

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.: 2009-4393
Issue No: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
February 11, 2009
Wayne County DHS (19)

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 February 11, 2009. The Claimant appeared and testified. Marietha Allman and Diedre Mitchell appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical records.

The additional records were received, reviewed, and submitted to the State Hearing Review Team ("SHRT") for consideration. On April 29, 2009, the SHRT found the Claimant not disabled and capable of performing light work. 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 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, Retro MA-P, and SDA benefits on July 9, 2008.
2. On July 9, 2008, the Medical Review Team (“MRT”) deferred the disability determination in order for the Claimant to attend an appointment with his treating neurologist. (Exhibit 1, p. 55, 56)
3. On October 1, 2008, the MRT determined the Claimant was not disabled finding the Claimant’s impairment(s) did not prevent employment for 90 days or more for SDA purposes and finding the Claimant capable of performing other work for MA-P purposes. (Exhibit 1, pp.65, 66)
4. On October 6, 2008, the Department sent the Claimant an eligibility notice informing the Claimant that his MA-P and SDA benefits were denied. (Exhibit 1, p. 68)
5. On October 23, 2008, the Department received the Claimant’s Request for Hearing protesting the determination that he was not disabled.
6. On November 20, 2008 and April 29, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 3)
7. The Claimant’s alleged physical disabling impairments are due to chronic back pain and numbness, and arthritis.
8. The Claimant’s alleged mental disabling impairments are due to Bipolar disorder, anxiety and attention deficit hyperactive disorder (“ADHD”).

9. At the time of hearing, the Claimant was 37 years old with an [REDACTED] birth date; was 6' 4" and weighed 240 pounds.
10. The Claimant completed through the 8th and subsequently obtained his GED.
11. The Claimant's employment history consists of worker as a welder/fitter, and carpenter.

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) Unless an

impairment(s) is expected to result in death, the impairment(s) must have lasted, or must be expected to last, for a continuous period of at least twelve months. 20 CFR 416.909

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) 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) 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 2006. 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 asserts physical and mental disabling impairments due chronic back pain/numbness, arthritis, bi-polar disorder, anxiety, and ADHS.

On [REDACTED], the Claimant was evaluated at the [REDACTED] and diagnosed with bi-polar disorder and depression with anti-social personality disorder. The Claimant's alcohol dependence and history of meth-amphetamine dependence was noted.

The Claimant's Global Assessment Functioning ("GAF") was 45. No current psychiatric records were presented.

On [REDACTED], the Claimant was evaluated by [REDACTED] in response to a previously filed application. The Claimant had prior back surgeries in 1990, 1992, 2007. The physical examination found the Claimant's straight leg raise as 90 degrees on the left side with pain in the back of the neck and thigh. Right side raises were fine without pain. The Claimant was able to squat and stand up without any problem. Handgrips were fine and the Claimant was able to tiptoe-walk, heel walk without problem. Ultimately, the Claimant was found to have degenerative disc disease between L2 and L3; L3 and L4 operated with screws and plaques. The primary diagnosis was essential hypertension without end organ damage secondary to degenerative disc disease.

On [REDACTED], the Claimant presented to [REDACTED] with complaints of posterior lumbar pain, right groin pain, and burning in leg symptoms. Review of the Claimant's prior studies found a moderate flattening of the lordotic curve with significant bone consolidation. The levels above the fusion revealed severe degenerative changes with moderate narrowing at L1-2, L2-3, and L3-4. The Claimant's symptoms were found consistent with mechanical disease. The Claimant elected to proceed with surgical intervention to remove the instrumentation of L4 to S1 and fusion at L1 to L4.

On [REDACTED] the neurosurgeon found the Claimant would be unable to work until March of 2008 in order to recover from the lumbar surgery noted above.

On [REDACTED], the Claimant's neurosurgeon completed a Medical Examination Report on the Claimant's behalf. The Claimant's condition was stable and he was restricted to occasionally lifting/carrying 10-20 pounds; standing and/or walking at least 2 hours in an 8-hour

workday with sitting less than 6 hours during this same period. Assistive devices were not required and there were no limitations on the Claimant's ability to perform repetitive actions with his extremities.

On [REDACTED], the Claimant was examined for post-operative recheck of posterior lumbar decompression and lumbar fusion at [REDACTED]. The Claimant's symptoms had improved and pain was denied.

On [REDACTED], the Claimant attended a postoperative examination of his lumbar spine at [REDACTED]. The physical examination of the spine, ribs and pelvis found no erythema, ecchymosis, edema or tenderness. No kyphosis, lordosis or scoliosis was documented. Lumbar flexion and extension was moderately restricted. The Claimant was found to have normal stability, strength, and tone. The Claimant's gait was intact and his incision wound had healed. X-rays revealed previous fusion from L1 to the sacrum. Posterior rods and screws were present from L1 – L4 and intertransverse bone graft material was seen through the length of the fusion. L4-5 and S1 appeared fused. No definite complications were identified.

On [REDACTED], the Claimant's treating physician listed the Claimant's current diagnoses as degenerative disc disease (with 4 prior surgeries), chronic low back pain, and bipolar disorder. Straight leg raise was limited to 35 degrees. The Claimant's condition was improving and he was found able to frequently lift 25 pounds and occasionally lift 50 pounds or more. The Claimant was able to stand and/or walk at least 2 hours in an 8 hour day and sit for less than 6 hours during this same period. There were no restrictions on the use of his extremities and no mental limitations were listed.

On [REDACTED], [REDACTED] completed a return to work slip on behalf of the Claimant. The Claimant was able to return to work provided he did not lift over 5 pounds with no repetitive bending, prolonged standing through [REDACTED]

On [REDACTED] [REDACTED] submitted a letter confirming that the Claimant is “currently attending the intensive outpatient treatment program for substance abuse at this agency. His final session is scheduled for [REDACTED],...”

On [REDACTED] the Claimant’s treating physician completed a Medical Examination Report on behalf of the Claimant. The Claimant’s impairments were listed as chronic, persistent back pain which radiates to the left leg post surgical intervention. The Claimant’s straight leg raise was 30 degrees with pain and his condition was listed as deteriorating. The Claimant was restricted to occasionally lifting 10 pounds; stand and/or walk less than 2 hours in an 8-hour workday with no sitting limitation noted. Repetitive actions were not limited. In addition, the Claimant’s bipolar disorder and ADHD were also listed with limitations on sustained concentration, reading/writing, and social interaction. The Medical Needs form was also completed by the Claimant’s treating physician. The Claimant’s chronic lower back pain was documented however the Claimant was ambulatory, did not need special transportation, was able to attend medical appointments unassisted, and he did not need assistance with personal care activities.

On [REDACTED], x-rays of the lumbar spine documented the pedicle screws and prior surgical changes throughout the lumbar spine. Degenerative disc changes through the lumbar spine were noted.

On [REDACTED], the Claimant was seen by his surgeon for a postoperative examination of his lumbar spine. Overall, the Claimant’s symptoms had “improved” however

midline low back pain was reported. X-rays documented L1-S1 fusion with no change in the degeneration of lumbar or lumbosacral inter-vertebrae.

On [REDACTED], the Claimant's neurosurgeon completed a Medical Examination Report on behalf of the Claimant. The Claimant's current diagnosis was listed as post laminectomy syndrome. The Claimant's decrease range of motion was noted but he was found to be in stable condition. In addition, the Claimant was found able to occasionally lift 25 pounds; stand and/or walk at least 2 hours in an 8-hour workday; and sit for less than 6 during this same period. There were no limitations on the Claimant's ability to use his extremities for repetitive actions with no mental limitations noted. In addition, the Claimant was found unable to work at his usual occupation and unable to perform any employment.

On [REDACTED], the Claimant began treatment with [REDACTED]. The listed restrictions were not to lift/carry more than 10 pounds, and not to bend or twist the lower back, no crawling, squatting, or reaching above shoulders.

On [REDACTED] the Claimant's treating pain physician requested a cane for the Claimant. On [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] the Claimant the Claimant was treated at [REDACTED] for a lumbar epidurals, facet joint blocks, and facet joint rhizotomy.

On [REDACTED] the Claimant was treated at [REDACTED] after a fall resulting in bruised ribs and low back pain.

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, or expected to last, 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 disabling physical impairments due to spinal injury and right leg and ankle pain due to fracture. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment.

The Claimant asserts impairments due to spinal cord injury and right leg and ankle pain. 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.*

Major joints refer to the major peripheral joints. 1.00F The ankle and foot are considered separately in evaluating weight bearing. *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)

As stated, the Claimant asserts impairments due to chronic back pain despite surgical intervention. The medical evidence presented document degenerative disc disease and chronic back pain despite treatment. Although the Claimant had a positive straight leg raising test there was no evidence of nerve root compression. The medical records presented document conflicting limitations. The Claimant's treating sources note his condition as deteriorating, stable, and improving. Similarly, imposed restrictions vary from being able to occasionally lift/carry up to 50 pounds to being unable to lift 5 pounds. There was no documentation of further injury. Ultimately, the records presented do not support a finding of a disability within Listing 1.00.

The Claimant asserts disabling mental impairments due to bi-polar disorder, anxiety, and ADHS. Based upon the submitted records, and in consideration of a Listed impairment within 12.00, it is found that the record is insufficient to support a finding of disability within this listing. 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 he cannot be found to be disabled for purposes of the Medical Assistance program at Step 3. 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 welder/fitter and carpenter whose primary responsibilities included lifting/carrying up to 50 pounds; walking, standing, bending, squatting, kneeling, sitting, and stooping. Given these facts, the Claimant's past work history is classified as semi-skilled medium work.

The Claimant testified that he can lift/carry approximately 10 to 20 pounds; sit for approximately ½ hour with pain; walk unassisted approximately 100 feet; and is able to grip and grasp without issue. The Claimant can stand for less than 30 minutes and is able to squat with difficulty. 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 as a fitter/welder and/or general laborer therefore the fifth-step in the sequential evaluation process is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is 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 37 years old thus considered a "younger individual" for MA-P purposes and has a GED with some vocational training. 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. For individuals under the age of 45, age is a more advantageous factor for making an adjustment to other work.

In the record presented, 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 sedentary work. As noted above, sedentary work involves sitting and lifting no more than 10 pounds at time with occasional walking and standing to carry out the job duties. 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 Rule 201.28, 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, since the Claimant was not found disabled for the purposes of the MA program therefore, the Claimant is found not disabled for SDA purposes.

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: 05/05/09

Date Mailed: 05/05/09

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:

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