

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201368407
Issue No.: 2009; 4009
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 hearing was held on February 5, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [REDACTED], Claimant's friend and representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Medical Contact Worker.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. The records were received, reviewed, and forwarded to the State Hearing Review Team (SHRT) for consideration. On April 28, 2014, this office received the SHRT determination which found Claimant not disabled. This matter is now before the undersigned for a final determination.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA-P) and State Disability Assistance (SDA) benefit programs?

FINDINGS OF FACT

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

1. On July 1, 2013, Claimant submitted an application for public assistance seeking MA-P and SDA benefits.

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2. On August 23, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On August 28, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On September 4, 2013, the Department received Claimant's timely written request for hearing.
5. On October 28, 2013, and April 22, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged physical disabling impairment due to chronic back pain and lower left extremity pain.
7. At the time of hearing, Claimant was 34 years old with a [REDACTED], birth date; he was 5'7" in height and weighed 165 pounds.
8. Claimant has an 11th grade education.
9. Claimant has prior employment history of work as a health aide, bus driver, fast food worker, light industrial assembly line worker, and assistant loan officer.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The 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 Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Bridges Reference Tables (RFT).

MA-P and SDA benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. In order to receive MA benefits based upon disability, Claimant must be disabled as defined in Title XVI of the Social Security Act. 20 CFR 416.901. Disability for MA purposes 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).

In order to determine whether or not an individual is disabled, federal regulations require application of a five-step sequential evaluation process. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider (1) whether the individual is engaged in substantial gainful activity (SGA); (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to 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 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)

In general, the individual has the responsibility to establish a disability 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, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. 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(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is substantial gainful activity (SGA), then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means

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work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under step 1 and the analysis continues to step 2.

Step Two

Under step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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 416.920(a)(4)(ii); 20 CFR 416.920(c). 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); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may 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). However, under the *de minimus* standard applied at step 2, an impairment is not severe only if it is a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case,

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Claimant alleges physical disability due to chronic back pain and lower left extremity pain.

Claimant was in a motor vehicle accident in November 2011. A January 5, 2012 MRI of Claimant's lumbar spine revealed a herniated disk at LS-S1 with asymmetric 4-mm extrusion to the left creating left canal and left foraminal compromise. The doctor who interpreted the MRI noted moderate degenerative disk changes at both L5-S1 and L3-L4.

A registered nurse examined Claimant on December 19, 2012, and her notes show that Claimant had difficulty in his physical exam: his straight leg raise was positive on the left with 10 degrees; with respect to his right leg, his right thigh strength was 4/5, lower leg strength was 4/5, and his foot flexion and pointing was appropriate; and with respect to his left leg, his left thigh strength was 3/5, lower leg strength was 0/5, and his foot flex and pointing was not possible.

In a request for medical opinion form completed by a [REDACTED] doctor on December 26, 2012, the doctor listed Claimant's diagnosis as chronic back pain. The doctor indicated that Claimant's condition would last between 30 to 45 days. He also indicated that Claimant would not be able to perform any employment in the foreseeable future.

That same day, another doctor at the office Claimant had visited on December 19, 2012 performed a physical examination of Claimant. The doctor noted paraspinous tenderness, abnormal gait with left-sided limp, pain on the left side during a straight leg raise that radiated down the left leg to the knee, and no CVA tenderness. The doctor assessed 3/5 for left lower extremity strength and 5/5 for right lower extremity strength.

An MRI of Claimant's lumbar spine taken on January 3, 2013 showed degenerative changes in the lumbar spine greatest at L5-S1 where an asymmetric disc bulge impinged on the left L5 nerve root as well as a left paracentral disc extrusion that impinged on the left S1 nerve root. The doctor noted that enlargement in both the left L5 and S1 nerve roots, bilateral facet hypertrophy, moderate right neuroforaminal narrowing and severe left neuroforaminal narrowing, and mild spinal canal narrowing. The doctor recommended clinical correlation for left L5 and S1 radiculopathy.

In a January 14, 2013, report, the registered nurse at a pain clinic examined Claimant and reported that he was tender paraspinally on the left at the L5 level, and that there was positive facet loading and positive straight leg raising past 90 degrees for lateral thigh pain. The nurse noted that Claimant reported pain in the left lower back with lateral bends to the left and rotation but he was able to forward flex and hyperextend with minimal discomfort and raise on heel and toe. His gait and ambulation was normal, and his muscle bulk and tone was within normal limits.

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On January 16, 2013, Claimant attended an office visit and the doctor's notes indicate that Claimant had completed physical therapy in August 2012 for a history of lumbar degenerative disc disease with radicular symptoms. Claimant reported pain in the back that radiated down his left leg into his calf, with no bowel or bladder dysfunction. Claimant reported that a pain clinic had prescribed gabapentin for treatment which helped for short period but not when the pain became severe. The doctor noted that Claimant had a positive straight leg raise in sitting and supine position. However, his gait was normal and his reflexes were active and equal.

On July 19, 2013, a doctor who was not a treating source examined Claimant and completed a medical examination report (DHS-49). He listed Claimant's current diagnoses and chief complains as hypertension, high cholesterol, and herniated discs at L-5 and S-1 with lower left extremity radiculopathy. The doctor noted that Claimant walked with a limp on the left side, that he had lower back pain on the left side and that he used a cane and, at home, a back brace. The doctor indicated that Claimant could lift up to 10 pounds occasionally (for 1/3 of an 8-hour day) and placed no restrictions on the use of his hands or arms or his feet or legs. He indicated that Claimant could sit less than 6 hours in an 8-hour workday. He concluded that Claimant's condition was stable.

On August 26, 2013, a consulting physician examined Claimant and prepared an examination report in connection with a request by the Social Security Administration. The consulting doctor reported that Claimant did not use any assistive device at the exam. The doctor noted no evidence of focal muscle atrophy in the right or left upper or lower extremities and full range of motion in all extremities. However, Claimant had decreased and painful range of motion of the lumbar spine. The doctor indicated that Claimant's endurance to sit was 15 minutes, to stand was 15 minutes and to walk was 15 minutes. Claimant was taking neurotin, naproxen, Vicodin, flexeril, and oxycodone. He reported to the doctor that he had treated with oral medications, chiropractic adjustments and physical therapy but nothing helped.

The doctor concluded in the August 26, 2013 exam that Claimant was able to ambulate without a cane, his gait was normal, and there were no physical limitations to sitting, standing or walking or for bending, stooping, carrying, pushing and pulling. The doctor identified no limitations in Claimant's range of motion except with respect to the lumbar spine where his pain limited his flexion to 45 degrees (on a 0 to 90 scale), his extension to 20 degrees (on a 0 to 25 scale), his right lateral flexion to 20 degrees (on a scale of 0 to 25), and his left lateral flexion to 20 degrees (on a 0 to 25 scale). The supplemental report indicated that Claimant was able to bend, stoop, carry and squat with lower back pain. Claimant's straight leg raise in the seated position was 90 degrees for both legs, with no lower back pain noted; it was not tested in the supine position.

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On January 28, 2014, Claimant had another MRI of his lumbar spine. The reading physician reported that the MRI showed showed multilevel moderate degree of degenerative findings, the most prominent being the asymmetric bulge and lateral herniation on the L5-S1. The doctor noted that the left lateral herniation extended into the left neural foramen and, along with moderate left facet hypertrophy, caused severe left neural foraminal stenosis and likely impinged the left SI nerve root within the lateral recess. There was also moderate right neural foraminal stenosis noted. The examiner compared the MRI results to those of a January 3, 2013 MRI, which he had previously read, and commented that that there was no significant change.

In consideration of the de minimis standard necessary to establish a severe impairment under step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments to the spine that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under step 2, and the analysis will proceed to step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The evidence shows diagnosis of, and treatment for, chronic back pain and lower left extremity pain. Although Claimant also alleged high blood pressure and headaches, there is no medical diagnostic evidence in the record to establish that these symptoms satisfy or meet the equivalence of a listing. Further, Claimant's vision issues were addressed with corrective lenses and are therefore not severe impairments.

Based on the objective medical evidence presented concerning the chronic back pain issue, the applicability of Listing 1.00 concerning the musculoskeletal system, specifically Listing 1.04 (disorders of the spine) was reviewed.

An individual alleging degenerative disc disease meets a Listing under 1.04 if the condition involves compromise of a nerve root (including the cauda equine) or the spinal cord with either (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) or (B) spinal arachnoiditis, or (C) lumbar spinal stenosis resulting in pseudoclaudication established by findings on appropriate medically acceptable

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imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

In this case, Claimant's January 3, 2013 and January 28, 2014 MRIs both showed impingement of the left L5 and left S1 nerve roots. Although the MRI establishes a compromise of the nerve root, the objective medical evidence fails to establish the severity to satisfy the other required elements under (A), (B) or (C) necessary to establish a disability under Listing 1.04.

Listing 11.00 (neurological), specifically 11.08 (spinal cord or nerve root lesions due to any cause), was also considered. However, the evidence presented did not establish the significant and persistent disorganization of motor function in two extremities to the degree necessary to meet a listing under 11.08. See Listing 11.04B.

Therefore, Claimant's chronic back pain and associated lower left extremity pain does not meet, and is not equal to, the required level of severity of a listing to be considered as disabling without further consideration.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under step 3, before proceeding to step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants 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).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s)

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and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

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.

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. 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. If someone can do light work, . . . he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

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, . . . he or she can also do sedentary and light work.

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, . . . he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, . . . he or she can also do heavy, medium, light, and sedentary work. 20 CFR 416.967.

In this case, Claimant suffers from chronic back pain and lower left extremity pain. Claimant testified that he has pain that radiates from his lower back to the side of his hip and down his left leg to his foot and that he experienced numbness and tingling in his leg. He stated that the pain and numbness in his leg made him unable to sit for more than 20 minutes at a time and then he had to stand. While he was able to stand, he felt unsteady, and in the past, he had tipped over or his legs had buckled under him. He testified that he was unable to cook and clean because of the stress on his back. He did not have car but testified that he would not drive because his leg locked. He used a chair in the shower and occasionally needed assistance if his leg stiffened, which

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happened once or twice a week. Claimant also testified he had difficulties bending or squatting because of the pain in his lower back. He also experienced right shoulder pain because he often laid on his right side to avoid lying on his left side. He admitted that he could lift items but that he felt a tugging at his back.

Claimant testified that he took various drugs for treatment, including oxycodin, Vicodin, valium, naproxen, and Percocet. The medications did not help, and they had side effects including causing nausea and dizziness. Claimant testified that he did not have a cane because he had no primary care physician to prescribe one and no money to purchase one. He added, however, that he used his mother's cane when he was at her house. He had a back brace, but it did not help because of the curvature in his spine. He testified that he had participated in physical therapy and chiropractic treatment but neither helped. He had been recommended for surgery.

The July 19, 2013 medical examination report concluded that Claimant could lift up to 10 pounds occasionally (for 1/3 of an 8-hour day) and had no restrictions on the use of either his lower or upper extremities. The doctor restricted Claimant to sitting less than 6 hours in an 8-hour workday and, while the Department's form makes the standing and sitting restrictions unclear, the doctor did limit Claimant at a minimum from standing and/or walking not more than 2 hours in an 8-hour workday. The doctor also noted that Claimant had a left side limp and used a cane.

The August 26, 2013 consultative examination showed that Claimant had decreased and painful range of motion of the lumbar spine. The doctor concluded that Claimant was able to ambulate without a cane, his gait was normal, and there were no physical limitations to sitting, standing or walking or for bending, stooping, carrying, pushing and pulling. However, the doctor identified Claimant's endurance to sit as 15 minutes, to stand as 15 minutes and to walk as 15 minutes. While he identified no limitations in Claimant's range of motion in his extremities, he indicated that Claimant's pain limited the motion of his lumbar spine as follows: flexion to 45 degrees (on a 0 to 90 scale), extension to 20 degrees (on a 0 to 25 scale), right lateral flexion to 20 degrees (on a scale of 0 to 25), and left lateral flexion to 20 degrees (on a 0 to 25 scale). He also noted that Claimant experienced lower back pain when he bent, stooped, carried or squatted. Claimant's straight leg raise in the seated position was 90 degrees for both legs, with no lower back pain noted; it was not tested in the supine position.

Claimant's physical examination reports put Claimant as capable of sedentary work. However, Claimant testified that the exams conducted on July 19, 2013 and August 26, 2013 were of limited duration; while he was asked to do bending exercises at the August 26, 2013 exam, there was no real examination conducted at the July 19, 2013 examination. Claimant explained that he had no primary care physician, usually using emergency rooms for issues, and the July 19, 2013 exam was a state-ordered exam. It is noted that there were internal inconsistencies in the August 26, 2013, consulting

exam which concluded that Claimant was able to bend, stoop, carry, push and pull but showed on the supplemental report that Claimant experienced lower back pain when he would bend, stoop, carry and squat, pain that was consistent with his testimony at the hearing. The consulting examiner also noted at the beginning of his report that Claimant's endurance to sit, stand and walk was 15 minutes. The doctor who completed the DHS-49 only examined Claimant the day he completed the form. Although he did not identify any restrictions in Claimant's use of his hands/arms or feet/legs, he did state that Claimant was could not sit 6 hours in an 8-hour day. Because of the manner in which the Department's form is written, it is not clear what restrictions the doctor identified concerning Claimant's ability to stand. Reading the form in the light most favorable to Claimant shows that the doctor limited Claimant's ability to stand or walk to less than 2 hours in an 8-hour workday. Both consulting exams noted that Claimant experienced lower back pain on the left side. This is consistent with Claimant's testimony of his pain and with the MRI results, which showed an asymmetric bulge and lateral herniation on the L5-S1 that extended into the left neural foramen and caused severe left neural foraminal stenosis.

Claimant's testimony concerning his pain and limitations, the MRI results, and the consultative exams, when considered in light of their internal inconsistencies and Claimant's testimony concerning their limited duration, establish that Claimant has the RFC to perform work activities categorized as less than sedentary. Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

The fourth step in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). 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). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. 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).

As determined in the RFC analysis above, Claimant is limited to less than sedentary work activities. Claimant's work history in the 15 years prior to the application consists of work as a health aide (semi-skilled, medium), a fast food line worker (unskilled, medium), a light industrial assembly line worker (unskilled, light), and assistant loan officer (semi-skilled, sedentary). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at step 4 and the assessment continues to step 5.

Step 5

In step 5, an assessment of Claimant's RFC 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 this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain 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). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

In this case, as discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical and mental demands required to perform less than sedentary work. At the time of hearing, the Claimant was 34 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant has some transferrable work skills. However, he is not a high school graduate. After review of the entire record and in consideration of Claimant's age, education, work experience, and RFC, Claimant is found disabled at step 5.

A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program. BEM 261 (July 2013), p. 2.

In this case, Claimant is found disabled for purposes of the MA-P program and, therefore, disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, the Department's determination is REVERSED.

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THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Process Claimant's July 1, 2013, MA-P and SDA application to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;
2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;
3. Review Claimant's continued eligibility in June 2015.


Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 16, 2014

Date Mailed: May 16, 2014

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.

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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

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cc:

