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: 2009-6852
Issue No: 2009; 4031
Case No: [redacted]
Load No:
Hearing Date:
March 26, 2009
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on March 26, 2009.

ISSUE

Was the denial of claimant's application for MA-P and SDA for lack of disability correct?

FINDINGS OF FACT

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

(1) Claimant applied for MA-P and SDA on 1-7-08.

(2) Claimant is 41 years old.

(3) Claimant has a high school education.

(4) Claimant is not currently working.

(5) Claimant has a prior work history consisting of cashier and line cook work in a fast food setting and housekeeping in a hotel position.

(6) Claimant performed both jobs at a light exertional level.

(7) In 1998, claimant was diagnosed as HIV positive.

(8) Claimant is currently on a full anti-viral regimen to treat the disease.

(9) Claimant complains of memory loss from these medications.

(10) Claimant has also been diagnosed with chronic lumbar radiculopathy stemming from a recurrent lumbar ruptured disc at the L4-5 level.

(11) Claimant has a history of severe back and lower extremity pain in relationship to this problem.

(12) Claimant has had several surgical interventions to treat this pain.

(13) These surgeries have been, at most, only somewhat successful.

(14) Claimant's injury still manifests with severe, chronic pain, documented by several treating sources, manifesting at about a 6 on the pain scale, with medication.

(15) Claimant has been prescribed several narcotics to deal with this pain.

(16) Further surgical interventions are no longer an option.

(17) Claimant has issues with ambulation and needs to use a cane.

(18) Her gait has been described as ataxic by her treating sources with a limp in her right leg.

(19) A DHS-49 form, Medical Examination Report, was completed by three of claimant's treating sources subsequent to the hearing, as ordered by the Administrative Law Judge.

(20) All three sources state that claimant's functional capacity is extremely limited.

(21) Claimant's infectious disease practitioner states that claimant does not retain functional capacity.

(22) Claimant's general practitioner states that claimant's functional capacity is extremely limited, and only retains the capacity to lift less than 10 lbs occasionally, and should not stand or walk more than 2 hours in an 8-hour day.

(23) According to these medical reports, claimant's HIV progress is stable, and her back symptoms are deteriorating.

(24) None of claimant's three treating sources state that claimant retains significant functional capacity for work-related activities.

(25) Furthermore, in a letter from claimant's nurse practitioner for claimant's doctor, addressed to the Administrative Law Judge, it is stated that claimant is unable to do several activities of daily living, including housework and grocery shopping, due to ambulation difficulties, and has problems with personal grooming, due to her back problems. The treating source further states that claimant is "unable to do gainful employment due to her restriction with mobility and the chronic pain".

(26) Claimant receives help for most activities of daily living from her adult children, who live with her.

(27) A psychological exam obtained by the Department in response to claimant's application, diagnosed claimant with addiction/dependence disorders, in remission, Adjustment Disorder, and Borderline Intellectual Functioning.

(28) A WAIS-III test gave claimant a Full Scale IQ score of 74, with significant weaknesses in verbal similarities, arithmetic, and comprehension, among other things.

(29) Claimant was given a GAF of 55 with a guarded prognosis.

(30) On 7-23-08, the Medical Review Team denied MA-P and SDA, stating that claimant had a nonexertional impairment.

(31) On 9-15-08, claimant filed for hearing.

(32) On 1-2-09, the State Hearing Review Team denied MA-P, Retro MA-P (though claimant did not apply) and SDA, stating that claimant had a non-severe impairment.

(33) SHRT concluded that claimant was alleging disability due to “low back pain and anemia”. No mention of claimant’s HIV status was given, or any mention of claimant’s surgeries or medication history.

(34) No mention of claimant’s Borderline Intellectual Functioning was contained in the SHRT decision.

(35) On 3-26-09, a hearing was held before the Administrative Law Judge. Claimant requested an extension of the record to secure records of her most recent surgery. The Administrative Law Judge ordered the claimant to submit Medical Examination Reports to her treating sources in lieu of direct testimony.

(36) Claimant returned these documents after some delay, and the record was resubmitted to SHRT.

(37) SHRT revised their decision to state that claimant was alleging disability due to “lower back pain”, once again making no mention of claimant’s HIV status, common side effects from anti-viral medications, or claimant’s Borderline Intellectual Functioning diagnosis.

(38) No mention was made of claimant’s source statements from three highly respected doctors.

(39) SHRT determined that claimant was capable of light work and denied disability based on rule 20 CFR 416.967(b).

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program 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).

Federal regulations require that the Department use the same operative definition of the term "disabled" as is used by the Social Security Administration for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

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

This is determined by a five-step sequential evaluation process where current work activity, the severity and duration of the impairment(s), statutory listings of medical impairments, residual functional capacity, and vocational factors (i.e., age, education, and work experience) are considered. These factors are always considered in order according to the five-

step sequential evaluation. When a determination can be made at any step as to the claimant's disability status, no analysis of subsequent steps is necessary. 20 CFR 416.920

The first step that must be considered is whether the claimant is still partaking in Substantial Gainful Activity (SGA). 20 CFR 416.920(b). To be considered disabled, a person must be unable to engage in SGA. A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability; the Social Security Act specifies a higher SGA amount for statutorily blind individuals and a lower SGA amount for non-blind individuals. Both SGA amounts increase with increases in the national average wage index. The monthly SGA amount for statutorily blind individuals for 2009 is $1,640. For non-blind individuals, the monthly SGA amount for 2009 is $980.

In the current case, claimant has testified that she is not working, and the Department has presented no evidence or allegations that claimant is engaging in SGA. Therefore, the Administrative Law Judge finds that the claimant is not engaging in SGA, and thus passes the first step of the sequential evaluation process.

The second step that must be considered is whether or not the claimant has a severe impairment. A severe impairment is an impairment expected to last 12 months or more (or result in death), which significantly limits an individual's physical or mental ability to perform basic work activities. The term "basic work activities" means the abilities and aptitudes necessary to do most jobs. Examples of these 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. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the Department may only screen out claims at this level which are "totally groundless" solely from a medical standpoint. This is a *de minimus* standard in the disability determination that the court may use only to disregard trifling matters. As a rule, any impairment that can reasonably be expected to significantly impair basic activities is enough to meet this standard.

In the current case, claimant has presented more than sufficient evidence of a chronic back injury that has more than a minimal effect on the claimant's ability to do basic work activities. Claimant's treating sources all state that claimant has severe restrictions in her functional capacities to do physical activities, including lifting, walking, and standing. Furthermore, the great weight of the evidence shows that claimant's intellectual problems provide more than minimal difficulty in understanding simple instructions. While SHRT originally determined claimant was less than minimally affected by her disabilities, the Administrative Law Judge holds that this finding is not supported by any of the evidence in the original file, especially given the Department's own psychiatric evaluation of the claimant.

In the third step of the sequential evaluation, we must determine if the claimant's impairment is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This is, generally speaking, an objective standard; either claimant's impairment is listed in this appendix, or it is not. However, at this step, a ruling against the claimant does not direct a finding of "not

disabled"; if the claimant's impairment does not meet or equal a listing found in Appendix 1, the sequential evaluation process must continue on to step four.

The Administrative Law Judge finds that the claimant's medical records do not contain medical evidence of an impairment that meets or equals a listed impairment. A listings disability finding for a disorder of the spine requires, among other factors, a finding of nerve root compression with sensory or reflex loss; spinal arachnoiditis; or spinal stenosis. The listings regulations of 1.04 (Disorders of the Spine) A, B, and C were considered. None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations that meet the indications and requirements of the listings of the above.

With regard to the listings requirements for a claimant diagnosed with HIV, listings require a sub-diagnosis of a secondary infection some time in the past; HIV encephalopathy; or HIV wasting disease marked by a 10% loss of weight, along with other factors. The listings regulations of 14.08 (Human Immunodeficiency Virus infection) A-K were considered. No medical evidence indicates that claimant possessed any of the exacerbating factors contained in 14.08; in fact, claimant's treating sources state that claimant has been responding positively to her anti-viral regimen and her viral load counts are suppressed. Therefore, the claimant cannot be found to be disabled at this step, based upon medical evidence alone. 20 CFR 416.920(d). We must thus proceed to the next steps, and evaluate claimant's vocational factors.

Evaluation under the disability regulations requires careful consideration of whether the claimant can do past relevant work (PRW), which is our step four, and if not, whether they can reasonably be expected to make vocational adjustments to other work, which is our step five. When the individual's residual functional capacity (RFC) precludes meeting the physical and mental demands of PRW, consideration of all facts of the case will lead to a finding that:

1) The individual has the functional and vocational capacity for other work, considering the individual's age, education and work experience, and that jobs which the individual could perform exist in significant numbers in the national economy, or

2) The extent of work that the claimant can do, functionally and vocationally, is too narrow to sustain a finding of the ability to engage in SGA. SSR 86-8.

Given that the severity of the impairment must be the basis for a finding of disability, steps four and five of the sequential evaluation process must begin with an assessment of the claimant's functional limitations and capacities. After the RFC assessment is made, we must determine whether the individual retains the capacity to perform PRW. Following that, an evaluation of the claimant's age, education and work experience and training will be made to determine if the claimant retains the capacity to participate in SGA.

RFC is an assessment of an individual's ability to do sustained work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. RFC assessments may only consider functional limitations and restrictions that result from a claimant's medically determinable impairment, including the impact from related symptoms. It is important to note that RFC is not a measure of the least an individual can do despite their limitations, but rather, the most. Furthermore, medical impairments and symptoms, including pain, are not intrinsically exertional or nonexertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and nonexertional categories. SSR 96-8p, 20 CFR 416.945 (a).

However, our RFC evaluations must necessarily differ between steps four and five. At step four of the evaluation process, RFC must not be expressed initially in terms of the step five exertional categories of "sedentary", "light", "medium", "heavy", and "very heavy" work because the first consideration in step four is whether the claimant can do PRW as they actually performed it. Such exertional categories are useful to determine whether a claimant can perform

at her PRW as is normally performed in the national economy, but this is generally not useful for a step four determination because particular occupations may not require all of the exertional and nonexertional demands necessary to do a full range of work at a given exertional level. SSR 96-8p.

Therefore, at this step, it is important to assess the claimant's RFC on a function-by-function basis, based upon all the relevant evidence of an individual's ability to do work related activities. Only at step 5 can we consider the claimant's exertional category.

An RFC assessment must be based on all relevant evidence in the case record, such as medical history, laboratory findings, the effects of treatments (including limitations or restrictions imposed by the mechanics of treatment), reports of daily activities, lay evidence, recorded observations, medical treating source statements, effects of symptoms (including pain) that are reasonably attributed to the impairment, and evidence from attempts to work. SSR 96-8p.

RFC assessments must also address both the remaining exertional and nonexertional capacities of the claimant. Exertional capacity addresses an individual's limitations and restrictions of physical strength, and the claimant's ability to perform everyday activities such as sitting, standing, walking, lifting, carrying, pushing and pulling; each activity must be considered separately. Nonexertional capacity considers all work-related limitations and restrictions that do not depend on an individual's physical strength, such as the ability to stoop, climb, reach, handle, communicate and understand and remember instructions.

Symptoms, such as pain, are neither exertional or nonexertional limitations; however such symptoms can often affect the capacity to perform activities as contemplated above and thus, can cause exertional or nonexertional limitations. SSR 96-8.

In the current case, claimant has been diagnosed with a recurrent ruptured disc at the L4-5 level, with significant lateral recess stenosis and neural foraminal narrowing. Medical Report, 11-10-08. Claimant has undergone several lumbar microdiscectomies to correct the problem, with varying degrees of success. The latest surgery, while alleviating some pain, was not fully successful. Medical Report, 4-8-09. Claimant continues to have severe pain in the lower back that radiates to the right lower region of the body. Claimant has neuropathy in her feet, with numbness and tingling. Claimant is unable to participate in physical therapy due to insurance factors. Claimant's gait is ataxic and affected by a right limp. Medical Report, 4-8-09. Claimant can only ambulate successfully with an assistive device, currently a 4-prong cane. Letter of 4-23-09 from treating source. According to claimant's testimony, she has fallen before, the last time in November, 2008. Claimant has been placed on lifting and standing restrictions by all doctors; the most generous of these restrictions limits claimant to occasionally lifting less than 10 lbs, and standing no more than 2 hours in an 8 hour day.

Additionally, claimant has been diagnosed with Borderline Intellectual Functioning (BIF) by the Department's own doctors. Claimant has problems with verbal cognition, comprehension, and arithmetic. Claimant is positive for memory loss according to treating sources, which may be the result of a drug induced stroke in 2001. However, claimant's current medications also are capable of causing memory loss, and claimant testifies that her memory loss became more severe with her current anti-viral regimen. While the undersigned is unsure as to whether claimant's previous drug use or claimant's current medications are the cause of her memory loss, the loss is documented.

Furthermore, claimant has trouble doing many activities of daily living including cooking, shopping and housekeeping. Claimant testifies that she has trouble standing long enough to do most chores. Claimant testifies that she uses paper cups and plates to avoid dishes.

Claimant's adult children help out with other chores. Claimant has trouble with personal grooming, and is unable to get in and out of a bathtub. Letter of 4-23-09 from treating source.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering the functions of carrying, lifting, and operating foot and leg controls. Claimant has no difficulties when manipulating fine objects. Claimant has severe limitations in walking and standing, which should not be done more than 2 hours in an 8-hour day. Claimant cannot climb. Claimant has extreme postural limitations, preventing her from crawling, stooping, and bending. Claimant has no visual limitations or communicative (hearing, speaking) limitations. Claimant has limitations in comprehending and following simple directions.

Claimant has also made allegations of disabling pain. When considering pain, there must be an assessment of whether the claimant's subjective complaints are supported by an objective medical condition which can be expected to cause such complaints. 20 CFR 416.929, *Rogers v. Commissioner,* 486 F. 3d 234 (6th Cir. 2007). An assessment must be done to consider whether objective medical evidence confirms the severity of the alleged pain or whether the objectively established medical condition is of such a severity that it can reasonably be expected to produce the alleged disabling pain. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (1986); *Felisky v Bowen*, 28 F3d 213 (6th Cir, 1994). Furthermore, the adjudicator must evaluate the intensity, persistence and limiting effects of the symptoms on the claimant's ability to do basic work activities, i.e. daily activities, location duration, frequency, intensity of symptoms, aggravating and precipitating factors, type, dosage effectiveness, and side effects of any medications, and any other treatment undertaken to relieve symptoms or other measures taken to relieve symptoms such as lying down. *Rogers.*

In this case, medical evidence from claimant's general practitioner, neurologist and infectious disease specialists confirms the existence of a condition which can be expected to cause complaints of pain. The specific nature of claimant's injury indicates nerve damage and recurrent ruptured disc with lateral stenosis, a condition which often results in extreme, sometimes disabling pain. Claimant's treating sources confirm claimant's credibility regarding the complaints of pain, and further state that claimant's injury is one as such that may cause disabling pain. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner,* 473 F3d 742 (6th Cir. 2007); restated (again) in *Hensley v. Commissioner,* No. 08-6389 (6th Cir. July 21, 2009). The undersigned sees no reason to discount claimant's treating source opinions.

Therefore, after careful review of claimant's medical record and the Administrative Law Judge's interactions with claimant at the hearing, the undersigned finds that claimant's medical condition is of such a severity that it can reasonably be expected to produce claimant's complaints of disabling pain.

With regard to the complaints of pain, claimant expressed familiarity with the pain scale. Claimant reported her pain to be around a 6 on the scale with the medications, depending on the day and the circumstances. Claimant described the pain further as a constant, even with medications.

Furthermore, the evidence presented indicates that claimant's medications have more than a nominal impact on claimant's ability to perform basic work functions. The evidence indicates that claimant takes Vicodin in the amount of 750mg, twice per day; Flexeril, once per day; and Lyrica, once per day. Claimant also takes the occasional Valium. All three of these medications have common side effects of drowsiness, somnolence, and sedative-hypnotic states. These medications are known to severely limit an individual's ability to maintain concentration,

persistence, pace, and affect; they can also impair memory, and can affect the ability to sustain gainful activity. Claimant has reported all these side effects. Claimant's medical treatment plans approved by her doctors and pain management specialist include taking the medications.

The Administrative Law Judge therefore concludes that claimant also has functional limitations resulting from her symptoms that affect her abilities to understand, carry out and remember instructions, and maintain concentration, persistence and pace.

Claimant's PRW includes cashier and line cook work in the fast food industry, and housekeeping in the hospitality industry. These jobs as typically performed and as described by the claimant, involve standing for long periods of time. All of the jobs require lifting heavy objects on occasion. Other jobs, such as a line cook and cashier, require maintaining concentration, persistence and pace. Therefore, given the functional requirements as stated by claimant (which is consistent with how these jobs are typically performed) for each of those jobs, and claimant's functional limitations as described above, the Administrative Law Judge concludes that claimant does not retain the capacity to perform her past relevant work.

In the fifth step of the sequential consideration of a disability claim, the Administrative Law Judge must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

> (1) residual functional capacity defined simply as "what can you still do despite you limitations?" 20 CFR 416.945;
>
> (2) age, education, and work experience, 20 CFR 416.963-.965; and
>
> (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

See *Felton v DSS* 161 Mich. App 690, 696 (1987).

At step five, RFC must be expressed in terms of, or related to, the exertional categories when the adjudicator determines whether there is other work that the individual can do. However, in order for an individual to do a full range of work at a given exertional level, such as sedentary, the individual must be able to perform substantially all of the exertional **and nonexertional functions** required at that level. SSR 96-8p. The individual has the burden of proving that they are disabled and of raising any issue bearing on that determination or decision. SSR 86-8.

If the remaining physical and mental capacities are consistent with meeting the physical and mental demands of a significant number of jobs in the national economy, and the claimant has the vocational capabilities (considering age, education and past work experience) to make an adjustment to work different from that performed in the past, it shall be determined that the claimant is not disabled. However, if the claimant's physical, mental and vocational capacities do not allow the individual to adjust to work different from that performed in the past, it shall be determined at this step that the claimant is disabled. SSR 86-8.

For the purpose of determining the exertional requirements of work in the national economy, jobs are classified as "sedentary", "light", "medium", "heavy", and "very heavy". These terms have the same meaning as are used in the *Dictionary of Occupational Titles*. In order to evaluate the claimant's skills and to help determine the existence in the national economy of work the claimant is able to do, occupations are classified as unskilled, semi-skilled and skilled. SSR 86-8.

These aspects are tied together through use of the rules established in Appendix 2 to Subpart P of the regulations (*20 CR 404, Appendix 2 to Subpart P, Section 200-204 et. seq.*) to make a determination as to disability. They reflect the analysis of the various vocational factors (i.e., age, education, and work experience) in combination with the individual's residual

functional capacity (used to determine his or her maximum sustained work capability for sedentary, light, medium, heavy, or very heavy work) in evaluating the individual's ability to engage in substantial gainful activity in other than his or her vocationally relevant past work. Where the findings of fact made with respect to a particular individual's vocational factors and residual functional capacity coincide with all of the criteria of a particular rule, the rule directs a conclusion as to whether the individual is or is not disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(a).

In the application of the rules, the individual's residual functional capacity, age, education, and work experience must first be determined. The correct disability decision (i.e., on the issue of ability to engage in substantial gainful activity) is found by then locating the individual's specific vocational profile. Since the rules are predicated on an individual's having an impairment which manifests itself by limitations in meeting the strength requirements of jobs, they may not be fully applicable where the nature of an individual's impairment does not result in such limitations, e.g., certain mental, sensory, or skin impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(c)-200.00(d).

In the evaluation of disability where the individual has solely a nonexertional type of impairment, determination as to whether disability exists shall be based on the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations. The rules do not direct factual conclusions of disabled or not disabled for individuals with solely nonexertional types of impairments. 20 CFR 404, Subpart P, Appendix 2, Rule 200.00(e)(1).

However, where an individual has an impairment or combination of impairments resulting in both strength limitations and nonexertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations

alone; if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience provide a framework for consideration of how much the individual's work capability is further diminished in terms of any types of jobs that would be contraindicated by the nonexertional limitations. Furthermore, when there are combinations of nonexertional and exertional limitations which cannot be wholly determined under the rules, full consideration must be given to all of the relevant facts in the case in accordance with the definitions and discussions of each factor in the appropriate sections of the regulations, which will provide insight into the adjudicative weight to be accorded each factor.

Claimant is 41 years old, with a high school education and prior work experience performed at the light exertional levels. Claimant’s exertional impairments likely render claimant unable to perform work at the sedentary level.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 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. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967.

Claimant has lifting and standing restrictions in place. Claimant’s neurosurgeon does not specifically state any restrictions. Claimant’s infectious disease specialist states that claimant retains no functional capacity. However, claimant’s general practitioner limits claimant to occasionally lifting items less than 10 pounds and never lifting items that weigh 10 pounds. Claimant’s general practitioner also placed restrictions on standing, limiting claimant to standing or walking less than 2 hours in an 8-hour day. Claimant may sit less than 6 hours in an 8-hour day.

The Administrative Law Judge finds the statement by claimant's general practitioner to be the most credible, in the absence of a definitive statement from claimant's neurologist. While claimant's infectious disease specialist certainly has experience with the claimant's limitations, the undersigned feels that his qualifications are best kept to those in the infectious disease realm, and simply finds a general practitioner to be more credible when testifying to the claimant's non-infectious disease related limitations.

However, even viewed in the light of the testimony of claimant's general practitioner, the Administrative Law Judge notes that the claimant's RFC does not rise to the level of sedentary work. The capacity to perform sedentary work requires a claimant to be capable of lifting no more than 10 pounds occasionally; this would include the lifting of weights that are 10 pounds. Claimant's treating source has ruled out the claimant lifting 10 pounds. Therefore, claimant does not retain the capacity to perform sedentary work. None of claimant's doctors have given any indication that claimant is capable of performing work at the sedentary level. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion, and the undersigned does not see a particular reason to discount this opinion. *Rogers; Bowen*; *Hensley.*

That being said, even if claimant was able to perform work, physically, at the sedentary level, claimant's ability to *perform* work at the sedentary level in no way is a judgment of residual functional capacity. RFC is an assessment of an individual's ability to do **sustained** work-related physical and mental activities in a work setting on a regular and continuing basis—meaning 8 hours a day, 5 days a week, or an equivalent work schedule. The great weight of the evidence in the packet, including claimant's psychiatric reports, claimant's treating sources, and claimant's own testimony all indicate that this would be next to impossible for a person suffering

from the claimant's particularly disabilities and taking a medicine regimen similar to the claimant's.

Furthermore, this is only a judgment of exertional limitations. The rules state that exertional limitations must first be considered to determine disability solely on strength factors; if those prove inconclusive, nonexertional limitations must be factored in to determine claimant's true RFC.

Both the MRT and the SHRT evaluated claimant solely on exertional factors; SHRT's evaluation stated that claimant was denied because, "in lieu of denying benefits as capable of performing past work a denial to other work based on Vocational Rule will be used." Ignoring the fact that this statement lacks any actual determination or evaluation of claimant's limiting physical factors (and instead, appears to be searching for a reason to deny benefits while ignoring three treating source statements advocating disability, a psychiatric report, and several years worth of medical evidence) this determination did not take into account the full range of claimant's limitations, and did not factor in at all claimant's nonexertional limitations, as are required by the rules.

Claimant's nonexertional limitations, discussed above, are supported by the objective medical evidence. Starting with the basic assumption that claimant's exertional limitations limit claimant to either sedentary work, or, viewing things in a light favorable to SHRT, light work, claimant's nonexertional limitations stemming from claimant's complaints of disabling pain, memory loss, and BIF, render claimant unable to engage in even a full range of sedentary work. Furthermore, even if claimant's nonexertional limitations relating to claimant's ability to maintain concentration, persistence and pace with regard to work-related activities were absent, the undersigned would have serious doubts regarding claimant's ability to sustain employment, even at the sedentary level, given claimant's medication side effects, claimant's problems with

BIF, and the sporadic nature of back problems, which often result in good days and bad days. Claimant's doctors agree with this determination and have gone out of their way to file a letter indicating that they believe claimant is unable to work at any job, and provide the medical reasons why they believe this is so. It is unknown why SHRT ignored this letter, as it is the most concise piece of evidence in the file laying out claimant's exact problems, from a learned standpoint. Again, it is well established case law, which is reiterated time and time again by the higher courts, that treating source opinions cannot be discounted unless the Administrative Law Judge or disability examiner provides good reasons for discounting the opinion, and the undersigned does not see any particular reason to discount this opinion. *Rogers; Bowen; Hensley.*

Therefore, after careful review of claimant's medical records and the Administrative Law Judge's personal interaction with claimant at the hearing, this Administrative Law Judge finds that claimant's exertional and nonexertional impairments render claimant unable to engage in a full range of even sedentary work activities on a regular and continuing basis. 20 CFR 404, Subpart P, Appendix 2, Section 201.00(h). See Social Security Ruling 83-10; *Wilson v Heckler*, 743 F2d 216 (1986). The Department has failed to provide vocational evidence which establishes that claimant has the residual functional capacity for substantial gainful activity and that, given claimant's age, education, and work experience, there are significant numbers of jobs in the national economy which the claimant could perform despite claimant's limitations. Accordingly, this Administrative Law Judge concludes that claimant is disabled for the purposes of the MA program.

With regard to the SDA program, a person is considered disabled for the purposes of SDA if the person has a physical or mental impairment which meets federal SSI disability standards for at least 90 days. Other specific financial and non-financial eligibility criteria are

found in PEM 261. As claimant meets the federal standards for SSI disability, as addressed above, and alleges an onset date of 2007, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant is disabled for the purposes of the MA and SDA program. Therefore, the decisions to deny claimant's application for MA-P and SDA were incorrect.

Accordingly, the Department's decision in the above-stated matter is, hereby, REVERSED.

The Department is ORDERED to process claimant's MA-P and SDA application and award required benefits, provided claimant meets all non-medical standards as well. The Department is further ORDERED to initiate a review of claimant's disability case in August, 2010.

/s/_____
Robert Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: August 12, 2009

Date Mailed: August 13, 2009

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 Circuit Court within 30 days of the mailing 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.

RJC/cv

cc: [redacted]