

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-36621
Case No: [REDACTED]
Issue: 2009/4031
Hearing Date
September 13, 2011
Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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, an in-person hearing was held on September 13, 2011. Claimant and Claimant's representative, Kristin Cole, personally appeared and testified.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional medical evidence. The new evidence was forwarded to the State Hearing Review Team ("SHRT") for consideration. On December 14, 2011, the SHRT found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Whether the Department of Human Services (the department) properly denied Claimant's application for Medical Assistance (MA-P), Retro-MA and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On December 8, 2010, Claimant filed an application for MA, Retro-MA and SDA benefits alleging disability.
- (2) On March 22, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P, Retro-MA and SDA indicating that Claimant physical is capable of performing unskilled work.
- (3) On April 1, 2011, the department sent out notice to Claimant that his application for Medicaid and SDA had been denied.

- (4) On April 8, 2011, Claimant's representative filed a request for a hearing to contest the department's negative action.
- (5) On July 1, 2011, and again on December 14, 2011, the State Hearing Review Team (SHRT) upheld the denial of MA-P and Retro-MA benefits stating Claimant retains the capacity to perform past relevant work. (Department Exhibit B, pp 1-2; Department Exhibit C, pp 1-2).
- (6) Claimant has a history of degenerative joint disease, bladder control, Asperger's disease, ADHD, depression, anxiety and obsessive compulsive disorder.
- (7) On January 12, 2010, Claimant saw his psychiatrist when he moved to Kalamazoo to attend Western Michigan University. He had been with St. Joe County CMH. He was currently on Ativan, Wellbutrin and Zoloft. He started going to Western in the Fall of 2009 and had a GPA of 3.17. He was part of Western Student Association and was quite active in it. Axis I: Provisional generalized anxiety disorder and attention deficit hyperactivity disorder (ADHD); questionable Asperger's; Axis IV: Applying for SSDI, going to Western, chronic mental illness, recently divorced, history of abuse; Axis V: GAF 50 to 55. (Department Exhibit A, pp 65-67).
- (8) On December 2, 2010, Claimant saw his psychiatrist and reported a 60% improvement in the intrusive thoughts that he had with the increase in Zoloft. He had no tics or stereotypy. No nervous gestures. Thought processes were linear and sequential. Speech was fluent. No suicidality or homicidality. No evidence of psychosis. Insight and judgment were good. (Department Exhibit A, pp 42-44).
- (9) On January 26, 2011, Claimant saw his doctor to follow-up on his hip dislocation. He stated he got it when he jumped off a jungle gym as a child. He was having some numbness and tingling in his lower legs. He had some incontinence, believed to be from his psych medication which he had not followed up with his psychiatric doctor. Claimant had a long history of autism, depression and attention deficit disorder. (Department Exhibit B, p 10).
- (10) On February 8, 2011, Claimant's psychiatrist completed a Mental Residual Functional Capacity Assessment on Claimant. Under Sustained Concentration and Persistence, Claimant was markedly limited in his ability to maintain attention and concentration for extended periods, to work in coordination with or proximity to others without being distracted by them and to make simple work-related decisions. Under Social Interaction, Claimant was markedly limited in his ability to interact appropriately with the general public, and to accept instructions and respond appropriately to criticism from supervisors. Under Adaptation, Claimant was markedly limited in his ability to respond appropriately to change in the work setting and to set realistic goals or make plans independently of others. The psychiatrist noted Claimant has significant

difficulty due to inherent shyness, anxiety and probably Asperger fears. The psychiatrist opined that Claimant's anxiety and ADHD were controlled 70% by his medication. Axis I: Generalized anxiety and ADHD. GAF 40. During the annual review, his psychiatrist noted Claimant would graduate from Western University in June 2011 with a degree in Business Administration. Claimant started having problems while in grade school because of ADHD and questionable Asperger's and went to special education. (Department Exhibit A, pp 30-34).

