

**STATE OF MICHIGAN**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**  
**ADMINISTRATIVE HEARINGS FOR THE**  
**DEPARTMENT OF HUMAN SERVICES**

**IN THE MATTER OF:**

[REDACTED]

Reg. No.: 2010-15399  
Issue No.: 2009  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: March 10, 2010  
Wayne County DHS (82)

**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 telephone hearing was conducted from Detroit, Michigan on Wednesday, March 10, 2010. The Claimant appeared and testified. [REDACTED] appeared on behalf of the Department.

During the hearing the Claimant waived the time frame for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was received, reviewed, and entered as Exhibit 5. 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 the Medical Assistance ("MA-P") benefit program?

**FINDINGS OF FACT**

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

1. The Claimant submitted an application for public assistance seeking MA-P benefits on August 14, 2009.
2. On November 25, 2009, the Medical Review Team ("MRT") determined that the Claimant was not disabled. (Exhibit 1, pp. 4, 5)

3. On December 9, 2009, the Department notified the Claimant of the MRT determination.
4. On December 17, 2009, the Department received the Claimant's timely written request for hearing. (Exhibit 2)
5. On January 20, 2010, the State Hearing Review Team ("SHRT") found the Claimant not disabled. (Exhibit 4)
6. The Claimant alleged physical disabling impairments due to the residual complications from bilateral upper extremity gunshot wounds.
7. The Claimant alleged mental disabling impairment due to depression.
8. At the time of hearing, the Claimant was 29 years old with a [REDACTED] birth date; was 6'4" in height; and weighed between 190 pounds.
9. The Claimant has the equivalent of a high school education with an employment history as a barber, in a warehouse, as a general laborer, and at a bank processing checks and issuing money orders.

### **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"), formerly known as the Family Independence Agency, pursuant to MCL 400.10 *et seq* and MCL 400.105. Department policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Bridges Reference Manual ("BRM").

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 416.927

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

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

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4) If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4) If an impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from step three to step four. 20 CFR 416.920(a)(4); 20 CFR 416.945 Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1) An individual's residual functional capacity assessment is evaluated at both steps four and five. 20 CFR 416.920(a)(4) In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv) In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a) An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a) The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6)

In addition to the above, when evaluating mental impairments, a special technique is utilized. 20 CFR 416.920a(a) First, an individual's pertinent symptoms, signs, and laboratory findings are evaluated to determine whether a medically determinable mental

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

After the degree of functional limitation is determined, the severity of the mental impairment is determined. 20 CFR 416.920a(d) If severe, a determination of whether the impairment meets or is the equivalent of a listed mental disorder is made. 20 CFR 416.920a(d)(2) If the severe mental impairment does not meet (or equal) a listed impairment, an individual's residual functional capacity is assessed. 20 CFR 416.920a(d)(3)

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity therefore is not ineligible for 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 non-severe only if, regardless of a claimant's age, education, or work experience, the impairment would not affect the claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985)

In the present case, the Claimant alleges disability due to residual complications from bilateral upper extremity gunshot wounds and depression.

On [REDACTED] the Claimant presented to the emergency room with multiple gunshot wounds to his upper extremities, bilaterally. As a result, the Claimant had a right ulnar fracture, right little finger fracture, and a left ring finger fracture. Incision and debridement were performed as well as the application of a splint. The Claimant was discharged the following day with the diagnoses of gunshot to the upper extremities bilaterally with fixation of the left ring finger and right ulna.

On [REDACTED], x-rays revealed comminuted intra-articular distal ulnar fracture in near anatomic alignment and comminuted intra-articular fifth proximal phalangeal fracture grossly aligned with some residual volar subluxation with respect to the fifth metacarpal.

On this same date, additional x-rays were taken of the left hand/wrist and right hand/wrist which revealed fractures and soft tissue swelling.

On [REDACTED], x-rays of the right hand/wrist found uncomplicated progressive healing of the distal ulnar and proximal fifth phalanx fracture site.

On [REDACTED], the Claimant attended a follow-up appointment. X-rays found no change in the hardware alignment of the left middle phalangeal fracture.

On [REDACTED], the Claimant attended a follow-up appointment. The physical examination showed two superficial ulcerations or abrasion type wounds over the border of the ulna on the right wrist with no evidence of purulence or significant erythema. There was no sign of infection. X-rays found no significant change in the fracture involving the proximal phalanx of the little finger. There were multiple fracture fragments at the metacarpophalangeal ("MCP") joint. A subtle fracture involving the fifth metacarpal head was possible and there was persistent soft tissue swelling. Slight increase in displacement of the distal fragment of the right distal ulna ulnar fracture was noted as well as some irregular callus suggesting early healing. The Claimant was placed into an ulnar gutter splint on the right.

On [REDACTED], the Claimant attended a follow-up appointment. The examination which included x-rays showed good alignment of the intercondylar phalanx fracture on the left right finger with the pin intact. The plan was to mobilize the little finger as soon as possible after the ulnar fracture was cleared by orthopedics.

On [REDACTED], the right ulnar gutter splint was fabricated/fitted and the Claimant (family) was instructed in its use, precautions, and care. The Claimant was found able to squeeze toothpaste onto a toothbrush; was mildly impaired with fastening seatbelts; was severely impaired with eating a sandwich/finger food; reaching dishes out of a cupboard, zipping, snapping, or buttoning a jacket, toileting/personal hygiene. The Claimant was unable to cut meat, use a spoon/fork, lift a gallon of milk, open a jar/cap/lid, loop belt on pants, or pull up pants/socks, wring out a washcloth, shave, carry grocery bags/laundry baskets, turn doorknob, receive change, use hand tools, or write. The Claimant was found to have good rehabilitation potential.

On [REDACTED], the Claimant attended a follow-up appointment for his fractures of the left right finger and right little finger. The right ulna fracture was also noted. The examination revealed some swelling of the PIP joint of the left ring finger with minimal range of motion of the PIP joint noting significant stiffness of the MCP and PIP joints. There was no movement of the right MCP joint of the little finger noting significant stiffness. Significant improvement in the flexion of both digits was noted. The therapist was authorized to perform more aggressive therapy to further improve the Claimant's range of motion.

On [REDACTED], the Claimant attended a follow-up appointment regarding his fracture of the right little finger and left ring finger. The examination of the right hand revealed acute swelling over the MCP joint noting good alignment of the digits with limited flexion of the MCP joint of the little finger. The left hand revealed swelling of the PIP joint of the left ring finger noting stiffness. X-rays compared with previous ones (September) revealed the distal right ulnar fracture was similar in appearance; the comminuted and intra-articular fracture of the distal aspects of the proximal phalanx of the left fourth digit and the radial side of the middle phalanx of the left fourth digit

appeared similar; and the comminuted fracture of the right fifth proximal phalanx with adjacent fracture fragments were similar. Soft tissue swelling was reduced.

On [REDACTED], the Claimant attended a follow-up appointment regarding his left ring finger fracture and right little finger proximal phalanx fracture. Due to the reinjuring of the right hand, the Claimant's therapy was put on hold.

On [REDACTED], x-rays of the right hand found no significant change in appearance of the right fifth metacarpal and right fifth finger proximal phalanx fractures with decreased overlying soft tissue swelling. The Claimant was severely impaired in cutting meat, eating a sandwich/finger foods, using a fork/spoon, zipping, snapping, or buttoning a jacket, looping a belt on his pants, pulling up pants/socks, toileting and personal hygiene, fastening seatbelts, turning doorknobs, lifting a gallon of milk, opening a jar, cap, of lid, wringing out a wash cloth, shaving, carrying grocery bags/laundry baskets, turning a doorknob, and writing. The Claimant was unable to receive change or use hand tools. The Claimant was returned to therapy.

On [REDACTED], the Claimant attended a follow-up appointment. The Claimant presented with stiffness and soreness in his hands. Left wrist flexion was 65 degrees and right wrist flexion was 70 degrees. Reduced range of motion of both hands was documented and strength in the left was 48 pounds and 33 pounds in the right. Pain was 7/10. The Claimant had moderate impairments in cutting meat, using a fork/spoon, zipping, snapping, or buttoning a jacket, looping a belt on his pants, pulling up pants/socks, toileting and personal hygiene, fastening seatbelts, turning doorknobs, and writing. Severe impairments were with eating a sandwich/finger food, lifting a gallon of milk, opening a jar, cap, or lid, reaching dishes out of a cupboard, wringing out a wash cloth, shaving, and carrying grocery bags/laundry baskets. Maximum impairments were with receiving change and using hand tools.

On [REDACTED], the Claimant attended a follow-up appointment for reevaluation of the gunshot wounds to both hands. The physical examination revealed approximately 60 degrees of range of motion of the MCP joint of the right little finger and 45-50 degrees of range of motion of the PIP joint. The range of motion of the left ring finger PIP joint was about 45 degrees. Surgery (capsulotomy) was recommended to improve the range of motion.

On [REDACTED], a Medical Examination Report was completed on behalf of the Claimant. The current diagnoses were fracture, multiple sites, middle proximal phalanx. X-rays from [REDACTED] revealed multiple gunshot wounds to the upper extremities. The Claimant had severe limitations of hand dexterity and was found able to frequently lift/carry 20 pounds with occasional lifting/carrying of 25 pounds. Sitting was limited to less than 6 hours during an 8 hour workday and he was unable to perform repetitive

actions with his upper extremities. The Claimant was able to operate foot/leg controls. No mental limitations were found.

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

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical disabling impairments due to residual complications from bilateral upper extremity gunshot wounds and depression.

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. 1.00B2a The inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities. 1.00 B2c In other words, an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. 1.00B2c To use the upper extremities effectively, an individual must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. 1.00B2c Examples include the inability to prepare a simple meal, feed oneself, take care of personal hygiene, sort/handle papers/files, or place items in a cabinet at or about the waist level. 1.00B2c Pain or other symptoms are also considered. 1.00B2d

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

In this case, the Claimant suffers from residual complications from multiple gunshot wounds to his upper extremities which occurred on August 9, 2009. Initially, the Claimant was unable to perform fine and gross movement effectively. As of March 2010, the Claimant continued to have severe limitations of hand dexterity but was found able to frequently lift/carry 20 pounds with the occasional lifting/carrying of 25 pounds. The Claimant was limited to sitting less than 6 hours during an 8 hour workday although the Claimant testified that he could sit all day. The Claimant was unable to perform repetitive actions with his upper extremities. Ultimately, based on the medical evidence alone, the Claimant's impairment(s) do not meet the intent and severity requirement of a listed impairment within Listing 1.00 as detailed above in light of the durational requirement therefore the Claimant can not be found disabled or not disabled under this listing.

The Claimant alleged disabling impairments due to a hernia and depression. There was no objective evidence to support a finding of disability. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a)

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv) An individual is not disabled if he/she can perform past relevant work. Id.; 20 CFR 416.960(b)(3) Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1) Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3) RFC is assessed based on impairment(s), and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20

CFR 416.967 Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a) Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b) Even though weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. *Id.* To be considered capable of performing a full or wide range of light work, an individual must have the ability to do substantially all of these activities. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additionally limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c) An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d) An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e) An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a) In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity with the demands of past relevant work. *Id.* If an individual can no longer do past relevant work the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e. can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi) If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2) The determination of whether disability exists is based upon the principles in the appropriate sections of the

regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's work history includes employment as a barber, in a warehouse, as a general laborer, and at a bank processing checks and issuing money. In light of the Claimant's testimony and in consideration of the Occupational Code, the Claimant's prior work as a barber and in a bank is classified as semi-skilled light work while the employment as an order taker is classified unskilled, medium to heavy work.

The Claimant testified that he can lift/carry light weight; can walk a couple of blocks; can stand for about 30 to 40 minutes; and can sit all day. The Claimant is able to squat but has difficulties bending due to a reported hernia. The objective medical records from the Claimant's treating physician limits the Claimant to the frequently lifting/carrying of 20 pounds with the occasional lifting/carrying of 25 pounds. The Claimant was limited to sitting at less than 6 hours during an 8 hour workday. The Claimant was unable to perform repetitive actions with his upper extremities but was able to operate foot/leg controls. If the impairment or combination of impairments does not limit an individual's 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 employment thus Step 5 of the sequential analysis 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 29 years old thus considered to be a younger individual for MA-P purposes. The Claimant has the equivalent of a high school education. Disability is found 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). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c)

In this case, the evidence reveals that the Claimant suffers from residual complications from multiple gunshot wounds to his upper extremities. That being states, the Claimant,

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a younger individual with the equivalent of a high school education, maintains the residual functional capacity for work activities on a regular and continuing basis to meet at least the physical and mental demands required to perform unskilled sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.28, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5.

**DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law finds the Claimant not disabled for purposes of the MA-P benefit program.

Accordingly, it is ORDERED:

The Department's determination is AFFIRMED.

*Colleen M. Mamelka*

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Colleen M. Mamelka  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: 01/05/2011

Date Mailed: 01/05/2011

**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.

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cc:

