

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-3431
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: March 20, 2014
County: Wayne (49)

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 March 20, 2014, from Detroit, Michigan. Participants included the above-named Claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (DHS) included [REDACTED], Medical Contact Worker.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) 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 SDA benefits.
2. On [REDACTED] Claimant applied for MA benefits, including retroactive MA benefits from [REDACTED].
3. Claimant's only basis for SDA and MA benefits was as a disabled individual.

4. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 1-2).
5. On [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action informing Claimant of the denial.
6. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA and SDA benefits.
7. On [REDACTED], SHRT determined that Claimant was not a disabled individual, in part, by determining that Claimant did not have a severe impairment.
8. On [REDACTED], an administrative hearing was held.
9. Claimant presented new medical documents (Exhibits A1-A22) at the hearing.
10. During the hearing, Claimant waived the right to receive a timely hearing decision.
11. During the hearing, Claimant and DHS waived any objections to allow the admission of any additional medical documents considered and forwarded by SHRT.
12. During the hearing, the record was extended 30 days to allow for DHS to submit the status of Claimant's Social Security Administration application, and Claimant to submit hospital records and a Medical Examination Report.
13. On [REDACTED], an Interim Order Extending the Record was mailed to Claimant and DHS.
14. On [REDACTED], following a request for extension by Claimant, an Updated Interim Order Extending the Record was mailed to Claimant and DHS extending the record 60 days from the date of hearing.
15. On [REDACTED], Claimant submitted additional documents (Exhibits B1-B59); DHS did not submit additional documents.
16. 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 an additional 90 days.
17. On [REDACTED], SHRT determined that Claimant was not disabled, in part, based on application of Medical-Vocational Rule 202.11.
18. On [REDACTED], the Michigan Administrative Hearings System received the hearing packet and updated SHRT decision.

19. As of the date of the administrative hearing, Claimant was a 51-year-old male with a height of 6'1" and weight of 198 pounds.
20. Claimant has no known relevant history of alcohol or illegal substance abuse.
21. Claimant's highest education year completed was the 11th grade.
22. As of the date of the administrative hearing, Claimant had no health insurance.
23. Claimant alleged disability based on impairments and issues including back pain, varicose veins, testicular cancer surgery complications, foot tingling, and right leg swelling.

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 request was granted and the hearing was conducted accordingly.

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.*, 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.*, p. 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 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

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.

Hospital documents (Exhibits 58-75) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain and vomiting. It was noted that Claimant snorted heroin for a week, before stopping two days prior. Noted assessments included colitis and heroin withdrawal.

Hospital documents (Exhibits 11-29) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of abdominal pain. During admission, it was noted that Claimant threw up and was very weak. It was noted that radiological views and ultrasounds of Claimant's abdomen showed a normal chest appearance and non-obstructive gas pattern. A diagnosis of leukocytosis was noted.

Hospital documents (Exhibits 76-104) from an admission dated [REDACTED] were presented. It was noted that Claimant complained of abdominal cramping. An extensive history of admissions related to alcohol gastritis and heroin abuse were noted. It was noted that Claimant exacerbated symptoms by consuming alcohol. Noted assessments included alcoholic gastritis, polysubstance abuse, and alcoholism. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 105-132) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of vomiting. It was noted that Claimant used heroin every day for the last two months to treat leg pain. It was noted that symptoms began after Claimant stopped using heroin. A diagnosis of alcoholic gastritis, HTN, alcohol abuse, and heroin abuse were noted. A discharge date of [REDACTED] was noted.

A Pulmonary Function Report (Exhibit B46) dated [REDACTED] was presented. It was noted that Claimant's FVC1 was 2.319. Claimant's FEV1 was 1.735. The test only listed one result; thus it appears that multiple trials and use of a bronchodilator were not performed. An impression of severe chest restriction was noted.

A radiology report (Exhibit B52) dated [REDACTED] was presented. An impression of minimal arteriosclerosis was noted following chest x-rays.

Lab results (Exhibits B59) dated [REDACTED] were presented. The results were unaccompanied by physician analysis.

Hospital documents (Exhibits 32-57) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of vomiting and abdominal pain, ongoing for 5 days, and back pain with dyspnea, ongoing for 2 weeks. Chest pain was also noted. Claimant's medical history noted cirrhosis and testicular cancer. It was noted that Claimant was cleared by cardiology. It was noted that opiate withdrawal likely caused Claimant's abdominal pain and vomiting. It was noted that chest x-rays, abdominal x-rays and a CT of Claimant's lumbar were performed; all radiology was noted as negative. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 30-31) from an admission dated [REDACTED] were presented. It was noted that Claimant complained of abdominal pain and vomiting. It was noted that Claimant complained of right leg pain and that an x-ray was unremarkable. It was noted that Claimant requested narcotics which were declined because Claimant was a heroin user. A history of alcohol and heroin abuse was noted. It was noted that Claimant left against medical advice. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits C1-C7) dated [REDACTED] were presented. It was noted that Claimant presented with a complaint of lower extremity pain, ongoing for 2 weeks. It was noted that Claimant occasionally used alcohol and smoked. It was noted that Claimant reported not using drugs in the last 3 months but it was also noted that Claimant admitted to snorting heroin. An impression of cellulitis was noted. It was noted that radiology of Claimant's right leg was taken; an impression of soft tissue edema and ulceration was noted.

A mental status examination report (Exhibits 2-1 – 2-5) dated [REDACTED] was presented. It was noted that Claimant took Folic Acid, Cephalexia, and Oxycodone. It was noted that Claimant independently performed ADLs; the quality of Claimant's ADLs was noted as marginal. It was noted that Claimant attends weekly chess games with his son. It was noted that Claimant "vaguely" reported that he last used heroin in the summer of 2013 and last reported alcohol use 2 years prior. It was noted that Claimant responded well to criticism and instructions. Noted observations included the following: good contact with reality, low self-esteem, slowed motor activity, sullen affect, verbal, pleasant, appropriate communication content, and logical and organized thought. Diagnoses of learning disability and depression were noted. It was opined that Claimant could comprehend and follow simple directions, and perform repetitive and routine tasks. A mild restriction in following complex tasks was noted. It was noted that Claimant required extra time to perform ADLs due to physical pain. Claimant's attention, focus, and behavior were noted as normal. Claimant's insight and judgment were noted as fair.

Dozens of progress notes (Exhibits A1-A22; B1-B59) from a treating physician were presented. The records verified over 20 doctor visits (usually monthly) from [REDACTED]. Diagnoses of lumbago, cellulitis, and chronic pain were regularly noted. Medications of Flexeril, Lisinopril, Neurontin, and Oxycodone were regularly noted. Claimant's first visit noted no reference to drug use; all subsequent visits noted "drug use- Pos Hx- heroin".

Claimant's physician regularly noted changes on Claimant's leg(s). On [REDACTED], distal pulses 2+, no edema, and no venous stasis changes were noted; scabs on the right leg were noted. On [REDACTED], distal pulses 2+, no edema, and no venous stasis changes were noted. On [REDACTED], 3+ edema was noted on Claimant's lower extremity. On [REDACTED], distal pulses 2+, no edema, and no venous stasis changes were noted. On [REDACTED], distal pulses 2+, no edema, and no venous stasis changes were noted. On [REDACTED], significant varicosities of bilateral legs were noted. On [REDACTED], foul smelling leg wounds with eschar were noted; a recent hospital work-up was noted as negative. On [REDACTED] 3, multi-discoloration of lower extremities was noted; varicose veins were

noted as healing well. On [REDACTED], edema was noted in Claimant's right foot. On [REDACTED], Claimant's physician noted distal pulses 2+, no edema, and no venous stasis changes. On [REDACTED], an ulcer was noted on Claimant's leg. On [REDACTED], tenderness on palpitation and erythema were noted in Claimant's legs.

Claimant testified that he was diagnosed with testicular cancer. Claimant testified that he subsequently underwent surgery, presumably testicle removal. Claimant testified that he developed varicose veins after the surgery. Claimant blames surgery complications for the cause of his chronic leg pain. Claimant stated that leg pain and a pinched back nerve cause walking and standing restrictions. Claimant testified that he uses a cane or a walker for ambulation.

Claimant alleged disability, in part, based on back pain. A diagnosis and medical treatment for lumbago were verified. The only presented radiology was negative. The evidence was sufficient to conclude that Claimant experiences some back pain. The evidence was insufficient to conclude that Claimant's back pain causes a severe impairment.

Claimant alleged disability from [REDACTED]. Physician records did not note any leg abnormalities until [REDACTED]. Abnormalities were not noted again until [REDACTED]. The evidence was suggestive that Claimant had a severe impairment beginning [REDACTED] 3.

Presented records tended to establish that Claimant was a heroin addict, at least through [REDACTED]. All of Claimant's prior hospitalizations tended to be related to heroin abuse or withdrawal. Claimant sought hospital treatment for his leg in [REDACTED]; radiology was negative and Claimant left against medical advice. Claimant's next hospital encounter occurred in [REDACTED]. Hospital treatment history was suggestive that Claimant established a severe impairment beginning [REDACTED].

Based on the presented evidence, it is found that Claimant had severe impairments since [REDACTED]. Thus, it is found that DHS properly denied Claimant's MA eligibility through [REDACTED]. The analysis may proceed for a consideration of disability from [REDACTED].

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 spinal disorders (Listing 1.04) was considered based on Claimant's LBP complaints. This listing was rejected due to a failure to establish a spinal disorder resulting in a compromised nerve root.

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 spirometry testing

involving multiple trials and use of a bronchodilator. The evidence also was not suggestive of a long-term respiratory restriction.

A listing for chronic skin infections (Listing 8.04) was considered. The listing was rejected due to a failure to verify extensive lesions or fungating for a period of 3 months despite prescribed treatment.

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.

A SSA earnings report (Exhibits 141- 143) and Work History Report (Exhibits 144-146) were presented. Claimant testified that he performed past employment as a truck driver and as a construction supervisor. Claimant testified that he would be unable to perform the standing and/or lifting required of his past employment. Claimant's testimony was consistent with the presented evidence. 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.*

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).

Claimant's history of leg ulcers was compelling. Since [REDACTED], Claimant was treated regularly for leg ulcers. When factored with a diagnosis of lumbago, and various psychiatric restrictions, a finding that Claimant cannot perform light employment is appropriate.

Based on Claimant's exertional work level (sedentary), age (closely approaching advanced age), education (limited), employment history (semi-skilled, not transferrable), Medical-Vocational Rule 201.10 is found to apply. This rule dictates a finding that Claimant is disabled. The finding of disability cannot be finalized until the significance of Claimant's heroin abuse is factored. SSA states the following concerning the relevance of drugs and/or alcohol.

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

Claimant testified that he used heroin one time, in [REDACTED]. Claimant testified that he usually treats his pain with Morphine. Presented hospital and physician records suggested that Claimant was a heroin addict, at least through [REDACTED]. Though Claimant appeared to be less than forthcoming concerning past drug abuse, presented records were not suggestive of drug abuse since [REDACTED].

The most compelling evidence supporting that drug abuse was not material was a diagnosis from Claimant's physician. After several months of noting various leg abnormalities, on [REDACTED] chronic lower extremity venous stasis and wounds were noted. The diagnosis was suggestive of a chronic problem, one not caused by drug abuse. Based on the presented evidence, it is found that any ongoing drug abuse by Claimant Claimant's heroin use was not material to the finding of disability. Accordingly, it is found that DHS improperly determined to be not disabled from [REDACTED].

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. DHS policies for SDA are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

SDA provides financial assistance to disabled adults who are not eligible for Family Independence Program (FIP) benefits. BEM 100 (1/2013), p. 4. The goal of the SDA program is to provide financial assistance to meet a disabled person's basic personal and shelter needs. *Id.* To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older. BEM 261 (1/2012), p. 1.

A person is disabled for SDA purposes if he/she:

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or
- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
- is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

Id.

It has already been found that Claimant is disabled for purposes of MA benefits, beginning [REDACTED] based on application of Medical-Vocational Rule 201.10. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual, beginning [REDACTED], for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

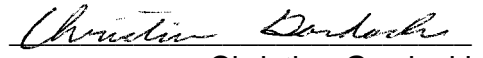
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA and SDA eligibility through [REDACTED] including retroactive MA benefits, based on a determination that Claimant is not disabled. The actions taken by DHS are **PARTIALLY AFFIRMED**.

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 and SDA benefits. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for MA and SDA benefits subject to the finding that Claimant is a disabled individual, **effective** [REDACTED];
- (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 and SDA benefits.

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


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

Date Signed: 7/31/2014

Date Mailed: 7/31/2014

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]