

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.: 2009-18618
Issue No.: 2009, 4031
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
August 12, 2009
Wayne County DHS (41)

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 hearing was held in Detroit, Michigan on August 12, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department. At the Claimant's request, the record was extended to allow for the submission of additional medical evidence.

The additional records were received, reviewed, and forwarded to the State Hearing Review Team ("SHRT") for consideration. On August 26, 2009, the SHRT determined the Claimant was not disabled for purposes of the Medical Assistance program. 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 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 an application for public assistance seeking Medical Assistance (“MA-P”) on October 2, 2008.
2. On December 1, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment 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. 1, 2)
3. On December 1, 2008, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled.
4. On February 25, 2009, the Department received the Claimant’s written Request for Hearing.
5. On May 4, 2009 and August 26, 2009, the State Hearing Review Team (“SHRT”) determined the Claimant not disabled. (Exhibit 2)
6. The Claimant’s alleged physical disabling impairment(s) are due to severe leg and back pain, cardiomyopathy, hypertension, migraine headaches, and obesity.
7. The Claimant has not alleged any mental disabling impairment(s).
8. At the time of hearing, the Claimant was 49 years old with an [REDACTED] birth date; was 5’3” in height; and weighed 230 pounds.
9. The Claimant is a high school graduate with some college with a work history providing general labor services and as a manager of a carry-out pizza establishment.

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)

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 October of 2007. 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 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 disability due to severe leg and back pain, hypertension, cardiomyopathy, headaches, and obesity. In support of her claim, older medical records from 2005 were submitted which documented the Claimant's initial onset of her back pain relating to a slip and fall incident. The diagnosis at that time was bilateral sacroiliitis. Additionally, treatment records from the Claimant's bilateral sacroiliac injections were also included.

On [REDACTED], after the injections failed to provide much relief, a MRI was performed which revealed facet arthrosis, most conspicuous at the L5-S1 level, moderate to severe. A leftward foraminal broad-based protrusion with annular rent or annular tear at L4-L5 about the exiting left L4 nerve root was documented as well as a leftward foraminal bulge at L3-L4 without high grade neural effacement. Ultimately, physical therapy was recommended to

continue along with pain management which included epidural injections. The Claimant's range of motion was noted as improved with a negative straight leg raise.

On [REDACTED], a physical examination found the Claimant's posture, gait, toe/heel and tandem walking were normal. The cervical spine was normal with no local tenderness. Further, the range of motion was normal in flexion, extension, bilateral bending and rotation with no obvious wasting on the upper extremities. The examination of the lumbar spine showed normal lumbar lordosis with severe tenderness with palpation. The range of motion was reduced by 50% in flexion, extension, bilateral bending, and rotation. Normal spinal balance was noted as well as no wasting on the lower limbs. Straight leg raising (bilaterally) was normal with no reduction in motor strength. Ultimately, and in consideration of a [REDACTED] MRI, the Claimant was diagnosed with discogenic back pain at L3-L4, L4-L5, and L5-S1, and traumatic spondylopathy. Continuing with conservative treatment was recommended.

During this same time, [REDACTED], a neurosurgeon found the Claimant was not a good surgical candidate because she would have a large fusion. The Claimant was restricted to light duty work.

In [REDACTED], the Claimant had a positive straight leg raise with pain noted in the lumbar area. The Claimant's range of motion was otherwise stable.

On [REDACTED], the Claimant's treating physician completed a Medical Examination Report on behalf of the Claimant. The current diagnoses were listed as hypertension and severe back pain due to nerve damage. An MRI revealed facet degeneration while a nerve conduction study showed radiculopathy. The Claimant's condition was listed as deteriorating and she was limited to occasionally lifting 10 pounds; standing and/or walking less than 2 hours in an 8-hour workday with sitting at less than 6 hours. Assistive devices for

ambulation were not medically required and the Claimant was able to perform repetitive actions with both hands/arms but unable to operate foot/leg controls.

On [REDACTED], the Claimant attended a department ordered evaluation by an Internist. The physical examination found the Claimant's range of motion of the thoracolumbar spine forward flexion at 0-50 degrees with extension of 0-10. Bilateral lateral flexion was 0-20 with bilateral SI joint tenderness. Straight leg raising was negative at 40 degrees in the supine position. Bilateral knees, hips, and ankles had full range of motion. The Claimant's gait was normal without a limp or the use of a cane. Muscle strength was 5/5 in all extremities and the Claimant was able to get off the examining table and chair without assistance. Ultimately, the Claimant was found to have hypertension, mild congestive heart failure compensated with medication, and low back pain. The Claimant's back pain was found stable with pain in control.

On this same date, an examination of the Claimant's lumbar spine was performed which found narrowing of the lumbosacral disc space.

On [REDACTED], the Claimant was examined to evaluate her varicose veins for insufficiency. A bilateral lower extremity venous examination was performed using duplex ultrasound imaging and spectral Doppler analysis. Although venous emptying hemodynamics were abnormal in the right lower extremity with reflux found in the GSV proximal thigh and LSV proximal calf, there was no evidence of acute or chronic, deep or superficial venous thrombosis identified.

On [REDACTED], the Claimant was evaluated by her treating physician. The Claimant's condition since 2005 was noted as not improved with back and leg pain and a positive MRI. The Claimant was found to have difficulties in walking, bending, sitting, and standing. The motor examination documented the Claimant's strength as 5/5 in all extremities with negative straight

leg raising and negative Bragard maneuver. Pain the left sacroiliac region was noted as her gait was antalgic. Ultimately, the Claimant was found to have left sacroilitis and L5 radiculopathy secondary to injury.

On [REDACTED], a SI joint injection was performed on the Claimant.

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 she does have some physical 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 severe back and leg pain, hypertension, cardiomyopathy, headaches, and obesity. 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)

The medical records which include medically acceptable imaging document the Claimant's disc herniation, facet degeneration, and radiculopathy. These same records conflict regarding positive straight leg raising, muscle weakness, and/or ineffective ambulation. Although the Claimant testified she was medically required to use the cane, the Claimant's treating physician in October of 2008 stated that an assistive device was not medically required. Ultimately, it is found that the Claimant may meet a listed impairment within listing 1.00,

however the objective medical findings are insufficient to meet the intent and severity requirement. Accordingly, the Claimant cannot be found disabled, or not disabled, under this Listing.

The Claimant asserts physical disabling impairments due to hypertension and an enlarged heart. Listing 4.00 defines cardiovascular impairment in part, as follows:

. . . any disorder that affects the proper functioning of the heart or the circulatory system (that is, arteries, veins, capillaries, and the lymphatic drainage). The disorder can be congenital or acquired. Cardiovascular impairment results from one or more of four consequences of heart disease:

- (i) Chronic heart failure or ventricular dysfunction.
- (ii) Discomfort or pain due to myocardial ischemia, with or without necrosis of heart muscle.
- (iii) Syncope, or near syncope, due to inadequate cerebral perfusion from any cardiac cause, such as obstruction of flow or disturbance in rhythm or conduction resulting in inadequate cardiac output.
- (iv) Central cyanosis due to right-to-left shunt, reduced oxygen concentration in the arterial blood, or pulmonary vascular disease.

An uncontrolled impairment means one that does not adequately respond to the standard prescribed medical treatment. 4.00A3f In a situation where an individual has not received ongoing treatment or have an ongoing relationship with the medical community despite the existence of a severe impairment, the disability evaluation is based on the current objective medical evidence. 4.00B3a If an individual does not receive treatment, an impairment that meets the criteria of a listing cannot be established. *Id.* Hypertension (high blood pressure) generally causes disability through its effect on other body systems and is evaluated by reference to specific body system(s) affected (heart, brain, kidneys, or eyes). 4.00H1 Hypertension, to include malignant hypertension, is not a listed impairment under 4.00 thus the effect on the Claimant's other body systems were evaluated by reference to specific body parts.

Cardiomyopathy is evaluated under 4.02, 4.04, 4.05 or 11.04 depending on its effects on the individual. 4.00H3

In the record presented, the Claimant medical records document hypertension however the record is devoid of any end organ damage. The Claimant's cardiomyopathy is not supported through objective medical documentation nor is there evidence to support a listed impairment under 4.02, 4.04, 4.05, or 11.04. Ultimately, the Claimant's medical record does not support a finding that the Claimant's physical impairment(s) are "listed impairments" or equivalent to a listed impairment detailed above. 20 CFR 416.920(a)(4)(iii) According to the medical evidence alone, the Claimant's physical impairment(s) do not meet or equal the requirements within Listing 4.00 thus she cannot be found to be disabled for purposes of the Medical Assistance program. Listings 7.00 and 11.00 were also considered and found not applicable (i.e., the medical records are insufficient to meet the intent and severity requirements). 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.*

The Claimant's prior work history is that of providing general labor type services whose primary responsibilities included lifting up to 50 pounds; walking, standing, bending, squatting, pushing, and pulling. The Claimant also worked as a manager of a pizza establishment whose was responsible for supervising/managing the stores operations to include filling out and/or

creating reports. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work providing general labor services is classified as unskilled, medium work while the Claimant's employment as a manager is classified as semi-skilled, light work.

The Claimant testified that she experiences difficulty lifting/carrying minimal weight; can stand for 6 minutes; can walk short distances with assistance; and is unable to fully bend and/or squat due to pain. The medical documentation limitations note similar restrictions finding the Claimant is able to occasionally carry/lift 10 pounds with no restrictions on the Claimant's ability to perform repetitive actions with her upper extremities. Further, the Claimant purported need for a cane for effective ambulation is not established through the objective medical records although the Claimant's standing/walking/sitting restrictions are comparable to sedentary limitations. Other records find the Claimant capable of performing light work. 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 providing general labor or as a manager, thus the fifth step in the sequential evaluation 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, a high school graduate with some college, was 49 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, it is found that the Claimant is able to perform the full range of activities required for sedentary work as defined in 20 CFR 416.967(a). After review of the entire record and in consideration of the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II], specifically Rule 201.15 (in light of the fact that the Claimant will be 50 years of age in less than 6 months) and 201.28, it is found that the Claimant is not disabled 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 impairment which meets federal SSI disability standards for at least ninety days. 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.

In this case, the Claimant is found not disabled for purposes of the Medical Assistance (“MA-P”) program therefore the Claimant’s is found not disabled for purposes of SDA benefits.

DECISION AND ORDER

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

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: 08/31/09

Date Mailed: 09/01/09

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 recip date of the rehearing decision.

CMM/jlg

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