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

IN THE MATTER OF:

[redacted]

Reg. No.: 2014-17065
Issue No.: 2009
Case No.: [redacted]
Hearing Date: June 18, 2014
County: Macomb (12)

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 June 18, 2014, from Clinton Township, Michigan. Participants included the above-named Claimant. [redacted] testified and appeared as Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (DHS) included [redacted], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) for the reason that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [redacted], Claimant applied for MA benefits, including retroactive MA benefits from 12/2012.

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 Exhibit 100-99).

4. On [redacted], DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action 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 a determination that Claimant can perform past relevant employment.

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

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

9. DHS presented new documents (Exhibits 2-1 – 2-8) 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 additional documents considered and forwarded by SHRT.

12. During the hearing, the record was extended 30 days to allow Claimant additional time to submit neurologist records; an Interim Order extending the record was subsequently mailed.

13. On [redacted], Claimant submitted additional documents (Exhibits B1-B17).

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 202.13.

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 55 year old female with a height of 5'5'' and weight of 205 pounds.

18. Claimant has no known relevant history of alcohol or illegal substance abuse.

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

20. Claimant alleged disability based on impairments and issues including recurring seizures and Chronic Obstructive Pulmonary Disease (COPD).

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. Claimant specifically noted difficulties with transportation. Claimant testified that her friend gave her a ride and that she required no special accommodation from MAHS.

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 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 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 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. It should be noted that DHS exhibits were presented in reverse number order. The below citations reflect the DHS preference to number their exhibits in backwards fashion.

Hospital documents (Exhibits 62-60; 55; 49-48; 43-42; 34-29; 23-13) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of worsening dyspnea. It was noted that Claimant reportedly quit smoking 3 days before admission. It was noted that an echocardiogram demonstrated moderate-to-severe tricuspid regurgitation and moderate mitral regurgitation. A CT scan report of Claimant's chest (Exhibit 69) noted an impression of moderate sized hiatal hernia and mild cardiomegaly. The impression also noted small parenchymal nodules with

recommended follow-up to determine if they were “true nodules”. It was noted that Claimant did not have a pulmonary embolism. It was noted that Claimant showed significant improvement and was discharged. Discharge diagnoses of acute dyspnea likely due to COPD exacerbation and questionable pneumonia were noted. Discharge medications included Atenolol, Aitalopram, Zantac, Trazadone, Albuterol, Xanax, Symbicort, and Spiriva. A discharge date of [redacted] was noted.

Cardiovascular documents (Exhibits 67-66; 59-58) dated [redacted] were presented. It was noted that Claimant recently was hospitalized for dyspnea and was found to have moderate-to-severe tricuspid regurgitation. It was noted that Claimant reported ongoing dyspnea following walking of “a few blocks”. An impression of dyspnea related to COPD exacerbation and/or pulmonary hypertension, and/or tricuspid regurgitation was noted. A recommendation of referral to a pulmonary hypertension clinic was noted.

Pulmonary hypertension clinic documents (Exhibits 65-63) dated [redacted] were presented. Impressions of dyspnea and pulmonary hypertension were noted.

An echocardiogram report (Exhibits 54-53) dated [redacted] was presented. A summary noted normal ventricular size, normal ejection fraction of 60-65%, mild mitral regurgitation, and mild tricuspid regurgitation.

Lung and sleep medicine center documents (Exhibits 39-35) were presented. It was noted that Claimant underwent a sleep study on [redacted]. An impression of mild sleep apnea and poor sleep efficiency was noted.

Pulmonary hypertension clinic documents (Exhibits 57-56) dated [redacted] were presented. Impressions of dyspnea and pulmonary hypertension were again noted. A recommendation of right heart catheterization with vasodilatory challenge was noted.

Hospital documents (Exhibits 52-50; 45-44) from an admission dated [redacted] were presented. It was noted that Claimant presented with complaints of dyspnea. It was noted that Claimant underwent left and right heart catheterization. An impression of mild pulmonary hypertension was noted.

