

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.: 2009-13872

Issue No.: 2009/4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

May 21, 2009

Wayne County DHS (18)

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 Thursday, May 21, 2009. The Claimant appeared and testified along with [REDACTED]. [REDACTED] appeared on behalf of the Department.

On the record, the Claimant waived the time period for issuing a decision in order to allow for the submission of additional medical documentation. The medical documentation was received, reviewed, and entered in to the record as Exhibit 3. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) 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 November 17, 2008.
2. On December 18, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled. (Exhibit 1, pp. 3, 4)
3. On December 29, 2008, the Department sent an eligibility notice to the Claimant informing him that he was found not disabled. (Exhibit 1, p. 2)
4. On January 21, 2009, the Department received the Claimant’s Request for Hearing protesting the denial of benefits. (Exhibit 1, p. 1)
5. On March 3, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairments are due to chronic back, neck, and shoulder pain with disc herniation, weight loss, and nerve damage.
7. The Claimant’s alleged mental impairment(s) are due to depression.
8. At the time of hearing, the Claimant was 27 years old with a [REDACTED] birth date; was 5’ 9” in height; and weighed approximately 110 pounds.
9. The Claimant is a high school graduate with some vocational training with an employment history as a material handler, shipping/receiving, customer service representative, press operator, and team member at a fast food restaurant.
10. The Claimant’s impairment(s) have lasted, or are expected to last, continuously for a period fo 12 months or longer.

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 416.927

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 therefore 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 non-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 and mental disability on the basis chronic back, neck, and shoulder pain with disc herniation, weight loss, nerve damage and depression.

By way of background, the Claimant was involved in three motor vehicle accidents with the most recent in [REDACTED].

On [REDACTED], an MRI of the Claimant's brain, cervical spine, and lumbar spine were normal.

On [REDACTED], an MRI of the thoracic spine revealed no abnormalities.

On [REDACTED] an MRI of the lumbar spine revealed degenerative changes of facet joints at L5-S1.

Monthly disability letters were submitted on behalf of the Claimant which provide the Claimant was unable to work from [REDACTED] through [REDACTED].

On [REDACTED], the Claimant presented to the hospital with complaints of bilateral shoulder pain, neck apin, and low back pain. The physical examination noted tenderness with gentle palpation on his cervical spine along with a positive Spuling's test with rotating his head on either side. The Claimant's range of motion was good. Ultimately the Claimant was diagnosed with bilateral shoulder pain and tendinitis.

On [REDACTED], the Claimant attended a follow-up appointment for his pain. The history of chronic pain was noted as well as an unclear cause and etiology. The Claimant had seen numerous specialists, had several x-rays and imaging studies, however, the plan was to "start from scratch."

On [REDACTED], the Claimant attended a follow-up pain appointment. The physical examination noted the Claimant's need for a crutch for ambulation but was otherwise unremarkable. The Claimant was found to have chronic pain without a structural or neurologic cause and insomnia.

On [REDACTED], the Claimant's gait was antalgic noting a limp. The Claimant was found to have widespread pain.

On [REDACTED], the Claimant presented to the hospital with complaints of back pain with radiation to the groin and buttock. A review of the MRI noted degenerative changes and disc space narrowing and desiccation at T12-L1. The physical examination revealed positive facet loading bilaterally with tenderness in the thoracic are of the spine and in the thoracolumbar paravertebrals. The Claimant underwent an epidural steroid injection and lumbar epidurogram. The post-operative diagnosis was lumbar radiculophthy. The Claimant was released the following day.

On [REDACTED], the Claimant attended a follow-up appointment post epidural injection. The Claimant's continued need for a cane and pain medication was noted and a disability letter was provided.

On [REDACTED], the Claimant presented to the hospital for another epidural steroid injection. The post-operative diagnosis was radiculopathy. The Claimant was discharged the following day.

On [REDACTED], the Claimant underwent an epidural injection and caudal epidurogram without complication. The Claimant was subsequently discharged with a lumbar radiculopathy diagnosis.

On [REDACTED], the Claimant presented to the hospital with complaints of a rash and back pain. The Claimant's weight was 125 pounds. The Claimant was discharged the following day with the diagnoses of chronic back pain radiculopathy.

On [REDACTED], the Claimant underwent a L4-5, L5-S1 medial branch nerve block without complication. The Claimant was discharged with the post-operative diagnosis of facet syndrome.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The physical examination documented the Claimant's need for a cane/crutch for ambulation as well as the Claimant's diminished range of motion of the lumbar spine which was tender to palpation. The Claimant was found temporarily disabled and was restricted to occasionally lifting/carrying under 10 pounds with full limitations on standing, walking, and/or sitting. The Claimant was able to perform repetitive actions with both hands/arms but was unable to operate foot/leg controls with either leg/foot. The physician stated that the Claimant suffers from severe persistent pain that radiates to his legs and limits ambulation and mobility.

On [REDACTED], the Claimant attended a physical examination which found the Claimant unable to place the right foot flat on the floor or put any weight on it requiring a crutch for ambulation. The Claimant has severe limitation of motion of the neck, low back, and all major joints in the upper and lower extremities. Right hand grip was 5/10 compared to 10/10 in the left hand. Excruciating tenderness to eight side of his neck which extends into the upper back around the shoulder blades was documented. Ultimately, physician opined that the tenderness and limited range of motion was subjective in nature as no objective physical or test results substantiated the high level of pain. A Medical Needs form was completed which provided that the Claimant needed help with moving about and sitting as well with his personal care activities.

On [REDACTED], the Claimant attended a psychological evaluation. The Claimant presented with a major depressive disorder of significant duration and intensity which severely impact work related activities. The Claimant's Global Assessment Functioning ("GAF") was 50. The Claimant was found moderately to markedly limited in 11 of the 20 factors on the Mental Residual Functional Capacity Assessment.

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 some medical evidence establishing that he does have some physical and mental limitations on his 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 disabling impairments due to chronic back, neck, and shoulder pain with disc herniation, weight loss, and nerve damage. 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.*

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 a 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 this case, the objective medical evidence presented document the Claimant's severe widespread pain and radiculopathy (disorder of the spinal nerve roots). The Claimant has treated with several specialists however the exact cause of the pain is not evident through objective tests such as MRIs and x-rays. The objective evidence establishes that the Claimant has degenerative changes, disc space narrowing, and radiculopathy which resulted in monthly epidural steroid injections. The Claimant's inability to ambulate independent of an assistive device is also documented. With the exception of the [REDACTED] MRI which revealed disc space narrowing, the objective findings did not establish joint space narrowing, nerve root compression, spinal arachnoiditis, and/or stenosis. Ultimately, the record does not support a finding that the Claimant's impairments meet the intent and severity requirement of a listed impairment within 1.00 as detailed above.

The Claimant asserts mental disabling impairments due to depression. Listing 12.00 encompasses adult mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months.

12.00A The existence of a medically determinable impairment(s) of the required duration must be established through medical evidence consisting of symptoms, signs, and laboratory findings, to include psychological test findings.

12.00B The evaluation of disability on the basis of a mental disorder requires sufficient evidence to (1) establish the presence of a medically determinable mental impairment(s), (2) assess the degree of functional limitation the impairment(s) imposes, and (3) project the probable duration of the impairment(s).

12.00D The evaluation of disability on the basis of mental disorders requires documentation of a medically

determinable impairment(s) and consideration of the degree in which the impairment limits the individual's ability to work consideration, and whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. 12.00A The severity requirement is measured according to the functional limitations imposed by the medically determinable mental impairment. 12.00C Functional limitations are assessed in consideration of an individual's activities of daily living; social functioning; concentration, persistence, or pace; and episodes of decompensation. *Id.*

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 is 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 distractability; 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.

In this case, the objective findings establish that the Claimant suffers from a major depressive disorder which severely impacts work related activities. The Claimant has not received an ongoing treatment/therapy for his mental disorder. The GAF was 50. Ultimately, the Claimant's mental impairment may meet Listing 12.04 however their record doesn't support a finding that the intent and severity requirements have been established. Accordingly, the Claimant cannot be disabled, or not disabled, under this listing therefore 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.

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's employment history includes work as a material handler, shipping/receiving, customer service representative, press operator, and team member at a fast food restaurant. In light of the foregoing, and in consideration of the Occupational Code, the Claimant's past relevant work is considered unskilled general labor with varying physical demands ranging from sedentary to heavy.

The Claimant testified that he is able to lift/carry any weight; is unable to walk unassisted; experiences pain when bending and/or squatting with standing and/or sitting limited to short periods of time. The medical documentation imposes similar restrictions noting decreased range of motion due to "excruciating" tenderness and pain and the need for an assistive device for ambulation. 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 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, thus the fifth step in the sequential evaluation is required.

In Step 5, an assessment of the individual's residual functional capacity, age, education, and work experience 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, a high school graduate with some vocational training, was 27 years old thus considered to be a younger individual for MA-P purposes. 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).

In the record presented, the total impact caused by the combination of medical problems suffered by the Claimant must be considered to include subjective complaints of severe pain. Pain is a non-exertional impairment. *Cline v Sullivan*, 939 F2d 560, 565 (CA 8, 1991) In applying the two-prong inquiry announced in *Duncan v Secretary of Health & Human Services*,

801 F2d 847 (CA6, 1986) it is found that the objective medical evidence establishes an underlying medical condition (degenerative changes, disc space narrowing, and radiculopathy) that can reasonably be expected to produce the alleged disabling pain. *Id.* at 853. In this case, the Claimant has treated with several specialists, participated in physical therapy, had epidural injections, all in effort to alleviate his pain. The exact etiology is not confirmed although all physicians conclude the Claimant's suffers from severe/excruciating widespread pain and tenderness which negatively impacts his ability to engage in any employment. In light of the foregoing, it is found that the combination of the Claimant's physical and mental impairments have an affect on his ability to perform basic work activities such that the Claimant is unable to meet the physical and mental demands necessary to perform even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5

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 impariment which meets federal SSI disability standards for at least ninety days. PEM 261 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

In this case, there is sufficient evidence to support a finding that the Claimant's impairment has disabled him under the SSI disability standards. Accordingly, it is found that the Claimant is 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 disabled for purposes of the State Disability Assistance program.

Accordingly, it is ORDERED:

1. The Department's determination is REVERSED.
2. The Department shall initiate review of the November 17, 2008 application to determine if all other non-medical criteria are met and inform the Claimant of the determination.
3. The Department shall supplement for any lost benefits the Claimant was entitled to receive if otherwise eligible and qualified in accordance with department policy.
4. The Department shall review the Claimant's continued eligibility in January 2011 in accordance with department policy.

*Colleen M. Mamelka*

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

Date Signed: 12/17/09

Date Mailed: 12/17/09

**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:

