

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-60451
Issue No.: 2009, 4009
Case No.: [REDACTED]
Hearing Date: November 20, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone conference hearing was held on November 20, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Authorized Hearing Representative (AHR)/Law Clerk from [REDACTED] and [REDACTED] (Claimant). Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Assistant Attorney General (AAG)), [REDACTED] (Eligibility Specialist) and [REDACTED] (Assistance Payments Supervisor).

During the hearing, Claimant waived the time period for the issuance of this decision, in order to allow for the submission of additional medical records. The evidence was received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. The Michigan Administrative Hearing System (MAHS), on or about January 10, 2014, received the SHRT determination which found Claimant was not disabled. This matter is now before the undersigned for a final decision.

ISSUE

Did the Department properly deny 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 April 1, 2013, Claimant filed an application for MA-P, Retro MA-P and SDA benefits alleging disability.
2. On June 24, 2013, the Medical Review Team (MRT) denied Claimant's application.

3. On July 2, 2013, the Department caseworker sent Claimant notice that his application was denied.
4. On July 12, 2013, Claimant filed a request for a hearing to contest the Department's action.
5. On September 13, 2013, the State Hearing Review Team (SHRT), following a review of additional records, again denied Claimant's application.
6. A telephone hearing was held on November 20, 2013. During the hearing, the Administrative Law Judge held the record open to allow for Claimant's additional records to be submitted. Claimant consented and agreed to waive the time periods.
7. Claimant has alleged the following disabling impairments: diverticulitis, back pain, and colostomy.
8. At the time of the hearing, Claimant was 53 (fifty-three) years old with a birth date of [REDACTED]; stood 5'8"; and weighed approximately 200 (two-hundred) pounds (lbs).
9. Claimant has a high school education or the equivalent (GED) with an employment history as a self-employed Heating, Ventilation & Air Conditioning (HVAC) service and installation technician.

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 (DHS or Department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Pursuant to Federal Rule 42 CFR 435.540, the Department uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the MA program. Under SSI, 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

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. Claimant's impairment must result from anatomical, physiological, or psychological

abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings, not only the claimant's statement of symptoms. 20 CFR 416.908; 20 CFR 416.927. Proof must be in the form of medical evidence showing that the claimant has impairment and the nature and extent of its severity. 20 CFR 416.912. Information must be sufficient to enable a determination as to the nature and limiting effects of the impairment for the period in question, the probable duration of the impairment and the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913.

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

All of the evidence relevant to the claim, including medical opinions, is reviewed and findings are made. 20 CFR 416.927(c). A statement by a medical source finding that an individual is "disabled" or "unable to work" does not mean that disability exists for the purposes of the program. 20 CFR 416.927(e). Statements about pain or other symptoms do not alone establish disability. 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. There must be medical signs and laboratory findings which demonstrate a medical impairment.... 20 CFR 416.929(a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms).... 20 CFR 416.913(b).

The law does not require an applicant to be completely symptom free before a finding of lack of disability can be rendered. In fact, if an applicant's symptoms can be managed to the point where substantial gainful activity can be achieved, a finding of not disabled must be rendered.

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge reviews all medical findings and other evidence that support a medical source's statement of disability.... 20 CFR 416.927(e).

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 there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

At step one, the Administrative Law Judge must determine whether the claimant is engaging in substantial gainful activity (20 CFR 404.1520(b) and 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 404.1572(a) and 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 404.1572(b) and 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 he or she has demonstrated the ability to engage in SGA (20 CFR 404.1574, 404.1575, 416.974, and 416.975). If an individual engages in SGA, he or she is not disabled regardless of how severe his or her physical or mental impairments are and regardless of his or her age, education, and work experience. If the individual is not engaging in SGA, the analysis proceeds to the second step.

At step two, the Administrative Law Judge must determine whether the claimant has a medically determinable impairment that is "severe" or a combination of impairments that is "severe" (20 CFR 404.1520(c) and 416.920(c)). An impairment or combination of impairments is "severe" within the meaning of the regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work (20 CFR 404.1521 and 416.921; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p). If the claimant does not have a severe medically determinable impairment or combination of impairments, he or she is not disabled.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C). First, an individual's pertinent symptoms, signs and

laboratory findings are evaluated to determine whether a medically determinable mental impairment exists. 20 CFR 416.920a(b)(1). When a medically determinable mental impairment is established, the symptoms, signs and laboratory findings that substantiate the impairment are documented to include the individual's significant history, laboratory findings, and functional limitations. 20 CFR 416.920a(e)(2). Functional limitations are assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively and on a sustained basis. 20 CFR 416.920(a)(2). Chronic mental disorders, structured settings, medication and other treatment, and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining and individual's degree of functional limitation. 20 CFR 416.920a(c)(4).

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). 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 determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b)(1)(iv).

Basic work activities are the abilities and aptitudes necessary to do most jobs. Examples of these include --

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

At step three, the Administrative Law Judge must determine whether the claimant's impairment or combination of impairments meets or medically equals the criteria of an impairment listed in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR 404.1520(d),

404.1525, 404.1526, 416.920(d), 416.925, and 416.926). If the claimant's impairment or combination of impairments meets or medically equals the criteria of a listing and meets the duration requirement (20 CFR 404.1509 and 416.909), the claimant is disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the Administrative Law Judge must first determine the claimant's residual functional capacity (20 CFR 404.1520(e) and 416.920(e)). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, all of the claimant's impairments, including impairments that are not severe, must be considered (20 CFR 404.1520(e), 404.1545, 416.920(e), and 416.945; SSR 96-8p).

Next, the Administrative Law Judge must determine at step four whether the claimant has the residual functional capacity to perform the requirements of his or her past relevant work (20 CFR 404.1520(f) and 416.920(f)). The term past relevant work means work performed (either as the claimant actually performed it or as it is generally performed in the national economy) within the last 15 (fifteen) years or 15 (fifteen) years prior to the date that disability must be established. In addition, the work must have lasted long enough for the claimant to learn to do the job and have been SGA (20 CFR 404.1560(b), 404.1565, 416.960(b), and 416.965). If the claimant has the residual functional capacity to do his or her past relevant work, the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth and last step.

At the last step of the sequential evaluation process (20 CFR 404.1520(g) and 416.920(g)), the Administrative Law Judge must determine whether the claimant is able to do any other work considering his or her residual functional capacity, age, education, and work experience. If the claimant is able to do other work, he or she is not disabled. If the claimant is not able to do other work and meets the duration requirements, he or she is disabled.

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. 20 CFR 416.967. The terms are defined as follows:

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the 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.... 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

The analysis begins at Step 1. To be eligible for disability benefits, a person must be unable to engage in substantial gainful activity (SGA). At the time of the hearing, Claimant testified that he is not engaged in SGA and has not worked since January of 2013. Therefore, Claimant is not disqualified from receiving disability at Step 1 and the analysis proceeds to Step 2.

At Step 2, Claimant's symptoms are evaluated to see if there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce Claimant's pain or other symptoms. This must be shown by medically acceptable clinical and laboratory diagnostic techniques. Once an underlying physical or mental impairment(s) has been shown, the Administrative Law Judge must evaluate the intensity, persistence, and limiting effects of Claimant's symptoms to determine the extent to which they limit Claimant's ability to do basic work activities. For this purpose, whenever statements about the intensity, persistence, or functionally limiting effects of pain or other symptoms are not substantiated by objective medical evidence, a finding on the credibility of the statements based on a consideration of the entire case record must be made.

Claimant alleges that he is disabled due to diverticulitis, back pain, depression and a colostomy with an onset date of [REDACTED]. The objective medical records show that Claimant had complained of lower back pain following a motor vehicle accident that occurred several years ago. Claimant has experienced issues with diverticulitis over the past 10-12 years. Claimant had no prior history of psychiatric problems.

The records indicated that Claimant was admitted to the hospital on [REDACTED] for an acute exacerbation of sigmoid diverticulitis with abscess formation. He was given antibiotics and his abscess was drained until his symptoms resolved. Claimant was discharged 3 days later with a drain in place.

On [REDACTED], Claimant underwent surgery to remove his sigmoid colon. Postoperatively, Claimant had a wound infection. Eventually, Claimant was required to use a colostomy. Claimant had a psychiatric consultation on [REDACTED]. This note indicated that Claimant had no psychiatric history. During the psychiatric interview, Claimant stated that his depression was situational due to multiple family issues and

financial problems. The psychiatrist determined that Claimant was appropriate for an SSRI treatment, but that he was not open to starting the medication at that time.

On [REDACTED], Claimant's surgeon placed Claimant on an additional 3 month work restriction so that Claimant could continue to receive post-surgery follow-up care.

Claimant's lumbar spine MRI without contrast dated [REDACTED], revealed degenerative disc disease and some disc bulging at L5-S1, but no clear herniation was found.

Claimant's primary care physician ([REDACTED]) noted in a [REDACTED] Physical Capacities Assessment (PCA) for recurrent diverticulitis that Claimant should refrain from bending, stooping or lifting anything over 50 lbs. Claimant was also restricted to 1-2 hours per day for sitting, standing, walking and lifting up to 25 lbs.

On [REDACTED], [REDACTED] assessment regarding Claimant's mental ability to perform work-related activities was that had extreme limitations with maintaining concentration, work stresses, detailed & complex job instructions, and concentration, persistence and pace.

Claimant had an office visit with [REDACTED] on [REDACTED] which indicated that he complained of occasional lower back pain. The note indicated that Claimant was "looking for disability for back pain." The note further added that Claimant does not have problems walking or with balance. The physical exam noted that he moved slowly. Claimant weighed 183 lbs and his BMI was 28.24. Due to depression, Claimant was advised to being Fluoxetine.

According to the objective medical evidence, Claimant has a medical basis for his reported complaints of low back pain and abdominal pain. The objective medical records show that Claimant's reported impairments are more than a slight abnormality or a combination of slight abnormalities that would have more than a minimal effect on his ability to work. Claimant does not possess the ability to perform basic work activities without limitations. The evidence demonstrates that Claimant cannot perform physical functions such as bending, stooping or lifting anything over 50 lbs. But Claimant can sit, stand, walk (limited to 1-2 hours per day) and he can lift up to 25 lbs.

The objective medical evidence in this matter reveals that Claimant does not have mental and/or emotional impairment that can fairly be characterized as "severe" for purposes of the Step 2 analysis. This evidence does not show that Claimant has a medically determinable mental impairment based on documented signs, symptoms, and laboratory findings that substantiate the alleged impairment. Claimant has been diagnosed with depression, but the evidence does not elaborate how Claimant has difficulty with concentration such that he lacks the ability to tolerate increased mental demands associated with competitive work. This Administrative Law Judge reviewed Dr. McBride's assessment, but disagrees that Claimant's depression is a chronic mental disorder rather than situational. The objective evidence does not show Claimant lacks the ability to function in a structured setting or that his overall functioning is compromised. During the hearing, Claimant has shown no restrictions on the ability to

understand, carry out, and remember simple instructions. Nor is there objective evidence that Claimant's use of judgment is impaired. Claimant also can respond appropriately to supervision, co-workers and usual work situations. In addition, Claimant possesses the ability to deal with normal changes in a routine work setting.

The objective medical evidence shows that Claimant has a physical impairment that "severe" for purposes of Step 2. The records show that Claimant's impairment significantly limits his ability to perform basic work activities. But there is no objective clinical medical evidence in the record that Claimant suffers a severely restrictive mental impairment. The objective clinical evidence shows that Claimant has a physical impairment which has lasted or can be expected to last for a continuous period of not less than 12 months.

Claimant has presented medical evidence that demonstrates he has some physical and limitations on his ability to perform basic work activities. The medical evidence has established that Claimant has an impairment, or combination of impairments, that has more than a *de minimus* effect on his basic work activities. Further, the impairments have lasted continuously for 12 (twelve) months; therefore, Claimant is not disqualified from receiving MA-P benefits at Step 2.

The analysis proceeds to Step 3 where the medical evidence of Claimant's condition is compared to the listings. In the third step of the sequential analysis of a disability claim, the trier of fact must determine if Claimant's impairment, or combination of impairments, are listed in Appendix 1 of Subpart P of 20 CFR, Part 404. In light of the medical evidence, listings 1.04 (disorders of the spine), 5.01 through 5.09 (digestive system) and 12.04 (affective disorders) are considered.

Listing 1.04 concerns disorders of the spine including: herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, and vertebral fracture. To meet 1.04, the aforementioned conditions must result in compromise of a nerve root (including the cauda equina) or the spinal cord with one of the following: (a) evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine); (b) spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours; or (3) Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

The medical evidence shows that Claimant's lumbar spine MRI without contrast dated [REDACTED], revealed degenerative disc disease and some disc bulging at L5-S1, but no clear herniation was found. Based on the above objective medical evidence, Claimant's low back pain does not meet or medically equal the criteria of listing 1.04. Claimant did not provide objective medical evidence to show compromise of the nerve

root or the spinal cord. Claimant also did not produce evidence of nerve root compression, limitation of motion of the spine, motor loss or any of the other requirements for this listing. Claimant also does not possess the inability to ambulate.

With regard to listings 5.01 through 5.09, the digestive system disorders are covered. 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. Because digestive disorders frequently respond to medical or surgical treatment; therefore, the listings generally consider the severity and duration of these disorders within the context of prescribed treatment. Here, the objective medical evidence shows that on [REDACTED], Claimant underwent surgery to remove his sigmoid colon due to recurrent diverticulitis. Records show that Claimant has a colostomy in the left lower quadrant of his abdomen. Based on all the objective medical records, this Administrative Law Judge finds that Claimant meets the listings of 5.06 and 5.07.

This Administrative Law Judge finds that Claimant does not meet 12.04, as he does not exhibit at least 4 of the medically documented required factors. Because Claimant does have an impairment that meets or medically equals the criteria of 5.06 and 5.07, he meets the Step 3 requirement.

Before Step 4, the Administrative Law Judge must determine Claimant's residual functional capacity to perform the requirements of his past relevant work. Here, Claimant has a work history as a self-employed HVAC service and installation technician. Claimant testified that he primarily serviced and installed residential HVAC systems and was limited to light commercial HVAC systems.

Claimant testified that he can perform limited physical functions. He stated that he makes breakfast and assists with simple household chores. Claimant testified that he must dump his colostomy bag at least 4 times a day. Due to Claimant's condition and, in part, due to the requirements of maintaining his colostomy, this Administrative Law Judge finds that Claimant cannot perform the duties of her former job. He cannot bend, stoop and perform the other requirements of his past employment. Based on all the evidence, this Administrative Law Judge finds that Claimant cannot perform the requirements of his past employment on a sustained basis.

The fourth step in analyzing a disability claim requires an assessment of Claimant's residual functional capacity (RFC) and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy is not considered. 20 CFR 416.960(b)(3).

Here, Claimant has past relevant work as an HVAC service/repair technician, which is considered medium level, skilled work.¹ Claimant testified that he can do the following activities: walk short distances without assistance; grip/grasp without issue; sit for 1-2 hours; lift up to 20 lbs; stand and has difficulties bending and/or squatting. The objective findings do not show any permanent physician imposed limitations. This Administrative Law Judge finds sufficient evidence in this record that demonstrates Claimant is unable to perform his past relevant work. Because the record evidence shows that Claimant is unable to do any past relevant work, the analysis proceeds to the fifth and final step.

At Step 5, this Administrative Law Judge must determine whether or not Claimant has the residual functional capacity to do any other work in the national economy considering his age, education, and work experience.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. Under the Medical-Vocational guidelines, a person closely approaching advanced age (age 53), with a high school education or the equivalent (GED), a skilled work history that is not transferrable and who is capable of light work is not considered disabled pursuant to Vocational Rule 202.14.

The entire record shows that Claimant is capable of light and/or sedentary work, even with his limitations. This Administrative Law Judge finds that the objective medical evidence on the record fails to show that Claimant has no residual functional capacity. Consequently, Claimant is disqualified from receiving disability at Step 5 based upon the fact that he has not established by objective medical evidence that he cannot perform light or sedentary work even with his impairments.

Accordingly, Claimant has not satisfied the burden of proof to show by competent, material and substantial evidence that he has an impairment or combination of impairments which would significantly limit the physical or mental ability to do basic work activities. 20 CFR 416.920(c). Although Claimant has cited medical problems, the objective clinical documentation submitted by Claimant is not sufficient to establish a finding that the claimant is disabled. There is no objective medical evidence to substantiate Claimant's assertion that his alleged impairment(s) are severe enough to reach the criteria and definition of disability. Claimant is not disabled for the purposes of the Medical Assistance disability (MA-P) program.

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).

¹ 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.*

With regard to Claimant's request for disability under the State Disability Assistance (SDA) program, it should be noted that the Department's Bridges Eligibility Manual (BEM) contains policy statements and instructions for caseworkers regarding the SDA program. In order to receive SDA, "a person must be disabled, caring for a disabled person or age 65 or older." BEM, Item 261, p. 1 (July, 2013).

A person is disabled for SDA purposes if he or she: (1) receives other specified disability-related benefits or services²; or (2) resides in a qualified Special Living Arrangement facility; or (3) is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability; or (4) is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS). BEM 261 pp 1-2 (July, 2013).

Because Claimant does not meet the definition of disabled under the MA-P program and because the evidence of record does not show that Claimant is unable to work for a period exceeding 90 (ninety) days, Claimant is also not disabled for purposes of the SDA program.

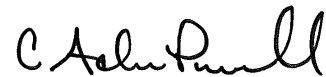
The Department has established by the necessary competent, material and substantial evidence on the record that it acted in compliance with Department policy when it determined that Claimant is not eligible to receive MA-P, Retro MA-P and SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has appropriately established on the record that it acted in compliance with Department policy when it denied Claimant's application for MA-P, Retro MA-P and SDA.

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.



C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 14, 2014

Date Mailed: March 14, 2014

²Retirement, Survivors and Disability Insurance (RSDI) due to disability/blindness, Supplemental Security Income (SSI) due to disability/blindness, Medicaid as blind/disabled based on a disability examiner or MRT determination or hearing decision, or Michigan Rehabilitation Services.

NOTICE OF APPEAL: The claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

CAP/las

cc:

