

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

IN THE MATTER OF:



Reg. No.: 201368413
Issue No.: 2009
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. 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 Department to obtain additional records. After the period for obtaining the records lapsed, the Department notified the undersigned that Claimant failed to cooperate in providing information concerning her doctor necessary for it to comply with the interim order. This matter is now considered by the undersigned for a final determination based on the medical record previously admitted into evidence.

ISSUE

Whether the Department properly determined 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:

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1. On September 17, 2012, Claimant submitted an application for public assistance seeking MA-P and SDA benefits.
2. On August 7, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On August 29, 2013, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On September 9, 2013, the Department received Claimant's timely written request for hearing.
5. On October 28, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled. (Exhibit 2)
6. Claimant alleged physical disabling impairments due to arthritis, degenerative disc disease, hypertension, seizures, migraines, and neuropathy.
7. At the time of hearing, Claimant was [REDACTED] years old with an [REDACTED], birth date; she was [REDACTED]" in height and weighed [REDACTED] pounds.
8. Claimant is a high school graduate with some college and an employment history of work as part-time teacher's assistant and a seasonal customer service representative.
9. 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).

A disabled person is eligible for MA-P and SDA. BEM 105 (January 2014), p. 1; BEM 260 (July 2013), p. 1; 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 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 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 (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 considered. 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 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 states 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). 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 v Bowen*, 880 F2d 860, 862 (CA 6, 1988).

Basic work activities means 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* at 862. 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).

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 disability due to arthritis, degenerative disc disease, diabetes, hypertension, seizures, migraines, and neuropathy.

On February 15, 2012, Claimant was referred to outpatient physical therapy to aid in decreasing lower back pain and improving daily functional activities. The therapist noted that Claimant had limited mobility throughout the spine and bilateral hips with hypersensitivity to palpation to the lumbar paraspinals and thoracic paraspinals with slow cadence with ambulation and decreased core strength in bilateral lower extremities.

An August 21, 2012, brain MRI showed that Claimant had no focal brain parenchymal abnormality, no intra-axial hemorrhage or midline shift or hydrocephalus, no abnormal signal to suggest the presence of an acute stroke, and no enhancing lesion.

Following an August 29, 2012 exam, Claimant's physician, who had treated her since September 16, 2009, completed a DHS-49, Medical Examination Report, listing Claimant's diagnosis as diabetes mellitus and headaches and concluded that Claimant's condition was deteriorating.

On August 29, 2012, after leaving her doctor's office, Claimant unexpectedly fell, apparently after passing out, and was transported by ambulance to the hospital and hospitalized from August 29, 2012 to August 31, 2012. An x-ray of Claimant's hand taken on August 29, 2012 following the fall showed no evidence of acute fracture or dislocation. An MRI of Claimant's cervical, thoracic, and lumbar spine, with and without contrast, was performed on August 30, 2012. The MRI showed that the alignment of Claimant's thoracic spine was within normal limits and that she had mild multilevel degenerative changes in the lumbar spine. The MRI revealed multilevel degenerative changes of the cervical spine with multilevel disc herniation, particularly at C2-C3, which showed a right posterolateral disc protrusion at approximately 6-7 o'clock resulting in severe compression of the right side of the spinal cord. It was also noted that Claimant's uterus was enlarged with a 3.2 cm subserosal fibroid extending from the left uterine fundus and 3.1 cm myometrial fibroid within the uterine body. Claimant's discharge showed a primary diagnosis of cervical cord compression and identified her condition as good at discharge.

Claimant participated in a consultative internal medicine evaluation on April 26, 2013. The report from the exam noted that Claimant had a syncopal episode on August 29, 2012 resulting in her passing out and being transported by ambulance to the hospital where an MRI of the cervical spine showed a possible spinal cord compression at the cervical cord level. Claimant complained of neck pain, headaches, dizziness and pain in the arms, lower back and bilateral lower limbs but was very vague in describing her pain. The evaluator noted that Claimant did not use a walking aid and was able to get on and off the exam table without assistance. It was noted that she was wearing a hard

cervical collar during the exam. The report referenced the abnormal MRI showing spinal cord compression at C2-C3 level but noted that Claimant did not yet have any hyperreflexia or severe sensory deficits. The report states that Claimant's range of motion of the C-spine was not evaluated because she was wearing the hard collar and it was not removed by the evaluator. The remaining range of motion measurements were within normal limits other than the negative bilateral straight leg raise in the supine and seated position. The evaluator concluded that Claimant had no significant functional impairment, noting that she could sit, stand, walk, and lift 10 to 15 pounds without difficulty eight hours a day. The evaluator noted that Claimant had to wear the hard collar and should avoid bending, machinery operation, and heights.

A consultative adult mental status evaluation performed on April 26, 2013 indicated that Claimant was alleging disability due to memory problems arising from seizures and possibly a CVA (cerebrovascular accident, or stroke). In preparing the evaluation, the licensed psychologist who performed the evaluation reviewed a November 1, 2010 report indicating Claimant had reported migraines; the August 21, 2012 MRI of Claimant's brain showing no brain parenchymal abnormalities of the ventricles; and a January 3, 2013 report from Henry Ford System finding that Claimant had a large disc herniation in c2 and c3. Claimant informed the evaluator that she suffered migraines three times daily lasting for three hours. It was noted in the report that she appeared in a neck brace and used a four-prong cane. The consulting psychologist concluded that Claimant had adjustment disorder due to physical problems and determined her GAF score to be 55. He noted that Claimant was able to (i) acquire and use information, (ii) attend a task presented during the examination, (iii) interact appropriately with the examination and examiner, (iv) care for herself, ask questions and follow simple directions, and (v) understand, retain and follow simple instructions. He further noted, however, that she was generally restricted to performing simple, routine, repetitive, concrete, tangible tasks and would need a public guardian to manage her benefit funds.

In this case, in consideration of the de minimis standard necessary to establish a severe impairment, Claimant has presented sufficient medical evidence to establish severe impairments to the spine and mental impairments 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, upper back pain and adjustment disorder due to physical problems.

Based on the objective medical evidence presented, the applicability of Listing 1.00 concerning 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 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 spinal MRI showed a compromise of the nerve root. However, the objective medical evidence fails to establish the other required elements under (A), (B) or (C) necessary to establish a disability under Listing 1.04. Therefore, Claimant's physical condition does not meet, and is not equal to, the required level of severity of a listing under Listing 1.04 to be considered as disabling without further consideration.

Claimant's record also reflected mental disorders. The evaluation of disability on the basis of mental disorders requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, and consideration of whether these limitations have lasted or are expected to last for a continuous period of at least 12 months. Listing 12.00A.

Based on the record presented, Listing 12.00 concerning mental disorders, specifically Listing 12.04 (affective disorders) and Listing 12.08 (personality disorders), was evaluated. To establish a disability under Listings 12.04 or 12.08, there must be marked restrictions and/or difficulties in the individual's activities of daily living, ability to maintain social functioning, or ability to maintain social function or concentration, persistence or pace; or repeated episodes of decompensation, each of extended duration. In the April 26, 2013 consultative adult mental status evaluation, the consulting doctor concluded that Claimant was able to perform, acquire, and use information; attend a task presented during the examination; interact appropriately with the examination and examiner; care for herself, ask questions and follow simple directions; and understand, retain and follow simple instructions. Because there were no significant limitations imposed on Claimant due to her mental condition, the medical record was insufficient to satisfy either Listing 12.04 or Listing 12.06. Accordingly, Claimant cannot be found disabled at Step 3 based on her mental condition.

Claimant also alleged a disability based on arthritis, hypertension, seizures, migraines and neuropathy. The medical evidence presented was reviewed but fails to support a finding that any of these conditions meet, or equal, the severity of a Listing. Because Claimant's physical and mental conditions are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under step 3 and the analysis continues to step 4.

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). If an individual has the RFC to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv).

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 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, non-exertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (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.

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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.

When an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands (i.e., difficulty functioning due to nervousness, anxiety 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 such as intolerance to dust or fumes; or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching), the individual is considered to have only non-exertional limitations or restrictions. 20 CFR 416.969a(a) and (c). 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.*

When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide

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the disability determination unless there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Claimant alleged both exertional and nonexertional limitations resulting from her condition. Claimant's back MRI established that there was a cervical cord compression and multilevel disc herniation and a right posterolateral disc protrusion at C2-C3. In the April 26, 2013, physical consultation, the examining doctor concluded that Claimant could sit, stand, walk and lift 10 to 15 pounds of weight without difficulty eight hours a day. The doctor conducted a range of motion assessment and noted that Claimant had limitations in her ability to bend and stomp but no other limitations; she acknowledged that Claimant was wearing a hard collar and, as a result, she did not complete any range of motion assessment concerning Claimant's cervical spine. In finding that Claimant had no significant functional impairment, she added that Claimant would have to avoid bending and would be required to wear the hard collar. The doctor noted no limp or use of cane.

The consulting physician's credibility is called into question by the fact that Claimant participated in a mental evaluation the same day as the physical consultation, and the psychologist who conducted the hearing noted that Claimant came in using a four-prong cane. Claimant's mental evaluation showed a diagnosis of adjustment disorder due to physical program and resulting in a GAF score of 55. The evaluator concluded that Claimant was able to understand, retain and follow simple instructions but was generally restricted to performing simple, routine, repetitive, concrete, tangible tasks and would need a public guardian to manage her benefit funds.

At the hearing, Claimant appeared in a hard neck brace and testified that her primary issue was pain in her neck, back and head. She testified that the brace helped keep her neck in place and minimized her pain. She also complained of pain in her left leg and both hands and arms, with weakness in her left leg. As a result of her pain, she testified that she had difficulty walking and could only walk a half block and could only stand for a half-hour before she would have to sit. She could not bend or squat. She had difficulties lifting items because of the weakness in her hand. She lived alone, but her daughter would do her cooking, cleaning, shopping and laundry, although she was able to fold laundry. She could dress herself. Claimant also complained of daily migraines lasting two hours at a time, high blood pressure, shortness of breath, and problems with her memory. Claimant testified that prescribed medication did not diminish her pain.

Based on the evidence presented, Claimant's nonexertional limitations restricted her to performing simple, routine, repetitive, concrete tangible tasks. The results of the MRI, Claimant's physical therapy history from March 13, 2012 showing restrictions in her mobility, the questionable conclusions of the physical consultation and Claimant's testimony, establish that Claimant maintains the physical and mental capacity to

perform sedentary work as defined by 20 CFR 416.967(a). 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 at step 4. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to no more than sedentary work activities. Claimant's work history in the 15 years prior to the application consists of work as a teacher's assistant at a day care, a position that required squatting (unskilled, light). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. While Claimant also testified that she worked as a customer service representative, she added that this was a seasonal, part-time job. Because it did not result in substantial gainful activity, it is not past relevant work. Based on the evidence presented, 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 the 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). 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, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as

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defined in 20 CFR 416.967(a). Claimant's limited work history and the restriction to performing simple, routine, repetitive, concrete, tangible tasks render her skills *not* transferable. At the time of hearing, the Claimant was 48 years old and, thus, considered to be a younger individual for MA-P purposes. The Claimant is a high school graduate with some college. Accordingly, after review of the entire record and in consideration of Claimant's age, education, work experience, RFC, and using the Medical-Vocational Guidelines (20 CFR 404, Subpart P, Appendix II) as a guide after finding no contradiction with Claimant's non-exertional limitations, Claimant is found **not** disabled at step 5.

A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Social Security disability standards for at least ninety days. 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 **not** disabled for purposes of the MA-P program and, therefore, **not** 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 **not** disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, It is ORDERED that the Department's determination is AFFIRMED.


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

Date Signed: April 23, 2014

Date Mailed: April 23, 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.

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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

ACE/tlf

cc:

