

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2008-26889
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 5, 2009
Muskegon County DHS

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on March 5, 2009. The Claimant appeared and testified. The Claimant was represented by attorney [REDACTED]. [REDACTED] appeared on behalf of the Department. At the Claimant's request, the record was extended for further medical evidence to be submitted.

On May 4, 2009, the additional evidence was received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. The SHRT found the Claimant not disabled and capable of performing other work. This matter is now before the undersigned for a final decision.

ISSUES

Whether the Department properly determined that the Claimant was not disabled for purposes of Medical Assistance ("MA") and State Disability Assistance ("SDA") programs?

FINDINGS OF FACT

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

1. The Claimant submitted a public assistance application seeking MA-P and SDA benefits on May 21, 2008.
2. On June 24, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment(s) does not prevent employment for 90 days or more for SDA purposes, and finding the Claimant capable of performing other work for MA-P purposes.
3. On July 7, 2008, the Department sent an eligibility notice to the Claimant informing her that her MA-P and SDA benefits were denied.
4. On July 17, 2008, the Department received the Claimant’s Request for Hearing protesting the denial of benefits.
5. On August 12th, the State Hearing Review Team (“SHRT”) found the Claimant not disabled.
6. The Claimant’s alleged physical disabling impairments are due to chronic neck and back pain, degenerative disc disease, spinal stenosis, and congenital bladder disorder.
7. The Claimant asserts mental disabling impairments due to bipolar disorder, attention deficit hyperactive disorder (“ADHD”) and mood disorder.
8. At the time of hearing, the Claimant was 47 years old with an [REDACTED] birth date; was 5’ 5” and weighed approximately 200 pounds.
9. The Claimant is a high school graduate whose previous employment includes work as an administrative assistant, waitress, gas station clerk, and assembler.

CONCLUSIONS OF LAW

The Medical Assistance (“MA”) program is established by Subchapter XIX of Chapter 7 of The Public Health & Welfare Act, 42 USC 1397, and is administered by the Department of Human Services (“DHS”), formally known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

Disability is defined as the inability to do any substantial gainful activity 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) The person claiming a physical or mental disability has the burden to establish it 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) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant’s pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and

(4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1) The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (i.e. age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv)

In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1) When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2) Functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2) Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality is considered. 20 CFR 416.920a(c)(1) In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of functional limitation. 20 CFR 416.920a(c)(3) The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4) A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation

in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in [REDACTED]. The Claimant is not ineligible for disability under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b) An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;

3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

Id. The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985) An impairment qualifies as severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges physical disability, in part, on the basis of chronic neck and back pain, degenerative disc disease, spinal stenosis, and congenital bladder disorder. In addition, the Claimant assert mental disabling impairments due to bipolar and mood disorders and ADHD. In support of her claim, several medical records from the 1990's were submitted which document the Claimant's treatment for her frequent urination, albeit without success.

On [REDACTED], an MRI of the Claimant's spine was taken which documented bilateral spondylosis of the posterior elements of L4 with either advanced first or early second degree anterior spondylolisthesis of L4 over L5.

On [REDACTED], the Claimant presented to [REDACTED] with complaints of urinary frequency. The Claimant's anatomic urinary abnormality (small bladder capacity) was noted. The Claimant was treated and released.

On [REDACTED], the Claimant presented to [REDACTED] with complaints of depression. The physical/mental examination found the Claimant with Anxiety and Depressive Disorders with a Global Assessment Functioning ("GAF") of 61. The Claimant was instructed to continue counseling appointments.

On [REDACTED], the Claimant was examined at the [REDACTED] due to a history of urinary frequency and urgency. The physical examination found the bladder not distended or tender. An urodynamics and cystoscopy were recommended.

On [REDACTED], the Claimant presented to [REDACTED] with complaints of heartburn. The Claimant's previous treatment with Zantac was discontinued and the Claimant was prescribed Prilosec and instructed to follow-up if symptoms worsen.

On [REDACTED], the Claimant presented to [REDACTED] for a cystoscopy. An urodynamic documented a smaller capacity bladder as well as past, unsuccessful anticholinergic treatment. The cystoscopy revealed a smooth-walled bladder with what appeared to be an indentation from a fibroid uterus. The Claimant's bladder held only 120cc. A bladder augmentation was discussed/recommended and the Urologist found the Claimant "totally and permanently disabled for 90 days."

On [REDACTED], the Claimant signed a Patient Contract for Controlled Substance Prescriptions' contract with the [REDACTED] for Ultram, used to treat the Claimant's cervical spondylosis with spondyloistresis. The Agreement set forth that the medication would be discontinued if abused. During this time, the Claimant physical

examination documented small bladder capacity as well as her 2004 back surgery and elevated blood pressure. The Claimant was diagnosed with cervical spondylosis.

On [REDACTED], the Claimant was evaluated at [REDACTED] for a physical work performance evaluation. The Claimant was able to lift 10 pounds from the floor to waist; carry 15 pounds bilaterally; carry approximately 12 pounds unilaterally; and push between 20 and 25 pounds. The Claimant was found to occasionally be able to sit and perform elevated work. The Claimant was unable to bend, stoop, kneel, squat, but could occasionally walk and perform repetitive trunk rotation while in a sitting position. Based on the evaluation, it was found that it would be difficult for the Claimant to maintain 8-hours of sedentary work because of limited standing endurance and because of the need for multiple rest periods or change of positions. In addition, the Claimant was found to have shortness of breath with most activities and required multiple bathroom breaks. The Claimant's self-limiting behavior (client stopped the task before a maximum effort was reached) was also noted.

On [REDACTED], the Claimant was treated at the [REDACTED] for left eye problem. The Claimant's was referred to Ophthalmology due to suspected cataract in her left eye. In addition, the Claimant was diagnosed with general anxiety disorder with major depressive affective disorder. The Claimant was prescribed Wellbutrin and instructed to follow-up in three weeks for a psychosocial assessment.

On [REDACTED], the Claimant was examined at the [REDACTED] [REDACTED] for treatment of depression, ADHD, and to rule out bipolar disorder. The Claimant's treatment with Wellbutrin was noted and she was instructed to appear for an [REDACTED] [REDACTED] appointment.

On [REDACTED], the Claimant was initially, screened at the [REDACTED] [REDACTED] for the psychosocial assessment. The Claimant was diagnosed with post-traumatic stress disorder. Non-specified mood and personality disorders were noted. The Claimant's GAF was 43.

On [REDACTED], the Claimant presented for the psychosocial assessment at the [REDACTED]. The Claimant was found "hyper" and somewhat restless. Her thinking was logical yet guarded and her symptoms are consistent with post traumatic stress disorder. A mood disorder was not ruled out. The Claimant was referred for therapy and psychiatric evaluation. Ultimately, the Claimant was diagnosed with post-traumatic stress disorder without ruling out a mood disorder, with a GAF of 50.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented medical evidence establishing that she does have some physical and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling impairments due to chronic neck and back pain, degenerative disc disease, spinal stenosis, congenital bladder disorder, and bipolar, attention deficit hyperactive, and mood disorders.

Listing 1.00 defines musculoskeletal system impairments. Disorders of the musculoskeletal system may result from hereditary, congenital, or acquired pathologic processes.

1.00A Impairments may result from infectious, inflammatory, or degenerative processes, traumatic or developmental events, or neoplastic, vascular, or toxic/metabolic diseases. 1.00A Regardless of the cause(s) of a musculoskeletal impairment, functional loss for purposes of these listings is defined as the inability to ambulate effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment, or the inability to perform fine and gross movements effectively on a sustained basis for any reason, including pain associated with the underlying musculoskeletal impairment. Inability to ambulate effectively means an extreme limitation of the ability to walk; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities.

1.00B2b(1) Ineffective ambulation is defined generally as having insufficient lower extremity function to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities. (Listing 1.05C is an exception to this general definition because the individual has the use of only one upper extremity due to amputation of a hand.) *Id.* To ambulate effectively, individuals must be capable of sustaining a reasonable walking pace over a sufficient distance to be able to carry out activities of daily living.

1.00B2b(2) They must have the ability to travel without companion assistance to and from a place of employment or school. . . . *Id.* When an individual's impairment involves a lower extremity uses a hand-held assistive device, such as a cane, crutch or walker, the medical basis for use of the device should be documented. 1.00J4 The requirement to use a hand-held assistive device may also impact an individual's functional capacity by virtue of the fact that one

or both upper extremities are not available for such activities as lifting, carrying, pushing, and pulling. *Id.*

Categories of Musculoskeletal include:

- 1.02 Major dysfunction of a joint(s) due to any cause: Characterized by gross anatomical deformity (e.g. subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:
- A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively as defined in 1.00B2b; or
 - B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, wrist, hand), resulting in inability to perform fine and gross movements effectively as defined in 1.00B2c

* * *

- 1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or 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. (see above definition)

In order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. The Claimant does not use any assistive device (nor has one been recommended) to ambulate effectively. The objective medical records document a bilateral spondylosis of the posterior elements of L4 with either advanced first or second degree anterior spondylolisthesis of L4 over L5, in 2005. Another record from [REDACTED] of [REDACTED], relates to the prescription of Ultram used to treat the Claimant's cervical spondylosis with spondylolisthesis where the Claimant had to sign an agreement not to abuse the medication. Ultimately there was insufficient evidence presented to find the Claimant's impairment(s) meet the intent and severity requirement of a listed impairment within Listing 1.00, specifically, 1.02 and/or 1.04 thus she cannot be found disabled for purposes of the Medical Assistance program for these impairments.

The Claimant also asserts physical disabling impairment due to a congenital bladder disorder which results in frequent urination. The medical records presented establish that the Claimant has a small bladder capacity however this condition does not meet any Listing, nor is it the medical equivalent to a Listing.

The Claimant asserts mental disabling impairments based upon bipolar disorder, attention deficit hyperactive disorder ("ADHD") and mood disorder. Listing 12.04 defines affective disorders as being characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Generally, affective disorders involve either depression or elation. The required level of severity for these disorders are met when the requirements of 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 on 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 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 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.

Anxiety-related disorders are either the predominant disturbance or the experience if the individual attempts to master symptoms. 12.06 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 both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:
 - a. Motor tension; or
 - b. Autonomic hyperactivity; or
 - c. Apprehensive expectation; or
 - d. Vigilance and scanning; or
2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or
3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or
4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

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. Resulting in complete inability to function independently outside the area of one's home.

In this case, the medical records document treatment for anxiety and depression, ADHD, and post-traumatic stress disorder. Bipolar disorder and/or other mood disorder were not ruled out, however, there was no objective medical records documenting persistent depressive and/or manic episodes, nor was there objective medical findings that the mental impairment(s) seriously impacted the Claimant's activities of daily living and/or social functioning, or that she experienced serious difficulties in maintaining concentration, persistence, or pace. There were no objective medical records establishing that the Claimant experienced repeated episodes of decomposition, each of an extended duration. Further, there was no evidence that the Claimant was unable to function independently outside of her home. Ultimately, the record is insufficient to meet the intent and severity requirement necessary to support a finding of disabled within Listing 12.00.

The objective medical records establish the Claimant has a past history of intravenous drug abuse. In consideration of the Claimant's other severe impairments as detailed above, it is

found that the substance use is not a contributing factor material to the determination of disability and the Claimant's functional limitations would remain independent of the abuse. 20 CFR 416.935 According to the medical evidence alone, the Claimant's physical and/or mental impairments do not meet or equal the intent or severity of the listing requirements thus she cannot be found to be disabled, or not disabled, for purposes of the Medical Assistance program. Accordingly, the Claimant's eligibility under Step 4 is considered. 20 CFR 416.905(a)

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 he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3) 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.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967 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 (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an

individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function 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.*

Over the past 15 years, the Claimant worked as a general laborer, clerk, and waitress, whose responsibilities included lifting/carrying material up to 10 pounds; walking, standing, sitting, bending, and stooping. Given these facts, the Claimant's past work history as a general laborer, clerk and waitress is classified as unskilled, light work. The Claimant's employment as an administrative assistant primarily involved sitting, typing, and handling payroll, accounts receivable and payable. This work is classified as semi-skilled, sedentary work.

The Claimant testified that she can lift/carry approximately 5 pounds; sit for 20 minutes; walk around the block; stand for 10 minutes; and is unable to bend or squat. The Claimant is able to drive and tend to her personal hygiene. The physical work performance evaluations found the Claimant able to lift 10 pounds from floor to waist; carry 15 pounds bilaterally and 12 pounds unilaterally; and push between 20 and 25 pounds. If the impairment or combination of

impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920 Although the work performance evaluation found it would be difficult for the Claimant to perform sedentary work, this same evaluation also noted that the determination was based upon the Claimant's self-limiting behavior. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work as a general laborer, waitress, and/or clerk however the Claimant is able to return to past relevant work as an administrative assistant. Accordingly, the Claimant is found not disabled at Step 4 therefore the fifth-step in the sequential evaluation process is not required.

Assuming arguendo, that the Claimant was not able to return to past relevant work, Step 5 of the sequential analysis assesses the individual's residual functional capacity and age, education, and work experience. These factors are considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, the Claimant was 47 years old thus considered a younger individual for MA-P purposes. The Claimant is also a high school graduate. Disability is found disabled if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). 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). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the nonexertional limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In the record presented and in consideration of all relevant facts, the Claimant's residual functional capacity for work activities on a regular and continuing basis does include the ability to meet at least the physical and mental demands required to perform unskilled, sedentary work. The Claimant is a younger individual and a high school graduate with a history semi-skilled and unskilled work. After review of the entire record finding no contradiction in the Claimant's nonexertional limitations, and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rules 201.21 and 201.22, it is found that the Claimant is not disabled for purposes of the MA-P program.

The State Disability Assistance ("SDA") program, which provides financial assistance for disabled persons, was established by 2004 PA 344. DHS administers the SDA program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code ("MAC R") 400.3151 – 400.3180. Department policies are found in PAM, PEM, and PRM. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets

federal SSI disability standards for at least ninety days. PEM 261, p. 1 Receipt of SSI or RSDI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness (MA-P) automatically qualifies an individual as disabled for purposes of the SDA program. PEM 261, pp 1 – 2

In this case, there is insufficient evidence to support a finding that the Claimant's impairment has disabled her under the SSI disability standards. Accordingly, it is found that the Claimant is not disabled for purposes of the SDA program.

DECISION AND ORDER

The Administrative Law Judge, based upon the above finds of facts and conclusions of law, finds the Claimant not disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

/s/ _____
Colleen M. Mamelka
Administrative Law Judge
For Ishmael Ahmed, Director
Department of Human Services

Date Signed: 05/13/09

Date Mailed: 05/13/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to the Circuit within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CMM/jlg

cc:

