

[REDACTED]

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.: 2009-4271

Issue No.: 2009; 4031

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

March 9, 2009

Wayne County DHS [REDACTED]

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 March 9, 2009. The Claimant appeared and testified. The Claimant was represented by [REDACTED]. [REDACTED] appeared on behalf of the Department.

During the hearing, additional medical records were received which were not previously considered by the State Hearing Review Team ("SHRT"). The records were forwarded to SHRT for consideration. On March 23, 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 with retroactive benefits for May 2008, and SDA benefits on August 28, 2008.
2. On October 23, 2008, the Medical Review Team (“MRT”) determined the Claimant was not disabled finding the Claimant’s impairment(s) lacked duration of 12 months for MA-P purposes and finding the Claimant’s impairment did not prevent employment for 90 days or more for SDA purposes. (Exhibit 1, pp. 3, 4)
3. The Department sent the Claimant an eligibility notice informing him he was found not disabled.
4. On October 30, 2008, the Department received the Claimant’s Request for Hearing protesting the determination that the Claimant was not disabled. (Exhibit 1, p. 2)
5. On November 10, 2008 and again on March 23, 2009, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2, pp. 1, 2)
6. The Claimant’s alleged physical disabling impairments are due to chronic back pain despite surgery, chronic joint pain and swelling, torn right rotator cuff, diabetes, high blood pressure, heart murmur, and sickle cell trait.
7. The Claimant’s alleged mental disabling impairment(s) is due to depression.
8. At the time of hearing, the Claimant was 53 years old with a [REDACTED] birth date; was 5’ 7” and weighed 172 pounds.

9. The Claimant graduated from high school and has some college with a work history as a maintenance worker for apartment complexes, truck driver/laborer, and a general laborer at a vehicle assembly plant.
10. The Claimant's impairment(s) have lasted or are expected to last 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-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 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) 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 previously stated, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and last worked on May 3, 2008. The Claimant is not disqualified from receipt of disability benefits under Step 1.

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

916.920(a)(4)(ii); 20 CFR 916.920(c) Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b) Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and
6. Dealing with changes in a routine work setting.

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

In the present case, the Claimant alleges physical disability due in part to chronic back, shoulder, and joint pain, diabetes, high blood pressure, and sickle cell trait.

On [REDACTED], the Claimant was admitted to [REDACTED] after complaints of low back pain. Laboratory and radiographic findings documented an infection. The MRI revealed discitis and osteomyelitis with an epidural abscess/phlegmon anterior to thecal sac at L4-5. The Claimant underwent emergency surgery for an anterior discectomy of L3-4, L4-5, and L4 subtotal corpectomy without complications. Subsequently, to stabilize the spine, the

Claimant underwent a posterior fusion with instrumentation of L3-L5. Postoperatively, the Claimant was found with deep vein thrombosis in the right femoral vein which required placement of infrarenal inferior vena cava filter. The Claimant was discharged on [REDACTED] [REDACTED] with a back brace in a wheelchair, with the following diagnoses: L3-L4 discitis/osteomyelitis; L4-5 discitis/osteomyelitis; L4 osteomyelitis; epidural abscess; IV drug use (heroin); cocaine abuse; tobacco abuse; diabetes mellitus; hyponatremia; and right femoral vein DVT.

On [REDACTED], the Claimant was treated at the [REDACTED] seeking treatment at the [REDACTED] for his pain. The Claimant had previously been in the [REDACTED] from [REDACTED] at which point he required surgery as discussed above. Upon release from [REDACTED], the Claimant was not admitted to the [REDACTED] due to substance abuse. Based on the [REDACTED] records, the Claimant last used heroin and cocaine on [REDACTED]. After evaluation, the Claimant was accepted to the treatment program which included monthly individual therapy.

On [REDACTED] [REDACTED] the Claimant attended a vascular surgery consult at the [REDACTED] which documented no “active complaints at this time” and no “pain at this time.”

On [REDACTED], the Claimant was attended an endocrinology consult at the [REDACTED]. The Claimant’s diabetes was found “well controlled at this time.” In addition, the record indicates that the Claimant had not taken any insulin since [REDACTED] but continued to participate with the [REDACTED].

On [REDACTED], the Claimant attended a nephrology consult at the [REDACTED]. The records noted a cyst on the Claimant’s right kidney found on [REDACTED] [REDACTED]. The Claimant chronic pain was also noted with notes that the Claimant was not to take any narcotic pain medication.

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 objective medical evidence establishing that he does have some physical and mental limitations on his ability to perform basic work activities. Accordingly, 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 are expected to last, continuously for a twelve month period, 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 asserts physical disabling impairments due in part to chronic back, shoulder and joint pain. Appendix I, Listing of Impairments, discusses the analysis and criteria necessary to support a finding of a listed impairment. 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

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- 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 inability to perform fine and gross movements effectively means that the impairment(s) interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use upper extremities effectively, an individual must be capable of sustaining functions such as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. *Id.*

In the record, the Claimant required back surgery with hardware in [REDACTED]. As a result, the Claimant wears a back brace except while sleeping. The epidural abscess was successfully treated with no further complications reported. The Claimant treats at the [REDACTED] [REDACTED] for pain. The [REDACTED] records document that in [REDACTED], the Claimant reported no complaints and was not in pain. The Claimant's assertions of rotator cuff tear, joint pain and swelling, were not supported with the submitted medical records. Ultimately, the objective medical evidence presented does meet the severity requirement of a listed impairment within 1.00 therefore the Claimant cannot be found disabled under this listing.

The Claimant also asserts physical disabling impairments due to high blood pressure and heart murmur. 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.

In the record presented, a cursory mention of high blood pressure is found however the record is devoid of any recent treatment or evidence of end organ damage. There were insufficient records presented to support a finding of disability within Listing 4.00.

The Claimant also asserts physical disabling impairments due to diabetes with blurred vision. Listing 9.08 discusses diabetes mellitus and, in order to meet this Listing, an individual must also establish:

- A. *Neuropathy* demonstrated by significant and persistent disorganization of motor function in two extremities resulting in sustained disturbance of gross and dexterous movements, or gait and station (see 11.00C); or
- B. *Acidosis* occurring at least on the average of once every 2 months documented by appropriate blood chemical tests (pH or pCO<sub>2</sub> or bicarbonate levels); or
- C. *Retinitis proliferans*; evaluate the visual impairment under the criteria in 2.02, 2.03, or 2.04.

11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other involuntary movements, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations establish a neurological impairment. 11.00C The degree of interference with locomotion and/or interference with the use of fingers, hands, and arms are considered. *Id.* Visual disorders are abnormalities of the eye, the optic nerve, the optic tracts, or the brain that may cause a loss of visual acuity or visual fields. 2.00A1 A loss of visual acuity limits your ability to distinguish detail, read, do fine work, or to perceive visual stimuli in the peripheral extent of vision. *Id.* The loss of visual acuity is met when vision in the better eye after best correction is 20/200 or less. 2.02 To evaluate visual disorders, the following is required:

- a. To evaluate your visual disorder, we usually need a report of an eye examination that includes measurements of the best-corrected visual acuity or the extent of the visual fields, as appropriate. If there is a loss of visual acuity or visual fields, the cause of the loss must be documented. A standard eye examination will usually reveal the cause of any visual acuity loss. An eye examination can also reveal the cause of some types of visual field deficits. If the eye examination does not reveal

the cause of the visual loss, we will request the information that was used to establish the presence of the visual disorder.

- b. A cortical visual disorder is a disturbance of the posterior visual pathways or occipital lobes of the brain in which the visual system does not interpret what the eyes are seeing. It may result from such causes as traumatic brain injury, stroke, cardiac arrest, near drowning, a central nervous system infection such as meningitis or encephalitis, a tumor, or surgery. It can be temporary or permanent, and the amount of visual loss can vary. It is possible to have a cortical visual disorder and not have any abnormalities observed in a standard eye examination. Therefore, a diagnosis of a cortical visual disorder must be confirmed by documentation of the cause of the brain lesion. If neuroimaging or visual evoked response (VER) testing was performed, we will request a copy of the report or other medical evidence that describes the findings in the report.
- c. If your visual disorder does not satisfy the criteria in 2.02, 2.03, or 2.04, we will also request a description of how your visual disorder impacts your ability to function.

Listing 2.02, 2.03, and 2.04 evaluate vision in the “better” eye.

In the record presented, the Claimant testimony regarding blurred vision is not supported by medical documentation. In addition, the Claimant’s back surgery in [REDACTED] was the result of an injury, and not associated with the Claimant’s diabetes. Objective medical records document that the Claimant’s diabetes is “well controlled.” Ultimately, there was insufficient evidence presented to support a finding of disability pursuant to a Listing 9.08

The Claimant also asserted he has sickle cell trait. Listing 7.05 discusses sickle cell disease. No records were presented to establish a finding of disability under this listing.

Similarly, the Claimant asserted mental disabling impairments due to depression. Listing 12.00 discusses adult mental disorders. This listing was also considered, however the records presented are insufficient to meet a listing within 12.00. According to the medical evidence alone, the Claimant’s physical and 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. 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.*

Over the past 15 years, the Claimant worked as an apartment maintenance worker, a truck driver/laborer, and as an assembler. Based on the Claimant's testimony, the Claimant's employment as a maintenance worker is classified as unskilled, heavy work. The Claimant's work as a truck driver/laborer is considered unskilled light work, while work as an assembler is unskilled medium work.

The Claimant testified that he can lift/carry less than 10 pounds; sit for less than 2 hours; stand for possibly 20 minutes; walk ½ block in pain; has difficulty squatting; is unable to bend; and occasionally experiences problems with gripping/grasping. The Claimant needs assistance in tending to his personal needs. 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 maintenance worker, truck driver/laborer, and/or assembler 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 54 years old thus considered approaching advanced age for MA-P purposes. The Claimant is also a high school graduate with some college. 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)

Transferability of skills for individuals approaching advanced age may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.968(g) 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 lifting no more

than 10 pounds at time and involves occasional walking and standing. After review of the entire record and using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 201.12, it is found that the Claimant is 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. 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, because the Claimant was found disabled for the purposes of the MA program, the Claimant is disabled for purposes of the SDA program.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds the Claimant disabled for purposes of the Medical Assistance program and the State Disability Assistance program.

It is ORDERED:

1. The Department’s determination is REVERSED.
2. The Department shall initiate review of the August 28, 2008 application to determine if all other non-medical criteria are met and inform the Claimant and his authorized representative of the determination.
3. The Department shall supplement the Claimant any lost benefits he was entitled to receive if otherwise eligible and qualified in accordance with department policy.

4. The Department shall review the Claimant's continued eligibility in accordance department policy in April of 2010.

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

Date Signed: 03/31/09

Date Mailed: 04/03/09

**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

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