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.: 2009-22186
Issue No.: 2009, 4031
Case No.: [redacted]
Load No.: [redacted]
Hearing Date:
July 2, 2009
St. Clair County DHS

ADMINISTRATIVE LAW JUDGE: Colleen M. Mamelka

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a hearing was conducted from Port Huron, Michigan on July 2, 2009. The Claimant appeared and testified, along with [redacted]. [redacted] appeared on behalf of the Department.

ISSUE

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

FINDINGS OF FACT

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

1. The Claimant submitted an application for public assistance seeking Medical Assistance ("MA-P") and State Disability Assistance ("SDA") benefits on December 8, 2008.
2. On February 4, 2009, the Medical Review Team ("MRT") determined the Claimant was not disabled for purposes of the MA-P and SDA benefit programs. (Exhibit 1, pp. 76, 77)

3. On February 11, 2009, the Department sent an Eligibility Notice to the Claimant informing her that she was found not disabled. (Exhibit 3)

4. On February 24, 2009, the Department received the Claimant's written Request for Hearing. (Exhibit 4)

5. On May 22, 2009, the State Hearing Review Team ("SHRT") determined the Claimant not disabled finding the Claimant capable of performing other work. (Exhibit 5)

6. The Claimant's alleged physical disabling impairment(s) are due to chronic pain, rheumatoid arthritis, degenerative disc disease, fibromyalgia, asthma, cardiomyopathy, high blood pressure, colitis, incontinence, stroke, sleep disorder, and migraines.

7. The Claimant's alleged mental impairments are due to anxiety and depression.

8. At the time of hearing, the Claimant was 48 years old with a [redacted] birth date; was 5'9" in height; and weighed 246 pounds.

9. The Claimant has an Associates Degree in Criminal Law and vocational training in paramedics, first responder, and as an Emergency Medical Technician ("EMT").

10. The Claimant's past relevant employment consists of work as a corrections officer, communications officer, security guard, and as a general laborer.

11. The Claimant's impairment(s) have lasted, or are expected to last, continuously for a period of 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-relate activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CRF 413.913 An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a) Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, is insufficient to establish disability. 20 CFR 416.929(a)

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3) The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2)

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

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work;

and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

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

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder. 20 CFR 416.920a(d)(2) If the

severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. An individual is not disabled regardless of the medical condition, age, education, and work experience, if the individual is working and the work is a substantial, gainful activity. 20 CFR 416.920(a)(4)(i) In the record presented, the Claimant is not involved in substantial gainful activity and last worked in 2008. 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 chronic pain, rheumatoid arthritis, degenerative disc disease, fibromyalgia, asthma, cardiomyopathy, high blood pressure, colitis, incontinence, stroke, sleep disorder, and migraines. The Claimant asserts mental disabling impairments due to depression and anxiety. In March of 2008, the record reflects that the Claimant injured her back while at work.

On [redacted], the Claimant was evaluated by a neurosurgeon which determined that surgery was not recommended however pain management was in light of the significant amount of prescribed narcotics. At this point, the goal was to get the Claimant off as much as the medication as possible and to get her to the appropriate pain specialist for ongoing chronic pain management.

On [redacted] the Claimant presented to the hospital with complaints of low back pain after a possible fall. X-rays of the lumbosacral spine found a small amount of spurring at L3-L4. The Claimant was diagnosed with syncope, chronic low back pain, right shoulder pain, arthritis, and a history of dyslipidemia, depression, and hypothyroidism.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as back and right shoulder pain, anxiety/depression,

hyperlipidemia, and cardiomyopathy. The Claimant was limited to standing and/or walking less than 2 hours during an 8-hour work day and sitting less than 6 during this same time. The Claimant was unable to perform reaching, pushing/pulling, or operate foot/leg controls with her upper/lower extremities. No mental limitations were noted.

On [redacted], the Claimant attended a neurology consultative examination due to complaints of severe low back pain. A March 2008 MRI was discussed which revealed a large disc herniation at L1/2 on the right paracentral side. Mild to moderate facet joint arthropathy was also seen. The lumbosacral spine x-ray from March of 2008 showed degenerative joint disease and scoliosis. The physical examination found tenderness to palpation along the lumbar spine with positive straight leg test on the right. As a result of the foregoing, the Claimant's pain medication was increased and a nerve conduction study of the upper and lower extremities was ordered.

On [redacted], the Claimant attended a neurology follow-up examination due to severe worsening in her low back. A repeat MRI was scheduled due to the concern of a new ruptured disc. On this same date, the Claimant underwent a Toradol injection without complication.

On [redacted], the Claimant had an MRI of the lumbar spine with gadolinium. This MRI was compared with the March 2008 MRI which found no significant increase or decrease in the size of the disc herniation, but showed a right sided disc protrusion causing extrinsic impression on the thecal sac and narrowing of the right L1 neural foramen. Facet joint arthropathy was seen at multiple levels.

On [redacted], an electrodiagnostic study revealed normal motor and sensory conduction bilaterally of the upper and lower extremities. Cervical and/or lumbosacral radiculopathy was not precluded.

On [redacted], the Claimant attended a neurology follow-up appointment with complaints of continued low back pain. Lumbar facet joint block with only Marcaine was recommended as well as an EEG to due to falling episodes and possible seizures.

On [redacted], the Claimant underwent a lumbar facet joint block without complication.

On [redacted], the Claimant attended a neurology appointment following a lumbar facet joint block procedure from [redacted]. Fifty percent pain relief was noted for 1-2 days. Tenderness to palpation along the lumbar spine with positive straight leg test was noted. The Claimant did not have significant improvement with the lumbar facet joint block.

On [redacted], the Claimant was examined after complaints of insomnia, chronic back pain, hypothyroidism, and weight gain. The physical examination revealed tenderness along the paravertebral muscles and upper back with multiple tender spots over the back of the neck. Tenderness over the anterior shoulders was also noted. Fibromyalgia, as the possible cause of the chronic pain, was also documented. The Claimant was also treated for depression and anxiety.

On [redacted], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were listed as lumbago/lumbar displaced disc, lumbar degenerative disc disease, lumbar facet point arthropathy, right upper extremity numbness, falling episodes, radicular pain, and sleep disorder. The physical examination documented fatigue, chronic pain, tenderness and decreased range of motion of the lumbar spine, and positive

straight leg raise bilaterally. The Claimant was limited to occasionally lifting/carrying 10 pounds; standing and/or walking less than 2 hours in an 8-hour workday; sitting less than 6 hours during this same time period; and unable to perform repetitive pushing/pulling with her upper extremities. The chronic low back pain and decreased range of motion was supported by MRI findings.

On [redacted], the Claimant's treating physician completed a Physical Functional Capacity Questionnaire on behalf of the Claimant. The Claimant's depression and anxiety were noted as psychological conditions that affect the Claimant's physical condition which would frequently interfere with the Claimant's attention and concentration. The Claimant was found capable of low-stress jobs. Further, the Claimant was found able to sit for 20 minutes at a time; stand for 20 minutes; stand/walk less than 2 hours; and sit about 4 hours (during an 8-hour workday); unable to twist and crouch; rarely able to stoop and climb ladders; and occasionally climb stairs. The Claimant's impairment(s) would likely result in more than 4 days of absences each month.

The [redacted] Medical Statement provided that the Claimant is unable to currently perform any full-time past relevant work, nor was she able to as of [redacted].

On [redacted], the Claimant's constant sharp pain (back and leg) was evaluated. The findings were summarized as possible lumbar radiculopathy; previous stroke history; upper extremity weakness; positive Romberg; obesity; and upper airway obstruction. The EMG revealed bilateral C5-6 radiculopathy.

On [redacted] the Claimant had an abnormal EEG which showed diffuse disturbance of cerebral function.

On [redacted], the Claimant was diagnosed with obstructive sleep apnea syndrome.

On [redacted], the Claimant attended a follow-up appointment for her back and right leg, and neck pain, and dizziness. The Claimant was diagnosed with low back pain with muscle spasms, bilateral C5-C6 radiculopathy, positive Romberg and positive central pathology, obesity, upper airway obstruction, and sleep disorder.

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 and mental limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling impairments due chronic pain, rheumatoid arthritis, degenerative disc disease, fibromyalgia, cardiomyopathy, high blood pressure, colitis, incontinence, stroke, migraines, depression and anxiety.

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 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, vertebral fracture), resulting in compromise of a nerve root (including the cauda equine) or spinal cord. With:

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

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

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

In order to meet a musculoskeletal listing, the impairment must present a major dysfunction resulting in the inability to ambulate effectively. The Claimant's back, neck, and shoulder pain is supported by medical documentation, as well as her inability to ambulate effectively without assistance. The Claimant has a large herniated disc as well as degenerative disc disease. Epidural injections were unsuccessful with a decreased range of motion noted

along with an increase in prescribed pain medication. Lumbar facet point arthropathy with numbness and bilateral positive straight leg raise are also documented. The objective medical record does not reflect that the nerve root or spinal cord is compromised. Ultimately, it is found that the Claimant's impairments may meet a listed impairment within 1.00 however, the record is insufficient to meet the intent and severity requirement thus the Claimant cannot be found disabled under this listing.

The Claimant asserts physical disabling impairments due to asthma, high blood pressure, fibromyalgia, cardiomyopathy, colitis, incontinence, stroke, sleep disorder, and migraines. Although the Claimant's medical records mention some of these impairments, treatment focused mainly on the Claimant's chronic neck, back, and shoulder pain. Listings 3.00, 4.00, 5.00 and 11.00 were considered and reviewed and ultimately found that the objective medical record is insufficient to meet the intent and severity requirement of these listings, thus the Claimant cannot be found disabled or not disabled under these listings.

The Claimant asserts mental disabling impairments due to depression and anxiety. 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 distractibility; or
g. Involvement in activities that have a high probability of painful consequences which are not recognized; or
h. Hallucinations, delusions, or paranoid thinking; or

3. Bipolar syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes)'

AND

B. Resulting in at least two of the following:

1. Marked restriction on activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;

OR

C. Medically documented history of chronic affective disorder of at least 2 years' duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:

1. Repeated episodes of decompensation, each of extended duration; or

2. A residual disease process that has resulted in such marginal adjustment that even minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or

3. Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

Listing 12.06 discusses anxiety-related disorders were anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms. The required

level of severity for these disorders are met when the requirements of both A and B are satisfied, or when the requirements in both A and C are satisfied.

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

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

a. Motor tension; or
b. Autonomic hyperactivity; or
c. Apprehensive expectation; or
d. Vigilance and scanning; or

2. A persistent irrational fear of a specific object, activity, or situation which results in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

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

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

OR

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

In this case, the medical records document the depression and anxiety as well as prescribed medication. These same records do not meet the intent and severity requirement of a

listed impairment within 12.00, specifically 12.04 and/or 12.06 thus the Claimant cannot be found disabled, or not disabled under this listing, therefore the Claimant's eligibility is considered under Step 4. 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 includes employment as a correction/communication officer, security guard, and general labor. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work as a correction/communication officer and security guard is classified as semi-skilled, medium/light work. The Claimant's previous employment providing general labor (stocking, loading, and unloading, etc) is considered unskilled, medium work.

The Claimant testified that she experiences difficulty walking with balance issues; can lift/carry less than 10 pounds; is unable to squat and/or bend; and can sit for approximately 20 minutes with pain. The medical evidence documents similar restrictions to include mental limitations noting that the Claimant's impairments would likely result in more than 4 absences a month. 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 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 and vocational training, was 48 years old thus considered 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. In doing so, it is found that the combination of the Claimant's physical and mental impairments have a major effect on her ability to perform basic work activities. That being stated, the Claimant is able to perform the full range of activities for sedentary work as defined in 20 CFR 416.967(a). Further, the Claimant's treating physician's restrictions are consistent with sedentary work. After review of the entire record and finding no

contradiction in the Claimant's nonexertional limitations, and in consideration of the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II), specifically Rule 201.22, it is found that the Claimant is not 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 purusant 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. 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: 07/22/09

Date Mailed: 07/22/09

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

cc: [redacted]