

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: 201016458
Issue No: 2009
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 22, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 July 22, 2010.

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 April 27, 2009.
- (2) Claimant is 58 years old.
- (3) Claimant has no formal education.
- (4) Claimant is illiterate in English.
- (5) Claimant is not currently working.
- (6) Claimant has no a prior work history.
- (7) Claimant is obese with a BMI of 41.2. Claimant is 5'4" and weighs 240 lbs.

- (8) Claimant has a history of diabetes mellitus type II, chronic pancreatitis, chronic obstructive pulmonary disease, bell palsy, anemia, and ulcerative colitis.
- (9) On [REDACTED], Claimant was admitted into [REDACTED] with complaint of abdominal pain. Claimant reported symptoms of increased cramps, bloody diarrhea, vomiting, nausea, and weight loss of approximately 12-13 lbs. Claimant was diagnosed with ulcerative colitis flare up, acute pancreatitis, anxiety and hyperlipidemia.
- (10) Physical examination demonstrated that Claimant's abdomen was soft and obese with epigastric discomfort and left lower quadrant tenderness.
- (11) Claimant underwent colonoscopy, which demonstrated chronic colitis in the transverse colon with mild activity; diffuse chronic colitis in the descending colon with mild activity, and chronic colitis in the sigmoid colon with moderate activity.
- (12) CT of the abdomen and pelvis showed mild enlargement of the pancreatic head with no ascites, free fluid, or evidence of abscess.
- (13) During this hospitalization, Claimant had hemoglobin levels of 9.3-9.8 g/dL and serum albumin levels of 3.2-3.7 g/dL.
- (14) Claimant was prescribed IV steroids for her condition.
- (15) Claimant was discharged on [REDACTED] with a prescription for Percocet for pain.
- (16) On [REDACTED], Claimant was again admitted into [REDACTED] with complaint of abdominal pain. Claimant reported symptoms including, diarrhea, cramps, and bloody stool.
- (17) Claimant reported improvement in pain following administration of Morphine.
- (18) Claimant underwent colonoscopy. However, a full colonoscopy examination was impeded by Claimant's umbilical hernia. Claimant underwent surgery for correction of her umbilical hernia.
- (19) On [REDACTED], Claimant's treating source reported that Claimant's abdomen is obese, soft, and non-distended with mild tenderness on palpation. Claimant was prescribed Dilaudid for pain.
- (20) On [REDACTED], a complete blood count showed a hemoglobin level of 9.9 g/dL.

- (21) Claimant was discharged on [REDACTED] with a lifting restriction of 10 lbs until approved by her surgeon. Claimant could walk up stairs. Claimant was prescribed [REDACTED] for pain.
- (22) On June 25, 2009, the Medical Review Team denied MA-P and SDA.
- (23) On September 24, 2009, Claimant filed for hearing.
- (24) On January 29, 2010, the State Hearing Review Team denied MA-P, Retro MA-P and SDA.
- (25) On July 22, 2010, a hearing was held before the Administrative Law Judge.

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, and when a determination can be made at any step as to the Claimant's disability status, no analysis of subsequent steps are 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 2010 is \$1,640. For non-blind individuals, the monthly SGA amount for 2010 is \$1,000.

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 medical evidence of Crohn's disease, also known as ulcerative colitis, an inflammatory bowel disease, uncontrolled diabetes, anemia, recurrent umbilical hernia, and numbness in her fingers, that has significantly limited her aptitude for physical function, according to the great weight of the evidence by the Claimant's treating sources, the Claimant's own testimony at the hearing, and the Administrative Law Judge's observations. On [REDACTED], Claimant was discharged from [REDACTED] with a lifting restriction of 10 lbs. Although Claimant testified during the hearing that she does participate in household chores, Claimant also reported that it takes longer to complete the chores. Claimant also reported numbness in three fingers on her right hand, which affects her gripping strength and her ability to engage in fine manipulation using her right hand. Furthermore, Claimant has limitations on sitting. During the hearing, Claimant had to alternative between sitting and standing, because long periods of sitting cause abdominal discomfort and pain. The Administrative Law Judge finds that these are significant impairments to Claimant's performance of basic physical work activities, and is therefore enough to pass step two of the sequential evaluation process.

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.

In making this determination, the undersigned has considered listings contained in Section 5.00 (Digestive System). A listings disability finding for an inflammatory bowel disease requires, among other things, at least two of the following, despite continuing treatment as prescribed and occurring within the same consecutive 6-month period:

1. Anemia with hemoglobin of less than 10.0 g/dL, present on at least two evaluations at least 60 days apart; or
2. Serum albumin of 3.0 g/dL or less, present on at least two evaluations at least 60 days apart; or
3. Clinically documented tender abdominal mass palpable on physical examination with abdominal pain or cramping that is not completely controlled by prescribed narcotic medication, present on at least two evaluations at least 60 days apart; or
4. Perineal disease with a draining abscess or fistula, with pain that is not completely controlled by prescribed

narcotic medication, present on at least two evaluations at least 60 days apart; or

5. Involuntary weight loss of at least 10 percent from baseline, as computed in pounds, kilograms, or BMI, present on at least two evaluations at least 60 days apart; or
6. Need for supplemental daily enteral nutrition via a gastrostomy or daily parenteral nutrition via a central venous catheter.

None of the medical evidence thus far presented to the Administrative Law Judge satisfies the conditions listed above, with the exception of anemia. During Claimant's hospitalization in [REDACTED], Claimant's hemoglobin level was between 9.3-9.8 g/dL. Two months later, on [REDACTED], a complete blood count showed a hemoglobin level of 9.9 g/dL. Therefore, Claimant's medical condition meets the criteria for anemia.

However, meeting one criterion of the six listed criteria is insufficient for a finding of disability under the listing for an inflammatory bowel disease. Claimant's medical condition must satisfy at least two of the six listed criteria. Claimant's Serum albumin level has consistently been above the maximum of 3.0 g/dL, CT of Claimant's abdomen was negative for abscess or fistula, Claimant has not lost a significant amount of weight, and Claimant does not require supplemental enteral nutrition or daily parenteral nutrition. While Claimant's medical records contain evidence of tender abdominal mass palpable on physical examination and abdominal pain and cramps, on [REDACTED], Claimant reported that her pain has improved with Morphine and her condition has been stable. Claimant was prescribed narcotics for pain, including Morphine, Percocet, and Dilaudid; however, there is no indication that Claimant continued to experience abdominal pain or cramping following administration of the narcotic medications. Contrarily, on [REDACTED], Claimant reported that she did not experience further cramping in the hospital, only a feeling of "fullness." Therefore, Claimant does not meet the listing for an inflammatory bowel disease.

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 to 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 non-exertional; the functional limitations caused by medical impairments and symptoms are placed into the exertional and non-exertional 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 non-exertional 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 non-exertional 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. Non-exertional 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.

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

In the current case, it is undisputed that Claimant has limitations in her physical function because of her physical impairments. Claimant's Crohn's disease, or ulcerative colitis, significantly limits Claimant's ability to sit for a long duration, as demonstrated during the hearing, where Claimant frequently had to alternate between sitting and standing to relieve abdominal pain. Claimant also reported numbness in three fingers on her right hand; mostly likely due to her uncontrolled diabetes mellitus type II. The numbness limits Claimant's ability to grasp and hold objects with her right hand, and her ability to use her right hand for manipulation. Furthermore, Claimant underwent surgery to correct her umbilical hernia on [REDACTED]. Claimant was discharged on [REDACTED] with a lifting restriction of no more than 10 lbs until approved by her surgeon. Claimant's medical records contain no evidence that the weight restriction was ever removed. However, considering Claimant's anemia, uncontrolled diabetes, which resulted in numbness in her right hand, it is beyond doubt that Claimant has some restrictions on her ability to lift and carry.

From these reports, the Administrative Law Judge concludes that Claimant has a disabling impairment when considering the functions of carrying, lifting, sitting, standing, and walking. Furthermore, Claimant has difficulties when manipulating fine objects, rising to a disabling impairment when the manipulation requires both hands. Claimant has few or no postural limitations (e.g. stooping), visual limitations or communicative (hearing, speaking) limitations.

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 hospital records confirms existence of a condition that can be expected to cause complaints of pain. The specific nature of Claimant's impairment, ulcerative colitis or Crohn's Disease, indicates inflammation of the bowel, a condition that can result in extreme and sometimes disabling pain. Claimant's treating sources confirm Claimant's credibility regarding the complaints of pain. During Claimant's hospitalizations in [REDACTED] and [REDACTED], 2009, Claimant's treating sources have found Claimant's allegation of pain credible. Consistent with this finding, Claimant was administered several narcotic pain medication during the hospitalization and at discharge. On [REDACTED], Claimant was administered Dilaudid for abdominal pain on an as needed basis. At discharge, on [REDACTED], Claimant was prescribed Percocet for a short period of time. Similarly, on [REDACTED], Claimant was administered Morphine, also on an as needed basis, for abdominal pain. At discharge on [REDACTED], Claimant was prescribed OxyContin 30 mg, one tablet to be taken twice a day as needed for pain. Treating source opinions cannot be discounted unless the Administrative Law Judge provides good reasons for discounting the opinion. *Rogers; Bowen v Commissioner*, 473 F. 3d 742 (6th Cir. 2007). 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.

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 Asacol 1200 mg three times a day and Protonix 40 mg daily for her Crohn's disease, and Levemir, Glipizide, and Novolog for her diabetes. However, Claimant's medications for her Crohn's disease affect her diabetes and make it difficult for Claimant to control her sugar level. Additionally, Claimant reported during the hearing that her medication makes her jittery, thus causing insomnia. Claimant was also prescribed OxyContin 30 mg twice a day as needed for pain. Claimant has been restricted from driving while taking the medications. Claimant's medical treatment plans approved by her doctors 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 has no PRW, and the Department has presented no evidence or allegations that Claimant has PRW. Since PRW is the main element in the step four analysis and Claimant has no PRW, a finding of disability or not disabled is not appropriate at this step. Therefore, the Administrative Law Judge concludes that evaluation of Claimant's disability claim must proceed onto the fifth step of the sequential evaluation.

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 your 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 non-exertional 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, semiskilled 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 non-exertional 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 non-exertional 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 non-exertional 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 non-exertional limitations. Furthermore, when there are combinations of non-exertional 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 fifty-eight years old, with no education, illiterate in English and no prior work experience. Claimant's exertional impairments likely render Claimant unable to perform work at the sedentary level; Claimant has limitations on walking and sitting, and while Claimant should probably be avoiding the use of her right hand and arm, no specific

weight restrictions have been given. Long periods of standing, walking, or standing will lead to exasperation of Claimant's abdominal discomfort. As observed by the Administrative Law Judge during the hearing, Claimant frequently had to alternate between sitting and standing to relieve abdominal pain and discomfort. Since Claimant is unable to tolerate long periods of sitting, standing, and walking, Claimant is unable to perform sedentary work, which requires extended sitting, and light to heavy work, which requires long periods of standing.

Even when viewing things in a light favorable to the Department, and finding that Claimant can do medium work, the Administrative Law Judge must still conclude that Claimant is disabled. The absence of any relevant work experience, in combination with a limited education or less, militates against making a vocation adjustment to even unskilled medium work, and therefore, a finding of disabled is appropriate. 20 CFR 404, Subpart P, Appendix 2, Rule 203.00(c)

Finally, the Department has failed to provide vocational evidence which establishes that the Claimant has the residual functional capacity for substantial gainful activity and that, given Claimant's age, illiteracy, and no work experience, there are significant numbers of jobs in the national economy which the Claimant could perform despite Claimant's limitations.

Therefore, using a combination of Claimant's age, lack of education and no previous work experience a finding of disabled is directed. 20 CFR 404, Subpart P, Appendix 2, Rule 203.10.

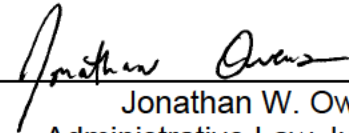
As stated above, where an individual has an impairment or combination of impairments resulting in both strength limitations and non-exertional limitations, the rules are considered in determining first whether a finding of disabled may be possible based on the strength limitations alone. As we are able to make a determination based solely on exertional limitations, an examination of Claimant's non-exertional limitations, such as depression and anxiety, though quite relevant to Claimant's overall health, is not required and will not be made here.

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 February, 2009, 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 medically disabled as of February 2009.

Accordingly, the Department decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated April 27, 2009, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. The Department shall set this case for review in August 2011.



Jonathan W. Owens
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/09/10

Date Mailed: 08/09/10

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.

JWO/dj

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