- (11) On February 18, 2011, Claimant was assessed by [REDACTED]. Claimant denied any suicidal ideation for the past several years. Claimant was unkempt and overweight. His thought processes were logical, circumstantial, racing and he experienced flight of ideas. His mood was depressed and anxious. He was cooperative, impulsive and restless. His intellectual functions and insight/judgment were adequate. He needed assistance with self direction, activities of daily living, learning and recreation, and interpersonal function. He was diagnosed with generalized anxiety disorder, dysthymic disorder and ADHD. GAF: 55.
- (12) On February 21, 2011, Claimant saw his doctor complaining of left hip pain. His x-ray showed he had a broad femoral neck with superolateral acetabular osteophytes that may predispose to acetabular impingement and also he had a history of chronic sinusitis. He was functional with mild pain in his right hip. He was in a good mood and had good insight. (Department Exhibit B, p 9).
- (13) On March 18, 2010, Claimant saw his physician for nasal airway obstruction. He was examined and diagnosed with deviation of the nasal septum with nasal airway obstruction. He is a candidate for either chemocautery of the inferior turbinates or septal surgery, possibly associated with sinus surgery. Degree of deviation is 100%.
- (14) On March 29, 2010, Claimant's physician reviewed the CT of the paranasal sinuses with Claimant. It does show deviation of the nose primarily posteriorly. Also significant hypertrophy of the inferior turbinates. No evidence of paranasal disease. (Department Exhibit A, p 193).
- (15) On April 19, 2011, Claimant saw his doctor complaining of nasal airway obstruction on both sides. On exam, he was found to have an adhesion between the inferior turbinate and the septum on the right side which was broad based. (Department Exhibit, p 195).
- (16) On April 26, 2010, Claimant had out-patient surgery at [REDACTED] for a subtotal nasal spetal resection and reconstruction and electrocautery of the inferior turbinates. (Department Exhibit A, pp 193-194, 198-199, 203-208).

- (17) On May 6, 2011, Claimant had out-patient surgery at [REDACTED] for lysis of adhesion on the right side and intra-mural electrocautery of the inferior turbinates. (Department Exhibit A, pp 193-194, 197, 210).
- (18) On May 23, 2011, Claimant saw his doctor for a follow-up visit. He stated that his right hip is up and left hip is down and he is doing exercises, which is making him ache a lot, when he sits on his butt. Claimant was advised he may have some piriformis syndrome, for which he should try to do some stretching. Claimant complained of left upper extremity pain on carrying bags and complains of pain in the left brachioradialis tendon. He stated he needed an MRI of his hip due to severe pain in it and for the possibility of acetabular impingement. (Department Exhibit B, p 7).
- (19) On June 22, 2011, an MRI of Claimant's left hip showed a labral tear. (Department Exhibit A, pp 190-191, 211).
- (20) On August 1, 2011, Claimant saw his doctor and on examination, he had significant nasal airway obstruction on the right side. Under Afrin and Xylocaine anesthesia, chemocautery of the inferior turbinates was extensively carried out. (Department Exhibit A, p 196).
- (21) On August 11, 2011, Claimant's treating psychiatrist opined that Claimant "is mentally unfit for employment at this time. Due to his current symptoms and presentation, this has changed since my review on 6/21/11." Claimant "has multiple domain deficits. His condition falls under the Asperger's Spectrum Disorder with co-morbidities such as ADHD, OCD and GAD as well as him having comprehension issues.
- (22) On August 12, 2011, Claimant was re-examined and still had obstruction on the right side. Another chemocautery was carried out on the inferior turbinate on the right side. (Department Exhibit A, p 196).
- (23) On September 8, 2011, Claimant's treating psychiatrist completed a the Mental Residual Functional Capacity Assessment finding under Understanding and Memory that Claimant was markedly limited in his ability to understand and remember very short and simple instructions and to understand and remember detailed instructions. Under Sustained Concentration and Persistence, the psychiatrist found Claimant markedly limited in his ability (1) carry out detailed instructions, (2) to maintain attention and concentration for extended periods, (3) to work in coordination with or proximity to others without being distracted by them, (4) to make simple work-related decisions and (5) to complete a normal workday or workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. Under Social Interaction, he was markedly limited in his ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes. Under Adaptation, he was markedly limited in his ability (1) to travel to unfamiliar places or use

public transportation and (2) to set realistic goals or make plans independently of others.

- (24) Claimant is a 40 year old man whose birthday is [REDACTED]. Claimant is 6'2" tall and weighs 220 lbs. Claimant completed his Bachelor of Arts in Business Administration.
- (25) Claimant was appealing the denial of Social Security disability benefits at the time of the hearing.

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, (DHS or department), 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 Reference Tables Manual ("RFT").

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 Mich Admin Code, Rules 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Current legislative amendments to the Act delineate eligibility criteria as implemented by department policy set forth in program manuals. 2004 PA 344, Sec. 604, establishes the State Disability Assistance program. It reads in part:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempt from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting one or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Specifically, this Act provides minimal cash assistance to individuals with some type of severe, temporary disability which prevents him or her from engaging in substantial gainful work activity for at least ninety (90) days.

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 applicant 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 (e.g., 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 to 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 3 to Step 4. 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 4 and 5. 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).

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 and testified that he has not worked since August 2009. Therefore, he is not disqualified from receiving disability benefits under Step 1.

The severity of the individual's alleged impairment(s) is considered under Step 2. The individual 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 mean 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, Claimant alleges disability due to degenerative joint disease, bladder control, Asperger's disease, ADHD, depression, anxiety and obsessive compulsive disorder.

On December 2, 2010, Claimant saw his psychiatrist and reported a 60% improvement in the intrusive thoughts since the increase in Zoloft. He had no tics or nervous gestures. His thought processes were linear and sequential and his speech was fluent.

He expressed no suicidal or homicidal ideations and there was no evidence of psychosis. His insight and judgment were good.

On February 8, 2011, Claimant's psychiatrist completed a Mental Residual Functional Capacity Assessment on Claimant. Under Sustained Concentration and Persistence, Claimant was markedly limited in his ability to maintain attention and concentration for extended periods, to work in coordination with or proximity to others without being distracted by them and to make simple work-related decisions. Under Social Interaction, Claimant was markedly limited in his ability to interact appropriately with the general public, and to accept instructions and respond appropriately to criticism from supervisors. Under Adaptation, Claimant was markedly limited in his ability to respond appropriately to change in the work setting and to set realistic goals or make plans independently of others. His psychiatrist noted Claimant would graduate from Western University in June 2011 with a degree in Business Administration. His psychiatrist opined that Claimant's anxiety and ADHD were 70% controlled by his medication. Axis I: Generalized anxiety and ADHD. GAF 40.

On February 18, 2011, Claimant was assessed by Kalamazoo Community Mental Health. He denied any suicidal ideation for the past several years. He was unkempt and overweight. His thought processes were logical, circumstantial, racing and he experienced flight of ideas. His mood was depressed and anxious. He was cooperative, impulsive and restless. His intellectual functions and insight/judgment were adequate. He needed assistance with self direction, activities of daily living, learning and recreation, and interpersonal function. He was diagnosed with generalized anxiety disorder, dysthymic disorder and ADHD. GAF: 55.

On March 18, 2010, Claimant saw his physician for nasal airway obstruction. He was diagnosed with deviation of the nasal septum with nasal airway obstruction. On March 29, 2010, Claimant's physician reviewed the CT of the paranasal sinuses with Claimant. It does show deviation of the nose primarily posteriorly. Also significant hypertrophy of the inferior turbinates. No evidence of paranasal disease. On April 19, 2011, Claimant saw his doctor complaining of nasal airway obstruction on both sides. On exam, he was found to have an adhesion between the inferior turbinate and the septum on the right side which was broad based. On April 26, 2010, Claimant had out-patient surgery for a subtotal nasal spetal resection and reconstruction and electrocautery of the inferior turbinates. On May 6, 2011, Claimant had out-patient surgery for lysis of adhesion on the right side and intra-mural electrocautery of the inferior turbinates. On August 1, 2011, Claimant saw his doctor and on examination, he had significant nasal airway obstruction on the right side. Under Afrin and Xylocaine anesthesia, chemocautery of the inferior turbinates was extensively carried out. On August 12, 2011, Claimant was re-examined and still had obstruction on the right side. Another chemocautery was carried out on the inferior turbinate on the right side.

On August 11, 2011, Claimant's psychiatrist concluded that Claimant "is mentally unfit for employment at this time. Due to his current symptoms and presentation, this has changed since my review on 6/21/11." Claimant "has multiple domain deficits. His condition falls under the Asperger's Spectrum Disorder with co-morbidities such as ADHD, OCD and GAD as well as him having comprehension issues.

Claimant underwent a psychological evaluation by his psychiatrist on September 8, 2011. His psychiatrist completed a mental residual functional capacity assessment. According to this completed form, Claimant is markedly limited in his ability to: to understand and remember very short and simple instructions; to understand and remember detailed instructions; to carry out detailed instructions; to maintain attention and concentration for extended periods; to work in coordination with or proximity to others without being distracted by them; to make simple work-related decisions; to complete a normal workday or workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; to get along with coworkers or peers without distracting them or exhibiting behavioral extremes; to travel to unfamiliar places or use public transportation and to set realistic goals or make plans independently of others. These marked limitations are in the area of understanding and memory, sustained concentration, social interaction and persistence, and adaption. Claimant was considered to be either not significantly limited or moderately limited in his ability to do all of the other activities in the four areas essential to work.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some limited medical evidence establishing that he does have some mental limitations on his ability to perform basic work activities. The medical evidence has established that 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, 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 individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant has alleged physical and mental disabling impairments due to degenerative joint disease, bladder control, Asperger's disease, ADHD, depression, anxiety and obsessive compulsive disorder.

Listing 1.00 (musculoskeletal system), Listing 6.00 (genitourinary impairments), and Listing 12.00 (mental disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, 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 individual'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 are 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 additional 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, e.g., 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 to the demands of past relevant work must be made. *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 functioning 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 (e.g., 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.*

Claimant's prior work history consists of work as a paper carrier for 7 years, a cashier and dishwasher. In light of Claimant's testimony, and in consideration of the Occupational Code, Claimant's prior work is classified as unskilled, medium work.

Claimant testified that he is able to walk 2 miles, sit for a couple of hours, stand for an hour and can lift/carry approximately 100 pounds. 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, Claimant can be found able to return to past relevant work. However, the analysis of Step 5 will continue.

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, Claimant was 39 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a Bachelor of Arts degree in Business Administration. 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). Where an individual has an impairment or combination of impairments that results in both strength limitations and non-exertional limitations, the rules in Subpart P are considered in determining whether a finding of disabled may be possible based on the strength limitations alone, and if not, the rule(s) reflecting the individual's maximum residual strength capabilities, age, education, and work experience, provide the framework for consideration of how much an individual's work capability is further diminished in terms of any type of jobs that would contradict the non-limitations. Full consideration must be given to all relevant facts of a case in accordance with the definitions of each factor to provide adjudicative weight for each factor.

In this case, the evidence reveals that Claimant suffers from Asperger's disease, ADHD, depression, and anxiety. While Claimant's psychiatrist noted limitations in understanding and memory, sustained concentration, social interaction and persistence, and adaption, these limitations were not supported by the objective medical evidence, especially in light of Claimant's attendance at Western Michigan University and his participation in the Western Michigan University Student Association. It must be noted

