

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

IN THE MATTER OF:



Reg. No.: 14-017040
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: January 26, 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, a telephone hearing was held on January 26, 2015, from Detroit, Michigan. Participants included the above-named Claimant. 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) and State Disability Assistance (SDA) for the reason that Claimant is not a disabled individual.

FINDINGS OF FACT

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

1. On [REDACTED], Claimant applied for SDA and MA benefits, including retroactive MA benefits from 8/2012.
2. Claimant's only basis for MA and SDA benefits was as a disabled individual.
3. On [REDACTED], the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-7).
4. On [REDACTED], DHS denied Claimant's application for MA and SDA benefits and mailed a Notice of Case Action (Exhibits 1-3) informing Claimant of the denial.

5. On [REDACTED] Claimant requested a hearing disputing the denial of MA and SDA 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 30 days to allow Claimant to submit the following: radiology reports, treating physician documents, and/or a Medical Examination Report; an Interim Order Extending the Record was subsequently mailed to both parties.
9. On [REDACTED], Claimant submitted additional documents (Exhibits B1-B20, C1-C21).
10. As of the date of the administrative hearing, Claimant was a 40 year old female.
11. Claimant has not earned substantial gainful activity since before the first month of benefits sought.
12. Claimant obtained an Associate's Degree in business.
13. Claimant has a history of semi-skilled employment, with no transferrable job skills.
14. Claimant alleged disability based on restrictions related to diagnoses of lumbar and cervical spine injuries.

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 chil-

dren, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies:

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

BEM 260 (7/2012) pp. 1-2

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.*, p. 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 (7/2012), p. 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.*, p. 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints

are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. "Current" work activity is interpreted to include all time since the date of application. The 2015 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 (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 background information from Claimant's testimony and a summary of presented medical documentation.

Claimant testified that she was in a motor vehicle accident. Medical documents noted that Claimant reported the accident happened in 12/2008 (see Exhibit 26). Claimant testified that the accident shattered her tibia, broke her sternum, and caused whiplash. Claimant testimony implied that the accident also caused her significant spinal problems.

A cervical spine MRI report (Exhibits A44-AA45) dated [REDACTED] was presented. A mild circumferential bulge with mild foraminal narrowing was noted at C5-C6 and C6-C7.

Physician office visit documents (Exhibits 26-30; A1-A4) dated [REDACTED] were presented. It was noted that Claimant complained of neck pain radiating to her left shoulder and left elbow. It was noted that Claimant reported ceasing employment as a hair stylist because of neck pain. It was noted that Claimant reported sleeping only 4-6 hours because of nighttime pain. Claimant reported a neck pain level of 8/10. It was noted that Claimant had bilateral facet joint tenderness in her upper back. Arm extension and flexion were noted as normal. It was noted that acupuncture and tramadol offered no pain relief. Muscle strength was noted to be 5/5 in all extremities. Spurling's Test, Hoffman's Test, and Lhermitte's Test were each noted to be negative. It was noted that Claimant agreed to future C3-C6 facet joint injections. An impression of cervicgia and cervical disc degeneration were noted. A plan for conservative management was noted. A plan to prescribe acupuncture, massage, and Norco was noted.

Pain management office visit notes (Exhibits A5-A6) dated [REDACTED] were presented. It was noted that Claimant underwent a medial branch block injection. It was noted that Claimant became anxious and halted her participation in the middle of the procedure.

Various pain management office visit notes (Exhibit 31-34; A6-A15) from 2012 were presented. It was noted that Claimant regularly reported neck pain. It was noted that Claimant continued to decline nerve block injections in favor of acupuncture. It was regularly noted that Claimant received Norco for her pain.

Pain management office visit notes (Exhibits A16-A17) dated [REDACTED] were presented. It was noted that Claimant reported 5/10 neck pain and 8/10 right leg pain. A positive Spurling's test (left side) was noted. A normal gait and station was noted. Norco was continued.

A lumbar MRI report (Exhibit A46) dated [REDACTED] was presented. A disc herniation at L5-S1 with mass effect on the thecal sac and abutting the left S1 root sleeve was noted.

Pain management office visit notes (Exhibits A18-A19) dated [REDACTED] were presented. A positive Spurling's test (left side) was noted. A normal gait and station was noted. Norco was continued.

Pain management office visit notes (Exhibits A20-A21) dated [REDACTED] were presented. It was noted that Claimant reported neck pain, occasionally radiating to her left elbow.

Pain management office visit notes (Exhibits A22-A23) dated [REDACTED] were presented. It was noted that Claimant underwent an L5-S1 nerve block injection.

Pain management office visit notes (Exhibits A24-A25) dated [REDACTED] were presented. It was noted that Claimant underwent an L5-S1 nerve block injection.

Physician office visit documents (Exhibits 22; 25) dated [REDACTED] were presented. It was noted that Claimant complained of radiating lumbar pain. A guarded range of motion to Claimant's lumbar appeared to be noted.

Pain management office visit notes (Exhibits A26-A27) dated [REDACTED] were presented. It was noted that Claimant underwent an L5-S1 nerve block injection.

Pain management office visit notes (Exhibits A28) dated [REDACTED] were presented. It was noted that Claimant reported lower back pain relief from injections, but only for 2 days before pain returned. Reported pain level was 6/10. It was noted that Claimant reported 65% improvement.

Pain management office visit notes (Exhibits A29) dated [REDACTED] were presented. It was noted that Claimant reported 3-4 week relief after last pain injection. Current reported pain level was 7/10. A prescription for acetaminophen-hydrocodone was refilled.

Pain management office visit notes (Exhibits A30) dated [REDACTED] were presented. It was noted Claimant reported increasing lower back pain (9/10 pain level).

Pain management office visit notes (Exhibits A31-A32) dated [REDACTED] were presented. It was noted that Claimant underwent an L5-S1 nerve block injection.

Pain management office visit notes (Exhibits A33) dated [REDACTED] were presented. It was noted that Claimant reported only 24 hour relief after her last injection. Reported cervical pain, radiating into left shoulder was reported.

Pain management office visit notes (Exhibits A34) dated [REDACTED] were presented. It was noted that Claimant reported ongoing LBP and radiating neck pain. A loss of insurance due to a job change was noted.

Pain management office visit notes (Exhibits A35) dated [REDACTED] were presented. It was noted that Claimant reported 6/10 in lower back and radiating pain in her neck. Intermittent shooting pain to Claimant's right leg was noted. Medications were noted as continued.

Pain management office visit notes (Exhibits A36-A37) dated [REDACTED] were presented. It was noted that Claimant reported constant back pain (5/10) with a shooting pain down right leg. Medications were noted as continued.

Pain management office visit notes (Exhibits A38-A39) dated [REDACTED] were presented. It was noted that Claimant reported lower back pain shooting down each of her legs. Physical examination findings noted a positive Patrick's test and normal gait and station.

Pain management office visit notes (Exhibits A40-A41) dated [REDACTED] were presented. It was noted that underwent L5-S1 transforaminal epidural steroid injection.

Pain management office visit notes (Exhibits A42-A43) dated [REDACTED] were presented. It was noted that Claimant reported only 2 days of pain relief following a recent injection before pain returned to pain level of 9/10. A recent prescription for an antidepressant as noted. A repeat injection was recommended.

Pain management office visit notes (Exhibits 35-38) dated [REDACTED] were presented. Diagnoses of lumbosacral radiculopathy and stenosis were noted. It was noted that Claimant presented for a repeat transforaminal epidural steroid injection.

A Mental Residual Functional Capacity Assessment (Exhibits 18-19) dated [REDACTED] was presented. The assessment appeared to be conducted by a treating social worker with a 5 month history working with Claimant. It was noted that Claimant was markedly restricted in the abilities to perform activities within a schedule while maintaining attendance and punctuality, and completing a normal workday without psychological symptom interruption. Claimant was found to be moderately 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
- Interacting appropriately with the general public

- Responding appropriately to changes in the work setting
- Traveling to unfamiliar places including use of public transportation

Claimant testified that she had sitting, lifting, and ambulation restrictions due to cervical and lumbar pain. Claimant's testimony was consistent with medical records which verified a two year history of very regular treatment for back pain.

It is found that Claimant established significant impairment to 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 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 back pain. Spinal disorders are covered by Listing 1.04 which reads:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

OR

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

In 2012, treatment records noted that Claimant had no loss of muscle strength. Subsequent treatment records did not note loss of strength. It is found that Claimant does not meet Part A of the listing for spinal disorders.

There was no evidence that Claimant was diagnosed with arachnoiditis. Thus, Claimant does not meet Part B of the spinal disorder listing.

Treatment records consistently noted that Claimant's gait was normal. A normal gait is highly consistent with an ability to ambulate effectively. It is found that Claimant does not meet Part C of the spinal disorder listing.

A listing for affective disorder (Listing 12.04) was considered based on treatment for depression. This listing was rejected due to a failure to establish marked restrictions in social functioning, completion of daily activities or concentration. It was also not established that Claimant required a highly supportive living arrangement, suffered repeated episodes of decompensation or that the residual disease process resulted in a marginal adjustment so that even a slight increase in mental demands would cause decompensation.

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 her past jobs included the following: manager of a bridal store, hair stylist, hair salon manager, and day care worker. Claimant testified that back pain and ambulation restrictions prevent her from performing any of her past jobs. Claimant's testimony was credible and consistent with presented evidence. It is found that Claimant cannot perform her 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.

Claimant's allegation of disability would have been bolstered by presenting physician statements of Claimant's abilities. Physician statements of Claimant restrictions were not presented. Restrictions can be inferred based on presented documents.

Cervical radiology from 2010 verified that Claimant has a mild circumferential bulge with mild foraminal narrowing affecting 2 vertebrae. "Mild" foraminal narrowing is indicative of pain, but not pain which would preclude the performance of sedentary employment.

Since 2010, multiple positive Spurling's tests were noted. A positive Spurling's test is understood to be consistent with nerve root pain in the cervical spine. Nerve root pain is consistent with intense pain, often of a radiating nature. This evidence is suggestive that Claimant's pain worsened with time. This consideration is consistent with pain that may prevent the performance of even sedentary employment.

Lumbar radiology from 2013 noted a disc herniation causing nerve root abutment and thecal sac effacement. Nerve root impingement is consistent with a significant amount of pain. Though Claimant's gait and strength are not affected, ambulation, standing, sitting, and lifting restrictions can be presumed. This presumption is consistent with Claimant's treatment history which included multiple nerve root blocking injections. Claimant's use of Ultram and Norco (relatively strong narcotic medication), and a positive Patrick's test are also consistent with fairly serious exertional restrictions.

Claimant's most recently reported pain level (9/10) compared to previous reports of 5/10 – 8/10 pain levels suggest that Claimant's pain is worsening over time. It is also notable that Claimant's physical pain is starting to translate into psychological problems.

Claimant failed to present evidence of psychological treatment history from a licensed psychologist or psychiatrist. SSR 06-03p provides guidance on what SSA accepts as

“acceptable medical sources”. Licensed physicians and licensed or certified psychologists are acceptable medical sources. Nurse practitioners and social workers are not “acceptable medical sources”. Thus, there is hesitancy in finding that Claimant has psychological restrictions. Still, a social worker’s statement that Claimant has marked restrictions in maintaining any employment carries some weight.

It is appreciated that Claimant appears to have made attempts to be employed and to pursue various treatments. Claimant testified credibly that she tried acupuncture and yoga before seeking nerve block injections. It is also notable that Claimant was hesitant to get nerve block injections but pursued them after her pain became unbearable. Claimant’s relenting is indicative that she is becoming more desperate for resolution.

Claimant testified credibly that she is restricted to 25 minute periods of walking, 10 minute periods of sitting, and lifting/carrying less than 10 pounds. Claimant testified that she has difficulty with several household chores including the following: standing while washing dishes, lifting laundry basket, showering (due to limited overhead reaching), and vacuuming. Claimant’s testimony was credible and consistent with presented documents.

For Claimant to work, she would need repeated sitting/standing changes, a minimum of lifting, and a very simple task due to difficulty in concentrating due to pain. It is possible that jobs exist within Claimant’s capabilities. DHS presented no vocational evidence to support the contention that Claimant has access to employment within her capabilities.

Based on presented evidence, it is found that claimant is incapable of performing sedentary employment. Accordingly, it is found that Claimant is disabled and that DHS erred in denying Claimant’s MA application.

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

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

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

- receives other specified disability-related benefits or services, see Other Benefits or Services below, or
- resides in a qualified Special Living Arrangement facility, or

- is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or
 - is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).
- Id.*

It has already been found that Claimant is disabled for purposes of MA benefits based on a finding that Claimant's restrictions prevent the performance of any employment. The analysis and finding applies equally for Claimant's SDA benefit application. It is found that Claimant is a disabled individual for purposes of SDA eligibility and that DHS improperly denied Claimant's application for SDA benefits.

DECISION AND ORDER

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

- (1) reinstate Claimant's MA and SDA benefit application dated [REDACTED];
- (2) evaluate Claimant's eligibility for 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 benefits.

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



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

Date Signed: **3/25/2015**

Date Mailed: **3/25/2015**

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:

