

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-005507
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: October 08, 2014
County: MACOMB- 20 (WARREN)

ADMINISTRATIVE LAW JUDGE: Lynn Ferris

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 October 8, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. The Claimant's Authorized Hearing Representative, (AHR), [REDACTED], also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator, and [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA) and/or 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 November 12, 2013, Claimant applied for SDA and retro SDA to August 2013.
2. On May 5, 2014, the Medical Review Team denied Claimant's request.
3. The Department sent the Claimant the Notice of Case Action dated May 14, 2014 denying the Claimant's SDA application.
4. On, May 23, 2014, Claimant submitted to the Department a timely hearing request.

5. An Interim Order was issued on October 8, 2014 and extended the record for 45 days. The Department was ordered to obtain treatment records from the Claimant's treating podiatrist beginning October 2013, ongoing. The treatment records were not received and it is unclear if the records were sought by the Department.
6. Claimant at the time of the hearing was 35 years old with a birth date of [REDACTED]. Claimant's height was 6'-1" and weighed 265 pounds. The Claimant is obese, BMI 35.
7. Claimant completed the high school and attended college for two years. The Claimant does not have a college degree.
8. Claimant's prior work experience includes employment working in a donut shop as a baker and a factory auto assembly job building trucks. The work required standing for eight hours and required lifting of at least 10 pounds and occasionally the heaviest weight of 60 pounds. The Claimant last worked in October 2013, as a private contractor performing quality control and inspection work for seat covers.
9. The Claimant has alleged mental disabling impairments which include bi-polar disorder and major depressive disorder severe without psychotic features. At the time of the hearing, the Claimant was receiving treatment.
10. Claimant alleges physical disabling impairments due to diabetes mellitus II, uncontrolled, peripheral neuropathy in hands and feet, Gerd, hyperlipidemia, hypertension, peripheral vascular disease, polyneuropathy and diabetes type II, with left foot amputation in October 2013. At the time of the hearing, the Claimant was in a wheelchair and using a walker (one year post amputation).
11. Claimant's impairments have lasted or are expected to last for 12 months duration or more.

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 BAM, BEM, and RFT. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal 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.

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

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. 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.

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 symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

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).

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, Appendix 1, 12.00(C).

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

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.

Pursuant to 20 CFR 416.920, a five-step sequential evaluation process is used to determine disability. An individual's current work activity, the severity of the impairment, the residual functional capacity, past work, age, education and work experience are evaluated. If an individual is found disabled or not disabled at any point, no further review is made.

The first step is to determine if an individual is working and if that work is "substantial gainful activity" (SGA). If the work is SGA, an individual is not considered disabled regardless of medical condition, age or other vocational factors. 20 CFR 416.920(b).

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of 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; 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/she is not disabled. If the Claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the Claimant's residual functional capacity. 20 CFR 404.1520(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, the trier must consider all of the Claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the Claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed as (either the Claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the Claimant has the residual functional capacity to do his/her past relevant work, then

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 step.

In the fifth step, an individual's residual functional capacity is considered in determining whether disability exists. An individual's age, education, work experience and skills are used to evaluate whether an individual has the residual functional capacity to perform work despite limitations. 20 CFR 416.920(e).

Claimant alleges physical disabling impairments due to hyperlipidemia, hypertension, peripheral vascular disease, polyneuropathy, diabetes type II, with left foot amputation due to gangrene.

Claimant has alleged mental disabling impairments, including bipolar disorder and major depressive disorder, severe.

A summary of the Claimant's medical evidence presented at the hearing and the new evidence presented follows.

An earlier medical needs form completed by the Claimant's treating Doctor noted a diagnosis of hypertension, diabetes type II, arrhythmia and neuropathy. This was prior to the Claimant's foot amputation. At that time restrictions were imposed, noting the Claimant could not stand more than two hours and had numbness and tingling in the hands and feet. The medical needs evaluation noted that the diagnosis would continue for the Claimant's lifetime. (2012).

A medical examination report was completed in October 2013. At the time the diagnosis was left foot gas gangrene, foot amputation, sepsis and diabetes mellitus uncontrolled with acute blood loss resulting in anemia and hypertension. On the date of the exam the cardiovascular results indicated tachycardia rhythm. Musculoskeletal was noted as foot pain due to amputation.

On October 25, 2013 the Claimant was seen in the hospital due to osteomyelitis, foot pain, and open sores. X-rays of the left foot demonstrated extensive soft tissue air within the toes extending along the dorsum of the foot to the level of the ankle. The examination indicated no periostitis or radiographic evidence of osteomyelitis.

Claimant complained of left foot pain and swelling with lesions for two weeks, which has worsened over the past three days. A sore began as a blister two weeks ago and was not noticed at the time. The Claimant did not feel the blister or notice any pain until he saw blood in his shoes due to his peripheral neuropathy, secondary to diabetes in his bi-lateral feet. The pain at the time of the examination was 9/10, and radiated up to his left ankle; swelling in the left ankle was also noted. The Claimant admitted to non-compliance with medications likely due to lack of medical insurance.

A Preliminary Report regarding the Claimant was completed on October 31, 2013, when the Claimant was seen for fever, and noted left lower extremity foot and ankle swelling with pain. Shortness of breath on exertion and at rest with cough was also noted, loss of appetite with occasional nausea and vomiting, and lesions wounds and ulcers were noted on the left foot and ankle. The exam of the left foot found wounds in the left foot planter great toe pad and the dorsal aspect of the foot midline, both showing deep ulcerations as well as a bulla on the dorsum of the foot, which is purulent and malodorous. The left foot also had purple discoloration on the toes through the ankle. The impression was left foot ulcer and bulla wounds. The wounds were likely secondary to poorly controlled diabetes mellitus, as well as blister formation. The Claimant at the time was on antibiotics. Diabetes mellitus, and non-insulin-dependent type II, likely poorly controlled. Patient states he is noncompliant and takes metformin from his sister for maintenance of his diabetes. He states he has no primary care physician to manage his blood glucose. Hypokalemia likely secondary to renal loss and secondary to hyperglycemia. Sepsis was noted on admission. Micro cystic hyperchromic anemia was also noted. While hospitalized, Claimant was on an insulin drip secondary to hyperglycemia. Obesity class one was noted. Based on these impressions, Claimant was admitted to the hospital. The Claimant had his left foot amputated on October 29, 2013, due to gangrene necrosis of skin in soft tissues extending into underlying bone and skin.

An examination for deep vein thrombosis of the lower extremity was performed on October 28, 2013. The impression was no evidence of lower extremity DVT bilaterally, from the level of the inguinal ligaments down through the popliteal veins. The impression was abnormal lower extremity, arterial Doppler study for both right and left extremities.

A final report was completed on August 12, 2013, due to a consultation regarding chest pain. At the time he was seen, the patient was vomiting for two weeks with sharp pain occurring after vomiting. He was unable to keep food down. The report notes that patient does not take his anti-hypertensives or diabetic medications due to lack of insurance. An x-ray of the abdomen and chest were performed which noted no specific bowel gas pattern or evidence of intestinal obstruction. The heart is stable in size and the lungs are grossly clear without obvious focal airspace consolidation or large plural effusions. The impression was no evidence of free intraperitoneal air or definite bowel obstruction. No definite acute cardiopulmonary disease.

A medical examination report was completed on January 13, 2014 by the Claimant's Family Medicine Doctor. At the time of the exam, the diagnosis was diabetes mellitus, hypertension, left diabetic foot amputation, Gerd and anemia. The Claimant's weight was 239 pounds and he was 6 feet 1 ½ inches in height. At the time of the exam, the left foot amputation was noted. At the time, limitations were imposed and were expected to last more than 90 days. The Claimant could lift no weight. Claimant could use neither foot to operate foot or leg controls, and use neither hand nor arm on either side for

operation of grasping, reaching, pushing, pulling, and fine stipulation. At the time, assistance in the home was recommended for completion of activities of daily living.

A Medical Examination Report was completed on October 13, 2014, by the Claimant's long-term care Doctor. The diagnosis was Gerd, hyperlipidemia, hypertension, peripheral vascular disease, polyneuropathy and diabetes type II. The Doctor evaluated the Claimant as being in stable condition and imposed limitations which were expected to last more than 90 days. Claimant was restricted from lifting any weight and was unable to perform fine manipulating with either hand or use foot/leg controls while operating equipment. The Doctor also noted that the Claimant needed extensive assistance with his activities of daily living, and also noted mental limitations including sustained concentration and social interaction

The Claimant has also alleged mental impairments due to anxiety and depression. The Claimant testified credibly to having crying spells three times per day. The Claimant's appetite was affected by his mental condition and he has also short-term memory problems and concentration problems due to his mind racing. The Claimant does not go out. The Claimant's witness also credibly testified that this is a total switch in behavior and mood since Claimant's serious health problems arose.

The Claimant began treatment in June 2014, seeing a therapist two times a month and a psychiatrist once a month. The diagnosis at the time was anxiety and depression.

The Claimant's medical records and evaluations from the Claimant's mental health care provider, [REDACTED], were reviewed. The records indicate that the Claimant was motivated for treatment and wished to adjust to his handicap. At the time of the assessment meeting, the Claimant was in a wheelchair.

A Mental Residual Functional Capacity assessment was completed by the Claimant's Doctor at New Oakland, on October 14, 2014. The Claimant was evaluated as moderately limited in his ability to understand and remember detailed instructions. As regards sustained concentration and persistence, the Claimant was moderately limited in the ability to carry out simple one and two-step instructions, ability to carry out detailed instructions and ability to maintain attention and concentration for extended periods. In the same category, the Claimant was deemed to be markedly limited in the ability to perform activities within a schedule, maintain regular attendance, and function within customary tolerances. The Claimant was also markedly limited in his ability to sustain an ordinary routine without supervision. The Claimant was not significantly limited in his ability to work in coordination with or proximity to others without being distracted by them and his ability to make simple work related decisions. The Claimant was moderately limited in his ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms, and to perform at a consistent pace without an unreasonable number of rest periods. The psychiatric evaluation was based on a meeting where the Claimant was interviewed. The interview notes indicate there was a history of chronic mood episodes, with an initial onset in

2003 due to an episode of depression, triggered by loss of a child. Claimant was noted as reporting feeling frequently depressed, with crying episodes, isolating himself and not wishing to do things or sleeping well. During the interview, the Claimant described a history of symptoms concerning bipolar disorder, including rapid mood swings from elevated, to angry, to sad, racing thoughts, reduced need for sleep, overly talkative, past reckless/impulsive behaviors (such as driving 120 mph on the freeway), and bursts of energy.

A second evaluation was performed by [REDACTED] at which time the Claimant was given a GAF score of 50 and was diagnosed with major depressive disorder, recurrent, severe without psychosis. With respect to social interaction, the Claimant was moderately limited in his ability to accept instructions and respond appropriately to criticism of supervisors. The Claimant was moderately limited in his ability to get along with coworkers or peers without distracting them or exhibiting behavioral extremes. There were no restrictions with regard to the Claimant's ability to interact appropriately with the general public and to ask simple questions, request assistance, maintain socially appropriate behavior, and to adhere to basic standards of neatness and cleanliness. With respect to adaptation, the Claimant was markedly limited in the ability to respond to change in work setting, ability to travel in unfamiliar places, use public transportation, the ability to set realistic goals, or make plans independently of others.

The Claimant was evaluated by his psychiatrist on July 16, 2014, and was given a diagnosis of bipolar disorder most recent episode depressed, severe. At the time of the evaluation, the Claimant's GAF score was 50. Frequent insomnia was also noted. The Claimant is presently prescribed medications for depression, which included Cymbalta and Trileptal for mood stabilization. The psychiatric evaluation noted decreased appetite.

The Claimant's mental status was also updated by the [REDACTED] on September 10, 2014. At that time, the Claimant was given a diagnosis of major depressive disorder, recurrent severe. The GAF score was 50. The Claimant is presenting with symptoms including mood swings, irritability, and feelings of hopelessness, helplessness and worthlessness. Claimant reports decreased sleep. He has a history of suicide attempts, most recently in February 2014. At the time, the Claimant had reported hearing voices for the past several weeks telling him to go ahead and take himself out.

The Claimant was seen September 30, 2014, at which time he requested to talk to his therapist and psychiatrist. Claimant reported that his crying spells came back and depression has been constant lately. Claimant reported having trouble getting motivated and gets anxiety about having to do things. Claimant has had panic attacks at night, reported having some agitation and many verbal conflicts which have escalated to physical conflicts with his fiancée in the past. Claimant reported he has not been sleeping well and has poor appetite. At the time, he denied any current suicidal

thoughts. The evaluation at that meeting was a diagnosis of major depressive disorder recurrent severe, cannabis abuse, and a GAF score of 50. At the time of the evaluation, the treatment plan included meeting biweekly with a therapist for a year in both an individual and group setting. The Claimant was to see a psychiatrist monthly, or as needed for medication management.

At the time of the hearing, the Claimant credibly testified that he was currently under treatment with his podiatrist for his right foot due to infection, and had been restricted and advised to stay off his right foot for six weeks. The medical records for this doctor were requested and were to be obtained by the Department, but were not provided. In addition, at the time of the hearing the Claimant was in a wheelchair and credibly testified that he could not use crutches, and was required to use a walker and a wheelchair. The Claimant could not climb stairs. The Claimant currently also uses a shower chair, cannot walk far as he is required to hop, and can sit 30-45 minutes, sitting sideways due to lower back pain after a fall. The Claimant cannot stand for any period of time and has poor balance. The Claimant still experiences pain in the left leg at the amputation site. Claimant credibly testified that he sleeps all day, has no motivation and cannot focus. He indicated he could no longer read due to lack of concentration.

Here, Claimant has satisfied requirements as set forth in steps one and two, as Claimant is not employed and has not worked since October 2013 when he had his foot amputated and other health issues involving his diabetes. Based upon the medical evidence presented, the Claimant's impairments have met the Step 2 severity requirements.

In addition, the Claimant's impairments have been examined in light of the listings and after a review of the evidence, the Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926 for Listing 4.11 Chronic Venous Insufficiency.

However, Listing 12.04 Affective Disorders and 12.06 Anxiety Related Disorders were also considered.

Listing 12.04 also requires the following symptoms and conditions be established. The required level of severity for this disorder is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or

- f. Feelings of guilt or worthlessness; or
- g. Difficulty concentrating or thinking; or
- h. Thoughts of suicide; or
- i. Hallucinations, delusions, or paranoid thinking.

A review of documented medical evidence and the Claimant's credible testimony with respect to his symptoms, establish that the Claimant has met at least four of the following found in 12.04 A, including sleep disturbance, difficulty concentrating or thinking, decreased energy, feelings of guilt or worthlessness and pervasive loss of interest in activities.

12.04 B requires:

AND,

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or
2. Marked difficulties in maintaining social functioning; or
3. Marked difficulties in maintaining concentration, persistence, or pace; or
4. Repeated episodes of decompensation, each of extended duration.

Here the Claimant demonstrated that on a daily basis he has extreme difficulty with his depression and cries at least 3 to 4 times per day. He also had marked limitations with regard to maintaining a schedule, being goal directed, responding to changes in the workplace, ability to travel in unfamiliar places and take public transportation, and ability to make independent plans and set goals. The Claimant's GAF score has not changed since his treatment and remains at 50 after two examinations by different evaluators.

Based upon the foregoing it is determined that Claimant does meet the requirements of Listing 12.04 or its medical equivalent and thus **Claimant is determined disabled at Step 3 with no further analysis required.**

Even though no further analysis is required, a brief review of vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

The fourth step of the analysis to be considered is whether the Claimant has the ability to perform work previously performed by the Claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the Claimant from doing past relevant work. In the present case, Claimant's prior work experience includes employment working in a donut shop as a baker and a factory auto assembly job building trucks. The work required standing for 8 hours, required lifting of at least 10 pounds and occasionally the heaviest weight of 60 pounds. The Claimant last worked in

October 2013, as a private contractor performing quality control and inspection work for seat covers. All these positions required Claimant to stand 7 hours a day. It is clear based upon the Claimant's current physical capabilities that he is no longer capable of standing all day and walking throughout a manufacturing plant as required by his previous jobs.

At the hearing, the Claimant credibly testified that he could no longer perform these jobs due to the standing, lifting and walking requirements of these jobs. The Claimant's work was unskilled and semi-skilled and is determined to be non-transferable. This prior work requires abilities and capabilities that based on the limitations presented, cannot be any longer achieved by the Claimant. Therefore, it is determined that the Claimant is no longer capable of past relevant work due to the standing requirements of his past work and his doctor's imposed lifting restrictions. Thus, a Step 5 analysis is required. 20 CFR 416.920(e).

In the final step of the analysis, the trier of fact must determine if the Claimant's impairment(s) prevent the Claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the Claimant's:

1. residual functional capacity defined simply as "what can you still do despite your limitations?" 20 CFR 416.945;
2. age, education, and work experience, 20 CFR 416.963-965; and
3. the kinds of work which exist in significant numbers in the national economy which the Claimant could perform despite his limitations. 20 CFR 416.966.

The residual functional capacity is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated. 20 CFR 416.945(a).

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.

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).

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At the time of hearing, the Claimant was 35 years old and thus is considered a person of younger age for MA-P purposes. The Claimant has a high school education and 2 years of college. Claimant has been restricted with limitations on standing and walking less than 2 hours in an 8-hour workday, no lifting or use of foot pedals due to diabetic neuropathy and cannot manipulate with either hand. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984).

While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

After a review of the entire record, including the Claimant's credible testimony, the credible testimony of Claimant's witness and AHR, the medical evidence presented, and the medical opinions of the Claimant's treating doctors, it is determined that the Claimant would be determined to be capable of only less than sedentary ability, as it is

determined that the total impact caused by the physical impairment suffered by the Claimant must be considered.

Deference was given by the undersigned to the Claimant's credible testimony and his current physical limitations, as well as the credible testimony of the Claimant's witness. As allowed by the regulations deference was afforded to the opinions and evaluations of the Claimant's treating doctor's consistent imposition of limitations. Therefore, after a review of the entire record, including the Claimant's testimony and the total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the Claimant's physical ability have a major impact on his ability to perform even basic work activities. Accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a). After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity, it is found that the Claimant is disabled for purposes of the SDA program at Step 5.

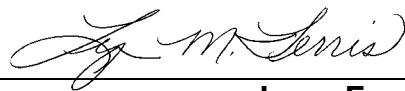
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled for SDA.

Accordingly, the Department's decision is hereby **REVERSED**

THE DEPARTMENT IS ORDERED TO INITIATE 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. The Department is ORDERED to initiate a review of the SDA application dated November 12, 2013 and retro application, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement for SDA benefits the Claimant is eligible to receive in accordance with Department policy.
3. A review of this case shall be set for December 2015.



Lynn Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 17, 2014
Date Mailed: December 17, 2014
LMF/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

