

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

IN THE MATTER OF THE CLAIM OF:

[REDACTED]

Reg. No.: 201032265  
Issue No.: 2009; 4051  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: August 23, 2010  
Wayne County DHS

**ADMINISTRATIVE LAW JUDGE:** Aaron McClintic

**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 held on August 23, 2010. The Claimant appeared and testified. [REDACTED], Medical Contact Worker appeared on behalf of the Department.

**ISSUE**

Was the Department correct in denying Claimant's MA and SDA application?

**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 December 9, 2009.
2. The Medical Review Team denied the applications on March 25, 2010.
3. Claimant filed a request for hearing on April 19, 2010 regarding SDA, MA.
4. A hearing was held on August 23, 2010.
6. Claimant's file was sent to the State Hearing Review Team on November 30, 2009.

7. On May 3, 2010 the State Hearing Review Team denied the application because his alleged disability lacked duration.
8. On December 16, 2010 the State Hearing Review Team denied the application because there was no objective evidence of a significant physical or mental impairment that would preclude basic work activity. SDA was denied for lack of severity.
9. Claimant is 6'1" tall and weighs 156 pounds.
10. Claimant is 30 years of age.
11. Claimant's impairments have been medically diagnosed as bowel obstruction with colostomy bag and back pain.
12. Claimant's physical symptoms are pain and irritation at colostomy attachment point.
13. Claimant takes the following prescriptions:
  - a. Indomethacin
  - b. Claritin
  - c. Vicodin
14. Claimant received a General Equivalency Degree.
15. Claimant is able to read, write, and perform basic math skills.
16. Claimant is not currently working.
17. Claimant last worked as a janitor. The job duties included lifting up to 25lbs., standing, bending/stooping, grasping.
18. Claimant testified to the following physical limitations:
  - i. Sitting: 5-10 minutes before has to stand or lie down
  - ii. Standing: 5-10 minutes
  - iii. Walking: 1/2 block
  - iv. Bend/stoop: bending is difficult b/c of back pain
  - v. Lifting: 5-10 lbs.
  - vi. Grip/grasp: difficulty with left hand
19. Claimant lives with his mother.
20. Claimant testified that he does not perform household chores.

21. A DHS-49 Medical Examination Report was completed by Dr. Conners on December 9, 2009. This report states that Claimant can never lift more than 10 lbs.; that Claimant can stand and/or walk less than 2 hours in an 8-hour day.
22. A DHS-54A Medical Needs also completed by Dr. Conners on December 9, 2009 states that Claimant cannot work at his usual occupation or any job for "lifetime".
23. On December 1, 2010 Claimant's file was sent back to the State Hearing Review Team because new medical records were submitted following hearing.
24. The Department found that Claimant was not disabled and denied Claimant's application on December 16, 2010.

#### CONCLUSIONS OF LAW

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 (formerly known as the Family Independence Agency) 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).

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 Program Reference manual (PRM).

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

"Disability" is:

- . . . 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.

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity; the severity

of impairment(s); residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. A determination that an individual is disabled can be made at any step in the sequential evaluation. Then evaluation under a subsequent step is not necessary.

### **1. Current Substantial Gainful Activity**

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). Substantial gainful activity (SGA) is defined as work activity that is both substantial and gainful. "Substantial work activity" is work activity that involves doing significant physical or mental activities. 20 CFR 416.972(a). "Gainful work activity" is work that is usually done for pay or profit, whether or not a profit is realized. 20 CFR 416.972(b). Generally if an individual has earnings from employment or self-employment above a specific level set out in the regulations, it is presumed that she has the demonstrated ability to engage in SGA. 20 CFR 416.974 and 416.975. If an individual engages in SGA, she is not disabled regardless of how severe her physical and mental impairments are and regardless of her age, education and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step. In this case, under the first step, the Claimant was not currently working at the time of the hearing. Therefore, the Claimant is not disqualified from receipt of disability benefits under Step 1.

### **2. Medically Determinable Impairment – 12 Months**

Second, in order to be considered disabled for purposes of MA, a person must have a "severe impairment" 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual's physical or mental ability to perform basic work activities. Basic work activities mean the abilities and aptitudes necessary to do most jobs. 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. 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. The court in *Salmi v Sec'y of Health and Human Servs*,

774 F.2d 685 (6<sup>th</sup> Cir. 1985) held that an impairment qualifies as “non-severe” only if it “would not affect the Claimant’s ability to work,” “regardless of the claimant’s age, education, or prior work experience.” *Id.* At 691-92. Only slight abnormalities that minimally affect a Claimant’s ability to work can be considered non-severe. *Higgs v Bowen*, 880 F.2d 860, 862 (6<sup>th</sup> Cir. 1988); *Farris v Sec’y of Health & Human Servs*, 773 F.2d 85, 90 (6<sup>th</sup> Cir. 1985).

In this case, the Claimant has presented medical evidence from medical providers showing diagnoses of small bowel obstruction with colostomy. Claimant also testified to physical limitations in terms of sitting, standing, walking and lifting.

The medical evidence has established that Claimant has physical limitations that could have more than a minimal effect on basic work activities; and Claimant’s impairments have lasted continuously or will last for more than twelve months. Because this is a de minimus test, it is necessary to continue to evaluate the Claimant’s impairments under step three.

### **3. Listed Impairment**

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. 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.

In making this determination, the undersigned has considered the listings in Section 5.00 (Digestive System) **A. What kinds of disorders do we consider in the digestive system?** Disorders of the digestive system include gastrointestinal hemorrhage, hepatic (liver) dysfunction, inflammatory bowel disease, short bowel syndrome, and malnutrition. They may also lead to complications, such as obstruction, or be accompanied by manifestations in other body systems.

**B. What documentation do we need?** We need a record of your medical evidence, including clinical and laboratory findings. The documentation should include appropriate medically acceptable imaging studies and reports of endoscopy, operations, and pathology, as appropriate to each listing, to document the severity and duration of your digestive disorder. Medically acceptable imaging includes, but is not limited to, x-ray imaging, sonography, computerized axial tomography (CAT scan), magnetic resonance

imaging (MRI), and radionuclide scans. *Appropriate* means that the technique used is the proper one to support the evaluation and diagnosis of the disorder. The findings required by these listings must occur within the period we are considering in connection with your application or continuing disability review.

**C. How do we consider the effects of treatment?**

1. Digestive disorders frequently respond to medical or surgical treatment; therefore, we generally consider the severity and duration of these disorders within the context of prescribed treatment.

2. We assess the effects of treatment, including medication, therapy, surgery, or any other form of treatment you receive, by determining if there are improvements in the symptoms, signs, and laboratory findings of your digestive disorder. We also assess any side effects of your treatment that may further limit your functioning.

3. To assess the effects of your treatment, we may need information about:

- a. The treatment you have been prescribed (for example, the type of medication or therapy, or your use of parenteral (intravenous) nutrition or supplemental enteral nutrition via a gastrostomy);
- b. The dosage, method, and frequency of administration;
- c. Your response to the treatment;
- d. Any adverse effects of such treatment; and
- e. The expected duration of the treatment.

4. Because the effects of treatment may be temporary or long-term, in most cases we need information about the impact of your treatment, including its expected duration and side effects, over a sufficient period of time to help us assess its outcome. When adverse effects of treatment contribute to the severity of your impairment(s), we will consider the duration or expected duration of the treatment when we assess the duration of your impairment(s).

5. If you need parenteral (intravenous) nutrition or supplemental enteral nutrition via a gastrostomy to avoid debilitating complications of a digestive disorder, this treatment will not, in itself, indicate that you are unable to do any gainful activity, except under 5.07, short bowel syndrome (see 5.00F).

6. If you have not received ongoing treatment or have not had an ongoing relationship with the medical community despite the existence of a severe impairment(s), we will evaluate the severity and duration of your digestive impairment on the basis of the current medical and other evidence in your case record. If you have not received treatment, you may not be able to show an impairment that meets the criteria of one of the digestive system listings, but your digestive impairment may medically equal a listing or be disabling based on consideration of your residual functional capacity, age, education, and work experience.

None of the medical evidence thus far presented to the Administrative Law Judge contains any allegations or indications of the severity of the above listings. At most the medical evidence shows small bowel obstruction with colostomy.

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 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 his 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.

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 (6<sup>th</sup> 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 (6<sup>th</sup> 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 doctor confirms existence of a condition which can be expected to cause complaints of pain. The specific nature of Claimant's ailment is 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 ailment 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 (6<sup>th</sup> 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.

In the current case, Claimant testified during his hearing that he retains the capacity to stand for 5-10 minutes, sit for 5-10 minutes, lift no weight, and walk approximately ½ block. A DHS-49 Medical Examination Report was completed by Dr. Andrea Connos on December 9, 2009. This report states that Claimant can never lift more than 10 lbs., that Claimant can stand and/or walk less than 6 hours in an 8-hour day, that Claimant can use his right hand and arm, and that Claimant cannot operate foot/leg controls.

Claimant's medical records confirm diagnoses of small bowel obstruction with colostomy bag following surgery going back to 2006. There are Doctor's notes from office visits for the period in question. With regard to the complaints of pain, Claimant expressed familiarity with the pain scale. Claimant reported his pain to be around a 3-10 on the scale with the medications, depending on the day and the circumstances. Claimant described the pain further as a constant, even with medications.

Furthermore, the evidence presented indicates that Claimant's medications have more than a nominal impact on claimant's ability to perform basic work functions. The evidence indicates that Claimant takes Vicodin in the amount of 750mg. This medication

has common side effects of drowsiness, somnolence, and sedative-hypnotic states. This medication is 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.

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

Claimant's PRW includes work as a janitor. These jobs as typically performed and as described by the Claimant involve the use of both arms. Several of the jobs require lifting heavy objects, such as wood boards, with both arms. Other jobs, such as a line cook, require maintaining concentration, persistence and pace. Therefore, the Administrative Law Judge concludes that Claimant does not retain the capacity to perform his 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 thirty years old, with a general equivalency degree and previous work history performed at the light exertional levels. Claimant's exertional impairments likely render Claimant able to perform work at the sedentary level; Claimant retains the capacity.

That being said, 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.

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

Both the MRT and the SHRT evaluated Claimant solely on exertional factors; SHRT's evaluation stated that "there was no objective evidence of a significant disabling physical or mental impairment that would preclude basic work activity." 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 the Department, 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.

Claimant's doctors agree with this determination and have filed a DHS-54A indicating that they believe claimant is unable to work at any job for "lifetime". 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 v Commissioner*, 473 F. 3d 742 (6<sup>th</sup> Cir. 2007).

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.

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 2008, the undersigned concludes that the Claimant is disabled for the purposes of the SDA program as well.

#### DECISION AND ORDER

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

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

The Department is ORDERED to process Claimant's MA-P and SDA application and award all benefits that Claimant is entitled to receive under the appropriate regulations.

201032265/AM

The Department is further ORDERED to initiate a review of Claimant's disability case in January, 2012.



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Aaron McClintic  
Administrative Law Judge  
For Maura Corrigan, Director  
Department of Human Services

Date Signed: February 7, 2011

Date Mailed: February 7, 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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