

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015311
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: February 11, 2015
County: Oakland (02)

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 February 11, 2015, from Madison Heights, Michigan. Participants included the above-named Claimant. [REDACTED]

[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 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 March 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 1-2).
4. On [REDACTED], DHS denied Claimant's application for MA benefits and mailed a Health Care Coverage Determination Notice (Exhibits 3-4) informing Claimant of the denial.

5. On [REDACTED], Claimant's AHR requested a hearing disputing the denial of MA benefits.
6. On [REDACTED], an administrative hearing was held.
7. During the hearing, Claimant and DHS waived the right to receive a timely hearing decision.
8. During the hearing, the record was extended 45 days to allow Claimant to submit a psychiatric evaluation and a Mental Residual Functional Capacity Assessment.
9. Following a request for extension from Claimant's AHR, the record was extended an additional 14 days.
10. On [REDACTED], Claimant's AHR submitted additional documents (Exhibits B1-B4).
11. As of the date of the administrative hearing, Claimant was a 43 year old male.
12. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
13. Claimant alleged disability based on restrictions related to diagnoses of lower back arthritis, panic attacks, and right arm tendonitis, and depression.

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).

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.* 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

Claimant's AHR sent Social Security Administration correspondence verifying that Claimant was found disabled, effective June 1, 2011. Unfortunately, the correspondence was sent following the close of record, and therefore, could not be considered in this decision. Based on admitted evidence, none of the above circumstances can be found to apply. Accordingly, an analysis of disability must be undertaken.

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.

SGA means a person does the following: performs significant duties, 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 SGA. *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 2014 monthly income limit considered SGA for non-blind individuals is \$1,070.

Claimant testified that he was a maître d from 10/2014 until 12/2014. Claimant testified that his employment hours ranged from 12-24 hours per week. Claimant testified that he made "a couple hundred dollars per week". Claimant also testified that he did not even receive wages for some of the time that he worked. DHS presented no evidence suggesting that Claimant's income exceeded SGA income limits. 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 presented medical documentation.

Psychiatric hospitalization documents (Exhibits A1-A4) from an admission dated [REDACTED], were presented. It was noted that Claimant presented after attempting suicide by overdosing on medications. Notable observations of Claimant included the following: suicidal ideation, tangential thought process, rapid and pressured speech, and disheveled appearance. It was noted that Claimant reported being sexually abused while in the first grade. A normal physical examination was noted. It was noted that Claimant's mood improved after medications were administered. Noted discharge diagnoses included major depressive disorder and PTSD. A discharge date of [REDACTED] was noted.

Hospital documents (Exhibits 13-50) from an admission dated [REDACTED], were presented. It was noted that Claimant presented with anxiety and depression. It was noted that Claimant reported recent slurred speech and facial droop. Physical examination findings included the following: normal gait, no asymmetry in face, and intact neurology. It was noted that a CT of Claimant's head revealed no acute intracranial pathology. Claimant reported feeling negative thoughts but denied suicidal ideation. A recent change in medication (Abilify increased and Celexa added) was noted. It was noted that Claimant agreed to stop taking current medications and begin to take Benadryl. A diagnosis of acute schizoaffective disorder was noted. It was noted that Claimant's speech slightly improved after a dose of Benadryl. A discharge date of [REDACTED], was noted.

Hospital documents (Exhibits A5-A13) from an admission dated [REDACTED], were presented. It was noted that Claimant presented due to unspecified suicide-related issues. Treatment details were not provided. Claimant's GAF at discharge was noted to be 45. Discharge medications included Klonopin, Clonazepam, and Sertraline Hydrochloride. A discharge date of [REDACTED] was noted.

Claimant alleged disability, in part, based on various physical problems. Claimant testified that he suffers lower back arthritis and right arm tendonitis. Claimant testified that he is restricted in standing due to lower back pain.

Claimant presented zero documents verifying any physical treatments. Without any documentation of treatment, a physical restriction cannot be found.

Claimant testified that he has recurring panic attacks and anxiety. Claimant's testimony was consistent with Claimant's documented psychological history which verified multiple suicidal attempts. Claimant's treatment history was suggestive of recurrent psychological episodes that may interrupt employment.

It is found that Claimant established significant impairment to basic work activities for a period longer than 12 months. Accordingly, Claimant established having a severe impairment and the disability analysis may proceed to the third step.

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

Claimant's most prominent impairment appears to be bipolar disorder. Bipolar disorder is an affective disorder covered by Listing 12.04 which reads as follows:

12.04 Affective disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation. The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking

OR

2. Manic syndrome characterized by at least three of the following:
 - a. Hyperactivity; or
 - b. Pressure of speech; or
 - c. Flight of ideas; or
 - d. Inflated self-esteem; or
 - e. Decreased need for sleep; or
 - f. Easy distractibility; or

- g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
- h. Hallucinations, delusions or paranoid thinking

OR

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes);

AND

B. Resulting in at least two of the following:

- 1. Marked restriction of activities of daily living; or
- 2. Marked difficulties in maintaining social functioning; or
- 3. Marked difficulties in maintaining concentration, persistence, or pace; or
- 4. Repeated episodes of decompensation, each of extended duration

OR

C. Medically documented history of a chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

- 1. Repeated episodes of decompensation, each of extended duration; or
- 2. A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- 3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

A Psychiatric/Psychological Examination Report (Exhibits B3-B4) dated March 18, 2015 was presented. The form was completed by a treating psychiatrist with an approximate seven month history of treating Claimant. Noted observations of Claimant included the following: orientation x3, good hygiene, neatly dressed, goal-directed thoughts, dysphoric mood, anxious affect, marginal insight, good judgment, and good memory. It was noted that Claimant had anxiety and agoraphobia for a long time. Three previous suicide attempts were noted. Diagnoses included major recurrent depression, anxiety disorder, agoraphobia, and BAD (bipolar affective disorder). Claimant's GAF was noted to be 48.

The Diagnostic and Statistical Manual of Mental Disorders (4th edition) (DSM IV) states that a GAF within the range of 41-50 is representative of a person with "serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) or any serious impairment in social, occupational, or school functioning (e.g. no friends, unable to keep a job)." Claimant's GAF is indicative of having marked restrictions.

Claimant's treating psychiatrist also completed a Mental Residual Functional Capacity Assessment (Exhibits B1-B2) dated [REDACTED]. 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 abilities:

- Remembering locations and other work-like procedures
- Understanding and remembering detailed instructions
- Carrying out detailed instructions
- Maintaining concentration for extended periods
- Performing activities within a schedule and maintaining attendance and punctuality
- Working in coordination or proximity to other without being distracting
- Completing a normal workday without psychological symptom interruption
- Interacting appropriately with the general public
- Accepting instructions and responding appropriately to criticism
- Getting along with others without exhibiting behavioral extremes
- Setting realistic goals or making plans independently of others.

Psychiatrist-stated restrictions were highly indicative of disability. In particular, marked restrictions to completing a workday, maintaining concentration for extended periods, and maintaining attendance and punctuality would impact Claimant's ability to function at any job. There were reasons to question the degree of restrictions as stated by Claimant's psychiatrist.

Claimant was found moderately restricted in understanding and remembering simple directions and markedly restricted in the same for complex directions. Claimant's psychiatrist also noted that Claimant had a "good memory". A good memory is not consistent with moderate restrictions in remembering simple directions or marked restrictions in remembering complex directions.

Claimant's psychiatrist stated that Claimant's GAF dropped to 48 from a previous year's GAF of 60. A decrease in functioning is puzzling when factoring presented evidence.

Claimant was hospitalized in March 2014 due to a suicide attempt. Zero psychological treatment records between the suicide attempt and the date of hearing were presented. No hospitalizations occurred. The absence of treatment records and/or hospitalizations is not indicative of a decrease in functional abilities. A single psychological examination is not compelling evidence to support a stated GAF of 48.

Claimant conceded that he had health insurance for the last 6 months. Generally, functioning increases after a client has access to health insurance. This consideration makes it less likely that Claimant's functioning abilities decreased.

Claimant testified that he worked as a maître d for from October 2014 – December 2014. Claimant initially stated that he was fired for having panic attacks. Later Claimant testimony indicated that he was really fired because blamed Claimant for his daughter's drug problem. Claimant's ability to hold a job for 2-3 months was indicative that he is not disabled. This conclusion is also consistent with other Claimant testimony which primarily cited physical problems as a basis for being unable to hold a cashier or security guard position. This conclusion is tempered because Claimant's psychiatrist noted that Claimant had limited insight. It is plausible that Claimant testimony masks shortcomings in psychiatric functioning.

Claimant's psychiatrist noted that Claimant takes Zoloft (100 mg- 1.5 mg a day) and Klonopin (.5 mg BID). The prescribed medications or dosages are not particularly indicative of disability. For example, there was no indication of medication changes or dosage increases. Two relatively common medications is also not highly indicative of disability.

Claimant testified that he requested a stoppage in psychiatric treatment after he found medications that worked. A stoppage in psychiatric treatment is not indicative of disability or marked restrictions.

Claimant's psychiatric history was also not well-detailed. For example, a diagnosis of agoraphobia was provided. Provided records did not note incidents of anxiety that are insightful of Claimant's ability to maintain employment.

Claimant testified that he hasn't gone to a mall in 20 years. Claimant testified that he does not shop due to psychological discomfort. The evidence was supportive of finding that Claimant has social restrictions. Based on provided psychiatrist statements, it can be found that Claimant is markedly restricted in social interactions. Presented evidence was less indicative of marked persistence or other restrictions.

The most notable problem with Claimant's presented documentation is the absence of details. Presented records from January 2013, March 2014, and March 2015 were presented. A year long silence between treatment records makes it difficult to draw definitive conclusions concerning Claimant's day-to-day functioning abilities. Though updated psychiatric records were presented, the records contained too many unsupported and/or inconsistent conclusions. Overall, the presented evidence does not support finding that Claimant meets the listing for 12.04.

Listings for affective disorder (Listing 12.03) and anxiety disorders (Listing 12.06) were considered based on provided diagnoses. The listings were rejected for the same reasons that an affective disorder listing was rejected.

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 self-employment as a broker. Claimant testified that he made money by buying items in bulk and sold them at a profit. Claimant testimony suggested that he can perform such employment, however, the income he'd make would not amount to SGA.

Claimant testified that he worked as a maître d' of a restaurant. Claimant testified that he was never paid for the employment due to some unspecified dispute with the owner.

For purposes of this decision, it will be found that Claimant's employment history from the last 15 years does not include income amounting to SGA. Without employment history amounting to SGA, it can only be found that Claimant cannot return to performance of past employment and the analysis may proceed to the final step.

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.

As noted in Step 2, Claimant failed to provide any evidence of a physical restriction. Thus, it is found that Claimant is capable of performing all exertional levels of employment.

At Step 2, it was found that Claimant may have psychological episodes which may interrupt his ability to performance of employment. At Step 3, it was acknowledged that Claimant may have marked social restrictions, but that Claimant is capable of persistence and attention to maintain employment. No doubt, Claimant requires ongoing medication. With ongoing health insurance, Claimant's medications should continue to be covered. Presented evidence justifies restricting Claimant from performing employment involving crowds and potentially high-stress interactions. Customer service employment would be an unrealistic expectation. Non-complex labor-oriented employment is within Claimant's abilities.

DHS did not provide statistics on the availability of jobs within Claimant's abilities. Claimant's restrictions are not so limiting to justify finding that DHS needed to verify that jobs are available. Examples of potential jobs for Claimant would include office work, labor work, security guard, and/or cashier. During the hearing, Claimant was asked about his thoughts on performing such jobs. Claimant's expressed concern about his physical abilities and living off of minimum wage, not psychological restrictions. This further supports finding that the jobs are within Claimant's psychological abilities.

It is found that Claimant has sufficient employment opportunities despite verified psychological restrictions. Accordingly, Claimant is not a disabled individual and it is found that DHS properly denied Claimant's MA application.

As noted above in the early analysis, Claimant was found disabled by SSA beginning [REDACTED]. The SSA determination of disability, once confirmed by DHS, will likely trump this decision's findings and allow Claimant to be eligible for MA benefits from March 2014.

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, based on a determination that Claimant is not disabled. The actions taken by DHS are **AFFIRMED**.



Christian Gardocki
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **4/17/2015**

Date Mailed: **4/17/2015**

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 48909-8139

CC:

