

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

IN THE MATTER OF:



Reg. No: 2011-48627
Case No: [REDACTED]
Issue: 2009/4031
Hearing Date
November 16, 2011
Lapeer 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, a telephone hearing was held on November 16, 2011. Claimant 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 June 8, 2011, Claimant filed an application for MA, Retro-MA, and SDA benefits alleging disability.
- (2) On August 2, 2011, the Medical Review Team (MRT) denied Claimant's application for MA-P and Retro-MA indicating that she was capable of performing other work, pursuant to 20 CFR 416.920(f). SDA was denied for lack of duration.

- (3) On August 8, 2011, the department caseworker sent Claimant notice that her application was denied.
- (4) On August 10, 2011, Claimant filed a request for a hearing to contest the department's negative action.
- (5) On September 20, 2011, and December 14, 2011, the State Hearing Review Team (SHRT) found Claimant was not disabled. (Department Exhibit B, pp 1-2; Department Exhibit C, pp 1-2).
- (6) Claimant has a history of fibromyalgia, osteoarthritis, cervical radiculopathy, carpal tunnel and mild chronic obstructive pulmonary disease (COPD).
- (7) On February 4, 2010, Claimant saw her doctor for a follow-up evaluation of fibromyalgia. She indicated the problem location was her right arm, left arm, right leg and left leg muscles. Severity of condition was severe. She reported no response to Cymbalta, and had previously tried Lyrica which was not helpful. On examination, painful small nodules right ventral wrist and left 2nd PIP joint were found. (Department Exhibit A, p 15).
- (8) On March 4, 2010, Claimant saw her doctor concerning her fibromyalgia. She had new complaints of pain in the distal hand joints. The pain was severe and aggravated by activities. Hands revealed early tender Heberdens nodes. Assessment: Fibromyalgia. Osteoarthritis of the hands, new-onset. (Department Exhibit A, p 14).
- (9) On November 18, 2010, Claimant saw her doctor for fibromyalgia and joint pain. Claimant stated her pain was localized to left DIP joint of and metacarpophalangeal joint of index finger, little finger, middle finger, ring finger, thumb. Joint pain is not associated with any other symptoms. It gets worse when using her hands. No measures seem to relieve the pain. She stated that due to her illness, she has been impaired in her activities of daily living. She has unusual flushing symptoms intermittently with Lyrica and other medications. She is up all night with pain. She stated that she is not a big pill taker. Early degenerative changes were observed in her hands. She was advised to exercise hand muscles by slightly squeezing a ball of yarn and given a prescription for Ultram to take at night. (Department Exhibit A, pp 12-13).
- (10) On February 18, 2011, Claimant saw her doctor for fibromyalgia and reported the fibromyalgia pain was interfering with her work. She stated she had right forearm jolting pain from elbow down. At times back pain, knee pain, right arm pain. She had grinding wrists and knees. She stated her muscles were tired. She reported dropping things and it hurt to lift, and she had been up at night with pain. The examination revealed a slight

decrease in grip strength of right hand compared to left. She was tender on palpation to right elbow, right forearm and wrist. (Department Exhibit A, pp 26-27).

- (11) On February 25, 2011, an EMG of Claimant's right upper extremity revealed evidence of mild median mononeuropathy/CTS (involving sensory fibers only) and mild C6-C7 nerve root irritation. (Department Exhibit A, p 32).
- (12) On March 11, 2011, an x-ray of Claimant's cervical spine showed no vertebral body spondylolisthesis or vertebral body fracture. C5-C6 and C6-C7 showed bilateral neural foraminal spondylitic stenosis, with concurrent minimal degenerative disc disease which may be resulting in bilateral C6. (Department Exhibit A, p 31).
- (13) On March 15, 2011, Claimant saw her doctor regarding her fibromyalgia. She complained of pain shooting in her neck, back and left knee. Stabbing pains in hands and arms, hip pain and swelling in joints. She saw pain management and had an EMG and x-ray of her neck. She is unable to function at work, she is dropping things. Lyrica helps the numbness, but not the pain. Claimant was put on lifting restrictions of no more than 5 pounds and no repetitive gripping. (Department Exhibit A, pp 24-25).
- (14) On March 21, 2011, Claimant saw her doctor for fibromyalgia. She reported the Lyrica helped with tingling pain, but does not help with "somebody beat me up" pain. She believes she cannot return to her job due to lifting and scrubbing. Does not request meds. (Department Exhibit A, pp 23-24).
- (15) On March 21, 2011, Claimant reported to the Back Pain and Sports Rehabilitation Specialists (pain management) for follow-up of her 2/25/11 visit when she had the EMG of the bilateral upper extremities which was abnormal for mild median mononeuropathy and mild C6-C7 nerve root irritation. She stated her pain has been diffuse jumping around from her left foot to the right thigh, right lower back to bilateral hands. She is having a lot of problems dropping things. She feels the Mobic has not helped and she has not noticed a big difference with Lyrica. She stated the Ultram has not been helping. She stated her hands are still extremely painful. (Department Exhibit A, pp 35, 37).
- (16) On March 22, 2011, Claimant saw her doctor concerning left knee pain and left foot discomfort. She described the pain as across the medial aspect of her left knee. No history of injury. Her left foot has been sore across the second metatarsal head. The left knee exhibits a mild effusion to testing. No signs of ligament injury. She had medial joint line

tenderness and her flexion/circumduction tests was slightly positive for a meniscus tear. She had a hint of a varus alignment but otherwise was neurologically normal. She had tenderness across the second metatarsal head. She exhibited signs of metatarsalgia. No obvious signs of fractures. An x-ray of her left knee showed mild signs of osteoarthritis across the medial compartment of her left knee. X-rays of her left foot were normal with no signs of fractures. Diagnosed with mild degenerative osteoarthritis left knee, questionable meniscus tear left knee and metatarsalgia second toe, left foot. (Department Exhibit A, p 36).

- (17) On April 15, 2011, Claimant saw her doctor for fibromyalgia. Her fingers, knees, back, and elbows hurt. She had fatigue with activity and repetitive movements. Head pain with leaning over. She tried vacuuming at home, which resulted in right neck and arm pain and hand numbness afterwards. (Department Exhibit A, pp 21-22).
- (18) On April 19, 2011, Claimant saw the pain management clinic for follow-up to the 3/21/11 visit. Claimant had changes in her vision and a 15 pound weight gain and felt "out of it." She also reported that the salsalate made her very nauseous. Her chief complaint of right sided pain of multiple etiologies was due to: (1) cervical spine arthritis, (2) cervical radiculopathy, (3) carpal tunnel, (4) ulnar neuropathy, (5) fibromyalgia, (6) autoimmune disease, and (7) arthritis. (Department Exhibit A, pp 33-34).
- (19) On April 28, 2011, Claimant saw her doctor regarding returning to work. She complained of generalized pain and discomfort. She had chronic radiculopathy. She complained of knee and wrist pain, instability and stiffness. She was taken off work for 6 months. (Department Exhibit A, pp 19-20).
- (20) On April 29, 2011, Claimant's physician completed a Physician's Statement of Disability that indicated Claimant was capable of sedentary work. Physical limitations consisted of an inability to climb, balance, stoop, kneel, crouch, crawl, or reach; but capable of walking, sitting and standing for up to 2.5 hours. (Department Exhibit A, pp 3-4).
- (21) On May 20, 2011, Claimant's physician completed a Medical Examination Report. She was diagnosed at that time with fibromyalgia, chronic pain syndrome, mild carpal tunnel syndrome right hand, depression and mild chronic obstructive pulmonary disease (COPD). Her physician noted she had muscle tenderness in all areas. Her gait was normal. She reported dropping heavy objects. Her hand strength seemed intact and symmetrical. The doctor found Claimant was stable and could meet her needs in her home. (Department Exhibit A, pp 57-58).

- (22) On June 30, 2011, Claimant had a Diagnostic Interview. On the Beck Depression Inventory, Claimant received a total score of 6, which falls in the Minimal depressive symptomology category. The psychologist found that Claimant reported few social, emotional or occupational problems which have been exacerbated by chronic and debilitating pain and other medical symptoms. Her mobility was greatly limited; however she was not socially isolated. She currently exhibited minimal to no depressive, ADHD or anxiety symptoms, which had affected her in the past. She was motivated to secure and sustain employment, but believed her abilities were limited due to back pain, and other medical concerns. She stated that she has a job waiting for her, but cannot work for various reasons. Her primary symptoms are medical in nature. Diagnoses: No Axis I; GAF=61. (Department Exhibit A, pp 4-9).
- (23) On July 8, 2011, Claimant was seen at the Medical Center for follow-up for fibromyalgia. Doctor noted Claimant was frustrated and very uncomfortable and in mild distress. She complained of fatigue, chronic back and leg pain and difficulty walking. She was given refills for Lyrica, Motrin and Vicodin. (Department Exhibit A, pp 17-18).
- (24) On July 21, 2011, Claimant's physician completed a Physician's Statement of Disability that indicated Claimant was capable of sedentary work. Physical limitations consisted of an inability to climb, crouch, crawl, or stand; but she was found capable of balancing, kneeling and walking for up to 2.5 hours, and reaching and sitting for up to 5.5 hours. (Department Exhibit A, pp 5-6).
- (25) On September 8, 2011, Claimant's physician issued a Return to Work/School Statement indicating Claimant's work status was "no work" until December 12, 2011, due to fibromyalgia. Her physician also added that Claimant may not be able to return to work for more than a year. (Claimant Exhibit A, p 1).
- (26) Claimant is a 49 year old woman whose birthday is [REDACTED]. Claimant is 5'4" tall and weighs 138 lbs. Claimant completed high school.
- (27) 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 she has not worked since April 2011. Therefore, she 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 fibromyalgia, osteoarthritis, cervical radiculopathy, carpal tunnel and asthma.

On February 4, 2010, Claimant saw her doctor for a follow-up evaluation of fibromyalgia. On examination, painful small nodules right ventral wrist and left 2nd PIP joint were found.

On March 4, 2010, Claimant saw her doctor concerning her fibromyalgia. She had new complaints of pain in the distal hand joints. The pain was severe and aggravated by activities. She was diagnosed with Fibromyalgia and new onset of Osteoarthritis of the hands.

On February 18, 2011, Claimant saw her doctor for fibromyalgia and reported the fibromyalgia pain was interfering with her work. She reported dropping things and that it was painful to lift. The examination revealed a slight decrease in grip strength of right hand compared to left. On February 25, 2011, an EMG of Claimant's right upper

extremity revealed evidence of mild median mononeuropathy/CTS (involving sensory fibers only) and mild C6-C7 nerve root irritation.

On March 11, 2011, an x-ray of Claimant's cervical spine showed no vertebral body spondylolisthesis or vertebral body fracture. C5-C6 and C6-C7 showed bilateral neural foraminal spondylitic stenosis, with concurrent minimal degenerative disc disease which may be resulting in bilateral C6.

On March 15, 2011, Claimant saw her doctor regarding her fibromyalgia. She complained of pain shooting in her neck, back and left knee. Stabbing pains in hands and arms, hip pain and swelling in joints. Claimant was put on lifting restrictions of no more than 5 pounds and no repetitive gripping.

On March 22, 2011, Claimant saw her doctor concerning left knee pain and left foot discomfort. An x-ray of her left knee showed mild signs of osteoarthritis across the medial compartment of her left knee. X-rays of her left foot were normal with no signs of fractures. Diagnosed with mild degenerative osteoarthritis left knee, questionable meniscus tear left knee and metatarsalgia second toe, left foot.

On April 28, 2011, Claimant saw her doctor regarding returning to work. She complained of generalized pain and discomfort. She had chronic radiculopathy. She complained of knee and wrist pain, instability and stiffness. She was taken off work for 6 months.

On April 29, 2011, Claimant's physician completed a Physician's Statement of Disability that indicated Claimant was capable of sedentary work. Physical limitations consisted of an inability to climb, balance, stoop, kneel, crouch, crawl, or reach; but capable of walking, sitting and standing for up to 2.5 hours.

On May 20, 2011, Claimant's physician completed a Medical Examination Report. She was diagnosed at that time with fibromyalgia, chronic pain syndrome, mild carpal tunnel syndrome right hand, depression and mild chronic obstructive pulmonary disease (COPD). Her physician noted her gait was normal. She reported dropping heavy objects. Her hand strength seemed intact and symmetrical. Based on the examination, her physician found Claimant was stable and her needs could be met in her home.

On June 30, 2011, Claimant had a Diagnostic Interview. The psychologist found that she currently exhibited minimal to no depressive, ADHD or anxiety symptoms. She was motivated to secure and sustain employment, but believed her abilities were limited due to back pain, and other medical concerns. She stated that she had a job waiting for her, but could not work for various reasons. Her primary symptoms were medical in nature.

On July 21, 2011, Claimant's physician completed a Physician's Statement of Disability that indicated Claimant was capable of sedentary work. Physical limitations consisted of an inability to climb, crouch, crawl, or stand; but capable of balancing, kneeling and walking for up to 2.5 hours, and reaching and sitting for up to 5.5 hours.

On September 8, 2011, Claimant's physician extended her medical time off from work until December 12, 2011, due to fibromyalgia. Her physician also added that Claimant may not be able to return to work for more than a year.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented some limited medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. The medical evidence has established that the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the 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 disabling impairments due to fibromyalgia, osteoarthritis, cervical radiculopathy, carpal tunnel and mild COPD.

Listing 1.00 (musculoskeletal system), Listing 3.00 (respiratory system), and Listing 14.00 (immune system disorders) were considered in light of the objective evidence. Based on the foregoing, it is found that the Claimant's impairment(s) does not meet the intent and severity requirement of a listed impairment; therefore, the Claimant cannot be found disabled at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the 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 the head cook for the past 13 years. 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 she is able to walk short distances, sit or stand for 15 – 20 minutes, and can lift/carry approximately 5 pounds. The objective medical evidence notes limitations in an inability to climb, crouch, crawl, or stand. Her physician found she was capable of balancing, kneeling and walking for up to 2.5 hours, and reaching and sitting for up to 5.5 hours.

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 cannot be found able to return to past relevant work. Accordingly, Step 5 of the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v) At the time of hearing, Claimant was 49 years old and was, thus, considered to be a younger individual for MA-P purposes. Claimant has a high school degree. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c).

In this case, the evidence reveals that Claimant suffers from fibromyalgia, osteoarthritis, cervical radiculopathy, carpal tunnel and mild COPD. The objective medical evidence notes limitations in climbing, crouching, crawling, standing, balancing, kneeling, and walking. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis which includes the ability to meet the physical and mental demands required to perform at least sedentary work as defined in 20 CFR 416.967(a). After review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 202.27, it is found that the Claimant is not disabled for purposes of the MA-P program at Step 5. In this case, the Claimant is found not disabled for purposes of the MA-P and SDA program.

DECISION AND ORDER