Hospital treatment documents (Exhibits 41) dated [redacted] were presented. Diagnoses of nonspecific abnormal lung radiology findings, acute bronchitis, and anxiety were noted.

A Psychiatric/Psychological Examination Report (Exhibits 74-72) dated [redacted] was presented. The report was completed by a treating psychiatrist and counselor. It was noted that Claimant was a patient for the period from 10/2011 to 10/2012. It was noted that Claimant reported increased depression symptoms over the past couple of years. It was noted that Claimant reported symptoms of feeling tense, worry, and low energy. It was noted that Claimant had no previous psychiatric hospitalizations. It was noted that Claimant attended group therapy once per month though it is presumed that Claimant stopped attending in 10/2012 (the month of Claimant’s last noted visit). It was noted that

Claimant is not currently receiving medications. It was noted that Claimant was capable of completing daily activities. An Axis I diagnosis of recurrent and moderate depressive disorder was noted. Claimant's GAF was noted to be 51.

An EEG report (Exhibit A1) dated [redacted] was presented. It was noted that the study was performed in response to complaints of confusion and memory lapses. It was noted that Claimant underwent 24 hour EEG study. It was noted that the study demonstrated some slowing of background alpha rhythm and excess slow wave activities of a generalized nature and occurrence. It was noted that findings suggest diffuse encephalopathy and raise the possibility of an irritative lesion on the right side of the brain.

An internal medicine examination report (Exhibits 96-89) dated [redacted] was presented. The report was completed by a consultative physician. It was noted that Claimant reported having COPD and high blood pressure. It was noted that Claimant's blood pressure was well controlled. Physical examination findings were all negative. It was noted that Claimant had no signs of respiratory distress. It was noted that Claimant had a full range of motion in all tested joints. It was noted that Claimant was capable of performing all 23 listed activities, which included: sitting, standing, stooping, bending, climbing stairs, and carrying.

A Pulmonary Function Report (Exhibits 87-85) dated [redacted] was presented. It was noted that a bronchodilator was not needed. Of 3 trials, Claimant's best FVC was 3.19; the capacity was 93% of predicted. Of 3 trials, Claimant's best FEV1 was 2.62 which was noted as 97% of predicted.

Neurology institute documents (Exhibits B4-B6) dated [redacted] were presented. It was noted that Claimant reported recurring headaches, memory lapses, confusion, and seizure-like "zoning-out". A neurologist impression noted skepticism at Claimant having neurological-based seizures.

Hospital documents (Exhibits B7-B9) from an admission dated [redacted] were presented. The documents suggested that Claimant was admitted for the purpose of 4 days of brain monitoring. An impression of normal long-term EEG monitoring was noted, however, an atypical recorded spell was also noted. A discharge date of [redacted] was noted.

A neuropsychological consultation report (Exhibits 2-5 – 2-8) dated [redacted] was presented. The report was noted as completed by a neuropsychologist with no history of treating Claimant. It was noted that Claimant reported ringing in her head associated with memory lapses and word-finding difficulties, ongoing since 10/2012. Other reported symptoms included light sensitivity, diminished initiative, crying episodes, decision making difficulties, bouts of confusion, and loss of balance. It was notable that Claimant's clinical profile is reflective of some degree of psychological distress and discomfort that is likely to involve multiple neurotic manifestations in chronic and longstanding nature. An impression of verbal and non-verbal performance inefficiency

was noted. Claimant's responses to MMPI-2 testing were noted to be suggestive of anxiety and depression in a schizoid personality. It was opined that Claimant's difficulties were the product of non-organic psychogenic factors despite evidence of seizure in previous testing.

Regular complaints of dyspnea were noted. Multiple diagnoses for pulmonary hypertension were noted in 2012. Pulmonary HTN is understood to be a serious medical condition that is difficult to control and treat. It appears that Claimant's condition significant improved base on Spirometry testing which revealed nearly 100% of predicted lung capacity. Some small degree of ongoing dyspnea can be presumed based on the pulmonary diagnosis. It is likely that Claimant has some degree of ambulation and lifting/carrying restrictions due to dyspnea.

Claimant testified that she often has memory lapses. As an example, Claimant testified that she will often start an activity and then forget what she was doing. Claimant's testimony was fairly consistent with presented evidence which tended to verify a small degree of neurological dysfunction and a large degree of psychological problems. The evidence was sufficient to verify some degree of social and attention deficits.

The medical evidence also established that Claimant's stated restrictions have lasted since 12/2012, the first month that 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 chronic pulmonary insufficiency (Listing 3.02) was considered based on Claimant's complaints of dyspnea. The listing was rejected due to a failure that Claimant's respiratory testing results approach listing requirements.

A listing for cor pulmonale secondary to chronic pulmonary vascular hypertension (Listing 3.09) was considered based on diagnoses of pulmonary HTN. The listing was rejected due to a failure to establish arterial hypoxemia or mean artery pressure greater than 40 mm Hg.

Listings for affective disorders (Listing 12.04) and anxiety disorders were considered based on presented documents. An affective disorder listing, in part, factors the degree of a client's social skills, persistence and concentration, and ability to complete daily activities. Presented evidence offered widely-differing opinions on Claimant's abilities.

A Mental Residual Functional Capacity Assessment (Exhibits 71-70) dated [redacted] was presented. The assessment was noted as completed by a treating psychiatrist and social worker. This form lists 20 different work-related activities among four areas:

understanding and memory, sustained concentration and persistence, social interaction and adaptation. A therapist or physician rates the patient's ability to perform each of the 20 abilities as either "not significantly limited", "moderately limited", "markedly limited" or "no evidence of limitation". It was noted that Claimant was markedly restricted in the following work-related abilities:

- Understanding and remembering detailed instructions
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Completing a normal workday without psychological symptom interruption
- Getting along with others without exhibiting behavioral extremes
- Maintaining socially appropriate behavior and adhering to general cleanliness standards

A Medical Source Statement if Ability to Do Work-Related Activities (Mental) (Exhibits B16-B18) dated [redacted] was presented. The form was completed by Claimant's treating internal medicine physician. Claimant was found to be markedly restricted in interacting with the public, supervisors, and co-workers. Claimant was found to have extreme restrictions in the following:

- Understanding and remembering simple and/or complex directions
- Carrying out simple and/or complex instructions
- Making simple and/or complex work-related decisions
- Interacting appropriately with the general public

A Mental Residual Functional Capacity Assessment (Exhibits 12-13) dated [redacted] was presented. The assessment was noted as completed by a psychiatrist with an unknown history of treating Claimant. Claimant was found to have several moderate restrictions, but no marked restrictions. Claimant was found to have no significant limitations in understanding or carrying-out 1-2 step instructions.

An examining neuropsychologist determined that Claimant's GAF was 60 (see Exhibit 2-4). The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 51-60 is representative of someone with moderate symptoms or any moderate difficulty in social, occupational, or school functioning.

Claimant attended numerous physician appointments, including fairly comprehensive testing with a neuropsychologist. There was no evidence that Claimant had difficulty in following any instructions, let alone simple instructions. Claimant made several complaints, to doctors and during the hearing, of memory problems, however, the statements were not supported to the point of justifying "extreme" restrictions. This consideration is suggestive in finding that Claimant's physician exaggerated Claimant's restrictions.

Claimant did not provide any evidence of counseling attendance. Counseling records detailing Claimant's problems are an example of supportive documents. Generally, marked or extreme restrictions should be supported with details, as found in counseling

records. The lack of counseling also makes it difficult to gauge whether Claimant's condition would improve by counseling. For example, the examining neuropsychologist recommended that Claimant reengage with counseling.

Generally, a psychologist or psychiatrist is a better judge of specific psychological restrictions than an internal medicine physician. This consideration lessens the credibility of her physician, at least concerning psychological restrictions.

Based on the presented evidence, it is found that Claimant does not have either marked or extreme psychological restrictions. Claimant failed to establish meeting the requirements of listing 12.06 or 12.06.

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 performed bookkeeping work for several different employers. At step 3 of the analysis, it was found that Claimant did not have extreme or marked social or concentration restrictions. Though Claimant does not have marked restrictions, moderate restrictions were established. It is probable that Claimant's moderate attention and persistence restrictions would prevent the performance of detail-oriented employment such as bookkeeping. It is found that Claimant cannot perform past 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).

Given Claimant's age, education and employment history a determination of disability is dependent on Claimant's ability to perform light employment. Social Security Rule 83-10 states that the full range of light work requires standing or walking, off and on, for a total of approximately 6 hours of an 8-hour workday. Claimant presented statements from her physician concerning physical limitations.

A Medical Examination Report (Exhibits 77-75) dated [redacted] was presented. The form was completed by a family medicine physician with an approximate 19 year history of treating Claimant. Claimant's physician listed diagnoses of depression, anxiety, long nodule, hip arthritis, chronic sinus bronchitis, vaginal polyps, and COPD. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. Claimant's physician opined that Claimant was restricted as follows over an eight-hour workday, standing and/or walking of at least 2 hours and sitting of approximately 6 hours. Claimant's physician opined that Claimant was capable of occasional lifting/carrying of 10 pounds and frequent lifting of less than 10 pounds.

A Medical Source Statement if Ability to Do Work-Related Activities (Physical) (Exhibits B10-B15) dated [redacted] was presented. The form was completed by Claimant's treating physician. Claimant's physician opined that Claimant could never perform any lifting/carrying of any weight amount. Claimant's physician opined that Claimant was restricted to walking for 20 minute periods and standing for 45 minute periods. Claimant was noted as restricted to 1 hour of walking and 1 hour of standing per 8 hour workday. Claimant was restricted to occasional overhead reaching, fingering, and feeling while she was restricted to never performing pushing/pulling. Claimant was restricted to never performing stooping, crawling, crouching, and kneeling. Claimant was restricted from use of a stove. It was noted that Claimant required a companion for any travel assistance and was not capable of using public assistance.

Claimant's case was full of contradictions. A consultative examiner found Claimant to be restriction-free; Claimant's physician found Claimant to be restricted from performing nearly all physical activity. Claimant complained of chronic dyspnea; Spirometry testing noted Claimant's breathing was barely subnormal.

Support for Claimant's physician's stated restrictions would have been stronger had more treatment for pulmonary HTN been presented. It was also not well established that pulmonary HTN was an ongoing problem. For example, pulmonary HTN was listed as a

diagnosis in 2012; it was not an apparent diagnosis in numerous subsequent physician encounters.

Claimant's physician's restrictions again appear to be exaggerated. For example, medical documents failed to justify a total lifting/carrying restriction. Nevertheless, Claimant's persistent dyspnea complaints, credible testimony, treating physician restrictions and verified medical problems (e.g. pulmonary HTN, brain lesion, seizure, heart valve regurgitation) justify a finding that Claimant is restricted to performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (closely approaching advanced age), education (high school and no direct entry into skilled employment), employment history (semi-skilled with no transferrable skills), Medical-Vocational Rule 201.14 is found to apply. This rule dictates a finding that Claimant is disabled. Accordingly, it is found that DHS improperly found Claimant to be not disabled for purposes of MA benefits.

DECISION AND ORDER

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

(1) reinstate Claimant's MA benefit application dated [redacted], including retroactive MA benefits from 12/2012
(2) evaluate Claimant's eligibility for MA benefits subject to the finding that Claimant is a disabled individual;
(3) initiate a supplement for any benefits not issued as a result of the improper application denial; and
(4) schedule a review of benefits in one year from the date of this administrative decision, if Claimant is found eligible for future MA benefits.

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

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

Date Signed: 9/9/2014

Date Mailed: 9/9/2014

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]