

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

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 14-010380  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: November 6, 2014  
County: Wayne (18)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on from Detroit, 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], Medical Contact Worker.

**ISSUE**

The issue is whether DHS properly denied Claimant's Medical Assistance (MA) eligibility 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 2/2014.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 2-3), in part by determining that Claimant did not have a severe impairment.
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. As of the date of the administrative hearing, Claimant was a 43 year old male with a height of 5'6" and weight of 204 pounds.
7. Claimant has no known relevant history of alcohol or illegal substance abuse.
8. Claimant's highest education year completed was the 11<sup>th</sup> grade.
9. As of the date of the administrative hearing, Claimant was an ongoing Healthy Michigan Plan recipient since 4/2014
10. Claimant alleged disability based on impairments and issues including diabetes mellitus, lumbar pain, and left-sided nerve damage.

#### **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, a 3-way telephone 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. Prior to a disability analysis, recent SSA activity concerning Claimant's claim of disability must be factored.

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.*

DHS and Claimant testimony tended to verify that Claimant applied for SSA disability benefits in 1/2013. Claimant testified that he appeared for a disability hearing in 2/2014. Claimant testified that the administrative law judge determined that he was not disabled.

The Social Security Administration's final determination that the client is not disabled/blind for SSI, not RSDI, takes precedence over an MRT determination. BEM 260 (7/2013), p. 3. Similar guidance is found elsewhere within DHS policies.

For MA, SSA's final determination that a client is not disabled/blind for SSI purposes supersedes MRT's/SHRT's certification. BAM 815 (7/2013), pp. 1-2. See BEM 260 to determine when to proceed with a medical determination for these clients. *Id.*

Claimant testified that he did not appeal the administrative law judge's decision and that more than 60 days had elapsed since the decision was issued. The evidence was highly suggestive in finding that the unfavorable finding of disability made by SSA is binding on DHS.

Eligibility for MA based on disability or blindness does not exist once SSA's determination is final. *Id.*, p. 3. SSA's determination that disability or blindness does not exist for SSI is final for MA if:

- The determination was made after 1/1/90, and
- No further appeals may be made at SSA; or
- The client failed to file an appeal at any step within SSA's 60 day limit, and
- The client is not claiming:
  - A totally different disabling condition than the condition SSA based its determination on, or
  - An additional impairment(s) or change or deterioration in his condition that SSA has not made a determination on.

BEM 260 (7/2013), p 3.

Claimant applied for MA benefits in the same month of his SSA disability hearing. Based on Claimant's testimony, it can be deduced that a federal administrative law judge rejected Claimant's claim of disability through the date of his SSA disability hearing. Claimant testified that his administrative hearing was held in 2/2014.

Claimant's testimony was suggestive that his medical condition worsened since the date of his administrative hearing; numerous medical documents created since the date of SSA decision were submitted to support Claimant's testimony. Thus, it is appropriate to perform a disability analysis for the months following Claimant's disability hearing.

Consideration was given to finding that the unfavorable SSA disability finding was binding on DHS and Claimant for the month of 2/2014. This consideration was rejected because disability for a benefit month can be established by being disabled for at least one day. Thus, unless Claimant lost his hearing on the last day of 2/2014 (which is not known), Claimant can still be found disabled for a date in 2/2014 following the hearing date. Based on the presented evidence, it is found that Claimant's unfavorable SSA decision from a 2/2014 hearing is not binding on DHS.

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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

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 (10<sup>th</sup> Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10<sup>th</sup> Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 12-20) from an admission dated [REDACTED] were presented. It was noted that Claimant presented with complaints of right leg pain and redness. Claimant's leg was noted as positive for edema and rash. It was noted that a Doppler was negative for deep vein thrombosis. It was noted that Claimant's rash appeared to be vasculitis and should be monitored. It was noted that Claimant received various medications and his pain mildly improved. Discharge diagnoses included cellulitis, hyperglycemia, HTN, and DM. It was noted that Claimant was discharged on [REDACTED]. It was noted that Claimant left against medical advice.

Hospital documents (Exhibits A68-A70) from an encounter dated [REDACTED] were presented. It was noted that Claimant complained of lumbar pain (pain level 7/10). A positive straight leg raising test was noted. Treatment was not apparent.

Spine clinic physician documents (Exhibits A1-A2) dated [REDACTED] were presented. It was noted that Claimant presented for an initial appointment with complaints of lumbar and left leg pain, ongoing since 10/2012. It was noted that Claimant tried injections in the past, but with no pain relief. It was noted that Claimant took Norco to dull his pain. It was noted that a CT from 12/2012 revealed moderate left-side neuroforaminal narrowing and mild bilateral foraminal narrowing at L4-L5. It was noted that Claimant had difficulty performing unilateral stance on his left leg. Lumbar flexion and extension were noted as limited due to pain. Decreased flexibility was noted in hamstrings and hip flexors. An assessment of lumbar radiculopathy was noted. A plan for a current lumbar MRI and physical therapy was noted. A plan to switch from Norco to Neurontin was noted.

Nurse Practitioner progress notes (Exhibits A6-A8) dated [REDACTED] were presented. Assessments of HTN, high cholesterol, diabetic neuropathy, leg swelling, diabetes, muscle spasm, and lumbar pain were noted. Various medications were noted as prescribed.

Hospital documents (Exhibits A71-A72) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of dental pain related to a cracked tooth. A prescription for Ancef was noted.

Various physical therapy appointment documents (Exhibits A38-A67) from 5/2014 were presented. On [REDACTED], it was noted that Claimant was discharged from physical therapy due to upcoming back surgery.

Treating physician progress notes (Exhibits A9-A12) dated [REDACTED] were presented. It was noted that a prescription for Norco was refilled.

A spine clinic physician document (Exhibit A2) dated [REDACTED] was presented. It was noted that Claimant underwent an MRI, which was limited due to Claimant discomfort. An assessment of disk herniation at L4-L5 and L5-S1 was noted. A plan for an open MRI was noted.

Spine clinic physician documents (Exhibits A2-A3) dated [REDACTED] were presented. Hip flexor, dorsiflexion, and EHL motion reductions were noted. A positive straight-leg raising test on Claimant's left leg was noted. An L5-S1 discectomy was recommended.

Nurse Practitioner progress notes (Exhibits A13-A15) dated [REDACTED] were presented. It was noted that Claimant was cleared for back surgery.

Hospital documents (Exhibits A76-A78) from an encounter dated [REDACTED] were presented. It was noted that Claimant presented with complaints of tooth pain. Bad teeth were noted to be throughout Claimant's mouth.

Treating physician Progress Notes (Exhibits A16-A18) dated [REDACTED] were presented. Various medications were noted as refilled.

Spine clinic physician documents (Exhibits A33-A34) dated [REDACTED] were presented. It was noted that Claimant underwent a discectomy.

Nurse Practitioner progress notes (Exhibits A19-A21) dated [REDACTED] were presented. It was noted that Claimant reported ongoing lumbar pain.

Spine clinic physician documents (Exhibits A4-A5) dated [REDACTED] were presented. It was noted that Claimant's back pain had not yet improved since surgery. It was noted that Claimant was to maintain his 5 pound lifting restriction.

Hospital documents (Exhibits A79-A81) from an encounter dated [REDACTED] were presented. It was noted that claimant had been unable to urinate for several hours. A diagnosis of urine retention was noted. It was noted that a foley cathater was placed (see Exhibit 82).

Treating physician progress notes (Exhibits A22-A24) dated [REDACTED] were presented. It was noted that Claimant complained of urinary retention, lasting for 12 hours. A recommendation of following-up with a spine clinic was noted.

Hospital documents (Exhibits A82-A84) from an encounter dated [REDACTED] were presented. It was noted that Claimant complained of constant penile pain. Various medications were noted as prescribed.

Presented documents verified Claimant was treated in 2/2014 for cellulitis. Presumably, Claimant does not have any lingering related restrictions because further treatment was not apparent. It is found that Claimant failed to establish a severe impairment related to cellulitis.

Presented documents verified Claimant was treated in 8/2014 for penile pain and urine retention. The complaints are not of a particular nature such that a long-term problem can be inferred. Presented documents failed to verify any treatment for penile pain and/or urine retention beyond 8/2014. It is found that Claimant failed to establish a severe impairment related to penile pain or urine retention.

Treatment from 5/2014 and 6/2014 for dental pain was verified. On [REDACTED], it was noted that Claimant was going to follow-up with a dentist for a full tooth extraction (see Exhibit A78). Tooth pain can be agonizing. Sympathy for Claimant's circumstances is appropriate, however, the evidence is not sufficient to justify inference of an impairment related to dental pain.

Claimant's primary argument was that back pain was disabling. Claimant's first verified treatment for back pain was in 3/2014. Medical documentation verified that Claimant underwent back surgery in 7/2014. Presented documents also verified that back surgery provided little improvement in Claimant's symptoms. Claimant's ability to walk and/or lift/carry was likely further aggravated by neuropathy, a verified diagnosis.

Based on the presented evidence, it is found that Claimant established significant impairment to performing basic work activities for a period longer than 12 months. Accordingly, it is found that Claimant established having a severe impairment and the disability analysis may move to step three.

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

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 chronic skin infections (Listing 8.04) was considered based on Claimant's recurrent cellulitis. The listing was rejected due to a failure to establish extensive

fungating or extensive ulcerating skin lesions that persist for at least 3 months despite continuing 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.

Claimant testified that he performed past employment as a truck driver, maintenance man / painter, armored truck driver, hospital security guard, airplane parking controller, and recycle truck driver. For purposes of this decision, it will be found that Claimant is unable to perform past employment due to restrictions. Based on this finding, 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 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.

Hospital physical therapy documents (Exhibits A36-A37) dated [REDACTED] were presented. Noted functional deficits were noted as follows: standing tolerance of 15-20 minutes on a good day, walking for 20 minute periods, sleeping for 2-3 hours, sitting for 1 hour periods on a good day, and stair climbing difficulties.

It is not known if the above-stated restrictions reflect Claimant's abilities following surgery. Based on Claimant's testimony that he experienced no improvement following surgery, it can be inferred that the provided restrictions accurately reflect Claimant's abilities after surgery.

It should be noted that above-cited restrictions were noted at the commencement of physical therapy. It is not known with certainty if therapy lessened Claimant's restrictions. The uncertainty of Claimant's restrictions following PT is further hampered because of multiple missed appointments and that therapy was cut-short due to upcoming surgery. Claimant appeared to only attend 6 (see Exhibit A60) of 12 PT appointments (3 per week for 4 weeks). It could be reasonably presumed that Claimant's restrictions would have diminished if further therapy was pursued.

Claimant testified that he only has about 4-5 good days per month. Claimant's testimony was not well verified.

The most recent presented radiology verified moderate left-side neuroforaminal narrowing and mild bilateral foraminal narrowing at L4-L5. Generally, back pain allowing only 4-5 good days per month requires verification of severe stenosis and/or nerve root compromise. Neither circumstance was verified.

Claimant's testimony was suggestive that he has nerve damage. Presented records verified a diagnosis of neuropathy, which may represent nerve damage. A neuropathy diagnosis, without further specifics, is insufficient to infer that Claimant has nerve damage preventing the performance of exertional requirements of sedentary employment. Overall, the evidence was suggestive that Claimant can perform the exertional requirements of sedentary employment.

In 7/2014, a continued 5 pound restriction was noted. Presumably, the restriction was temporary due back surgery from the same month. The evidence was not persuasive that Claimant has an ongoing 5 pound lifting/carrying restriction. Even if the restriction did continue, the restriction would likely erode Claimant's potential employment, but not to the point of disability.

Claimant testified that he is scheduled to have a second back surgery in 12/2014. It cannot be stated with certainty what restrictions that Claimant will have after a second discectomy. There is no particular medical evidence suggesting that the second surgery will not improve Claimant's pain. Presumably, such improvement would occur within one month following surgery. When factoring Claimant's first documented complaint of lumbar pain [REDACTED], a 12 month period of disability would not be established, even if it was found that Claimant experienced disabling pain from 3/2014 until his second surgery. It is found that Claimant is capable of performing sedentary employment.

Based on Claimant's exertional work level (sedentary), age (younger individual 18-44), education (less than high school), employment history (semi-skilled with no known transferrable skills), Medical-Vocational Rule 201.25 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 benefit application dated [REDACTED], including retroactive MA benefits from 2/2014, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



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

Date Signed: **12/1/2014**

Date Mailed: **12/1/2014**

CG / hw

**NOTICE OF APPEAL:** A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CC:

