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: 201028007
Issue No: 2009
Case No: [redacted]
Load No: [redacted]
Hearing Date:
September 29, 2010
Wayne 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 September 29, 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 in June 2009.

(2) Claimant is 45 years old.

(3) Claimant has a 9th grade education.

(4) Claimant is not currently working.

(5) Claimant has a prior work history consisting of cashier work, stock clerk, and security.

(6) Claimant performed these jobs at the light and medium exertional levels.

(7) Claimant was injured on the job in 2008.

(8) Claimant has also been diagnosed with sacroiliitis and degenerative changes at the L4-L5 levels, as well as the L5-S1 levels.

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

(10) Claimant's range of motion is significantly limited with forward flexion and extension, with a guarded gait.

(11) Claimant uses a cane for balance and support.

(12) Claimant's injury still manifests with severe, chronic pain, documented by several treating sources, manifesting at about a 9 on the pain scale, without medication.

(13) Claimant has been proscribed several narcotics to deal with this pain.

(14) Independent and treating source examinations show that claimant is extremely limited in several functions, including lifting, pushing, pulling and bending.

(15) Several older treating source examinations either limit claimant to sedentary work, or disqualify claimant from sedentary work.

(16) More recent treating source notes state that claimant has been restricted from work in the future.

(17) No specific limitations are given in these notes.

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

(19) Claimant receives help for most activities of daily living from her family.

(20) Claimant's medications leave claimant in a narcotic state and non-functional, though they do control the pain.

(21) On January 26, 2010, the Medical Review Team denied MA-P and retroactive MA-P, stating that claimant was capable of other work.

(22) On February 24, 2010, claimant filed for hearing.

(23) On April 15, 2010, the State Hearing Review Team denied MA-P and retroactive MA-P, stating that claimant was capable of other work.

(24) At no point did the MRT or SHRT make a determination as to claimant's SDA application.

(25) On September 29, 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 $1000.

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, as well as independent examinations, all state that claimant has severe restrictions in her functional capacities to do physical activities, including lifting, walking, standing, bending, and pushing and pulling. Therefore, as claimant has presented evidence of limitations that have more than a minimal effect on claimant's ability to do basic work activities, claimant passes this step of the sequential evaluation.

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 severe enough to meet these listings, 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. None of the medical evidence thus far presented to the Administrative

Law Judge contains any allegations or indications of the above. The undersigned also considered the listings in for affective disorders in 12.04.

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 their 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.

Symptom, 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 recurrent sacroiliitis and degenerative changes at the L4-L5 levels, as well as the L5-S1 levels. Claimant continues to have severe pain in the lower back. Claimant walks with a guarded gait, and needs a cane to retain balance. Claimant is unable to participate in physical

therapy or attempt surgical interventions due to insurance factors. Independent examinations show that claimant has limitations on reaching, pushing, pulling, lifting and bending. Claimant has been placed on lifting and standing restrictions by all doctors; the most generous of these restrictions limits claimant to frequently lifting less than 10lbs, and standing no more than 6 hours in an 8 hour day; however, this evaluation was conducted in [redacted], and has little weight when considering claimant's most recent condition. Claimant is unable to operate foot and leg controls, and is limited in fine manipulating.

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's family helps out with other chores.

From these reports, the Administrative Law Judge concludes that claimant has a disabling impairment when considering the functions of carrying, lifting, pushing and pulling, and operating foot and leg controls. Claimant has difficulties when manipulating fine objects. Claimant has severe limitations in walking and standing. Claimant can not 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 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, rehabilitation specialist, and independent examiner confirms existence of a condition which can be expected to cause complaints of pain. The specific nature of claimant's injury indicates sacroiliitis and degenerative changes at the L4-L5 levels, as well as the L5-S1 levels, 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 F. 3d 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 9 on the scale without the medications, depending on the day and the circumstances. Claimant further testified that she has no pain with the medications; however, claimant's medications leave claimant in a narcotic state without the ability to perform the most basic of daily activities.

After a review of claimant's medications, the undersigned believes that 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, four times per day; Valium in the amount of 10mg, three times per day; Tizanidine in the amount of 2mg, twice per day; Inbrega in the amount of 3mg, once per day; Tristia in the amount of 50mg, once per day, and; a 5% concentration Lydoderm patch for 1 ½ hours, once per day. Claimant also takes medications for mood elevation with regard to psychological symptoms. All 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 stock clerk work in the merchandising industry, and security work. These jobs as typically performed and as described by the

claimant, involve standing for long periods of time. All of the jobs required lifting heavy objects on occasion. All of the jobs required 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, 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 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 45 years old, with a 9th grade education, and prior work experience performed at the light and medium 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. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger actions. 20 CFR 416.967.

Claimant has lifting and standing restrictions in place. Claimant's neurologist, in a report from July 2009, restricted claimant from lifting over 10 pounds. While claimant has significantly worsened since that date, the undersigned still finds this report credible, especially in light of subsequent reports from claimant's rehabilitative specialist and independent examiners. This same report stated that claimant could stand at least 6 hours in an 8 hour work day; the undersigned does not believe this statement to be still accurate, in light of subsequent reports. However, the lifting restriction above would still limit claimant's exertional capabilities to sedentary work.

Furthermore, a claimant must be able to perform a full range of work at a given exertional level. SSR 83-10. This same report limits claimant's functional capacity to

perform fine manipulation, a report that is supported by claimant's other treating sources and an independent examination. Most unskilled sedentary jobs require good use of the hands and fingers for repetitive hand-finger actions. Therefore, when considering claimant's lifting restrictions, and then claimant's restrictions in performing fine manipulations, the undersigned must rule that claimant is not able to perform a full range of work at the sedentary level. Therefore, claimant is unable to perform work at the sedentary level. 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 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; 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, 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—which often leave claimant completely non-functional--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 indicated several times in their progress notes that they believe claimant is unable to work at any job, and provide the medical reasons why they believe this is so. Again, 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 non-exertional 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.

It should be noted that claimant also has been diagnosed with some mental impairments; the Administrative Law Judge acknowledges these impairments, but, as they were ultimately unimportant to a disability determination, chose to leave them out of the sequential evaluation.

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 BEM 261. As claimant meets the federal standards for SSI disability, as addressed above, and alleges an onset date of 2008, the undersigned concludes that the claimant is disabled for the purposes of the SDA program as well.

Finally, if the claimant has been determined to be disabled and there is medical evidence of drug addiction or alcoholism, a determination must be made as to whether the drug addiction or alcoholism is a contributing factor material to the determination of disability, unless eligibility for benefits has been found because of age or blindness. 20 CFR 416.935 (a).

The key factor in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether a finding of disability would still be directed if claimant stopped using drugs or alcohol. 20 CFR 416.935 (b) (1).

In making this determination, an evaluation of which of the claimant's current physical and mental limitations, upon which the disability determination was based, would remain if claimant stopped using drugs or alcohol; a determination is then made as to whether any or all of claimant's remaining limitations would be disabling. 20 CFR 416.935 (b) (2).

If it is determined that claimant's remaining limitations would not be disabling, it will be found that claimant's drug addiction or alcoholism is a contributing factor material to the determination of disability.

If it is determined that claimant's remaining limitations are disabling, claimant shall be found to be disabled independent of claimant's drug addiction or alcoholism and the undersigned will find that claimant's drug addiction or alcoholism is not a contributing factor material to the determination of disability.

The undersigned determined disability based upon claimant's sacroiliitis and degenerative changes at the L4-L5 levels, as well as the L5-S1 levels, and the lifting and physical restrictions that arose from that condition. A finding of disability was directed because of these strength limitations, and the non-exertional limitations caused by these impairments. Claimant's condition was not caused by claimant's former drug abuse problem, and claimant has not used drugs since 1993.

As these limitations have no rational connection to claimant's former problems, it therefore follows that the Administrative Law Judge's determination of disability would

remain even if claimant never abused illegal drugs. Therefore, claimant's narcotic dependence is not a contributing factor material to the determination of disability.

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 March 2012.

Robert Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 03/03/11

Date Mailed: 03/08/11

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/dj

cc: [redacted]