abuse and/or medication noncompliance were not material. An analysis will proceed concerning Claimant's alleged exertional impairments.

Claimant testified that she had walking and lifting restrictions. Claimant presented a hodgepodge of medical treatment documents. The documents verified numerous medical encounters; the majority of the encounters were not relevant to a claim of disability.

Diagnoses of CTS and COPD were established. Based on a de minimus standard, some degree of walking and/or lifting restrictions could be inferred based on Claimant's diagnoses and medical treatment history. The medical evidence was suggestive in restrictions since [REDACTED], the earliest month from which Claimant seeks MA benefits. It is found that Claimant has a severe impairment and the analysis may proceed to step three.

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

A listing for joint dysfunction (Listing 1.02) was considered based on Claimant's diagnoses of CTS. The listing was rejected due to a failure to establish that Claimant is unable to perform fine and gross movements with both hands.

A listing for respiratory function (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a lack of respiratory testing evidence.

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 worked in [REDACTED] performing janitorial and clerical duties. Claimant's described duties included typing, filing, and cleaning. Claimant testified that she could not perform the lifting required of her past employment due to hernia. The presented records failed to verify restrictions related to hernia. For purposes of this decision, Claimant's testimony will be found persuasive. It is found that Claimant cannot perform past relevant employment and 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.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands are considered nonexertional. 20 CFR 416.969a(a). Examples of non-exertional limitations include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i)-(vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2)

The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.* In using the rules of Appendix 2, an individual's circumstances, as indicated by the findings with respect to RFC, age, education, and work experience, is compared to the pertinent rule(s).

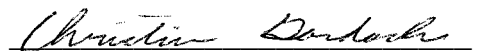
Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform sedentary employment. For sedentary employment, periods of standing or walking should generally total no more than about 2 hours of an 8-hour workday. Social Security Rule 83-10.

Presented records did not cite any ongoing restrictions for Claimant. Medical testing revealed right-sided CTS markedly affecting sensory fibers; the test results appear concerning, however, the significance of those results was unclear. Combined with a diagnosis with COPD, the evidence was not sufficient to presume that Claimant was incapable of performing sedentary employment. Based on the presented evidence, Claimant is minimally capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual aged 45-49), education (limited but able to communicate in English), employment history (unskilled), Medical-Vocational Rule 201.18 is found to apply. This rule dictates a finding that Claimant is not disabled. Accordingly, it is found that DHS properly found Claimant to be not disabled for purposes of MA benefits.

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 application dated 8/28/13, based on determinations that Claimant is not disabled and not eligible for MA as a caretaker. The actions taken by DHS are **AFFIRMED**.


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

Date Signed: 7/11/2014

Date Mailed: 7/11/2014

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:

