

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

**IN THE MATTER OF:**



Reg. No.: 14-001448  
Issue No.: 2009  
Case No.: [REDACTED]  
Hearing Date: August 13, 2014  
County: WAYNE-17

**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 three way telephone hearing was held on August 13, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant and [REDACTED], of L&S Associates, the Claimant's Authorized Hearing Representative also appeared. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payments Worker.

**ISSUE**

Whether the Department properly determined that Claimant is not "disabled" for purposes of the Medical Assistance (MA-P) program?

**FINDINGS OF FACT**

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

1. On November 23, 2013, Claimant applied for MA-P.
2. On January 25, 2014, the Medical Review Team denied Claimant's request.
3. The Department issued a Notice of Case Action dated February 4, 2014 denying the Claimant's MA-P application. Exhibit 1
4. On April 17, 2014, Claimant's AHR submitted to the Department a timely hearing request.

5. On June 26, 2014, the State Hearing Review Team (SHRT) found the Claimant not disabled and denied Claimant's request.
6. An Interim Order was issued on August 13, 2014 and additional medical evidence was received.
7. At the time of the hearing Claimant is [REDACTED] years old with a birth date of [REDACTED] r [REDACTED]
8. Claimant completed high school.
9. Claimant has employment experience as a newspaper deliveryman, driving his own car, and delivering newspapers door-to-door. The Claimant last worked in 2012.
10. Claimant alleges physical impairments due to HIV, pneumonia and shingles, as well as chronic lumbar pain and cervical pain due to an automobile accident in February 2014.
11. The Claimant has alleged mental disabling impairments, including depression, but has not received any treatment and was not receiving psychotropic drug therapy at the time of the hearing.
12. Claimant's limitations have lasted for 12 months 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.

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 (either as 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).

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. The Claimant is not currently engaging in substantial gainful activity and is not employed; thus, is not disqualified at Step 1.

The Claimant alleges physical disabling impairments due to HIV, pneumonia and shingles, as well as chronic lumbar pain and cervical pain due to an automobile accident in February 2014.

The Claimant alleges mental disabling impairments of depression with no psychiatric treatment, and was not taking any psychotropic drugs for depression at the time of the hearing.

A summary of the medical evidence presented follows.

The Claimant alleges physical disabling impairments due to HIV-positive infection with a 17-year history, with the date of diagnosis of January 1, 1996. The Claimant's most recent CD 4 count is 374. The Claimant was hospitalized in November 2013, with pneumonia and, thereafter, developed herpes zoster, (shingles) in 2014, with ongoing pain symptoms.

The Claimant was seen in the emergency room on December 25, 2013, due to weakness and was examined in the emergency room. The Claimant's AIDS status was noted. At the time of the examination, the Claimant appeared generally physically benign and was well appearing with a normal neurologic examination. The patient was discharged home in stable condition and was advised to follow up with this primary care physician.

The Claimant was seen on December 5, 2013, for an office visit due to pain problems. At that time, the history of present illness noted pneumonia with no cough, and doing better. The Claimant had been compliant with his HIV medications. At the time of the visit, the Claimant was clinically improved, and as Claimant was staying in a shelter, he was advised to follow up with the Ryan White Clinic. Claimant's pneumonia was better with no cough or fevers

The Claimant was seen on December 17, 2013 for an office visit due to HIV. At that time, the Claimant was not feeling well. At the time of the visit, an extensive evaluation was performed. The examiner noted that the Claimant had not been in care for approximately 12 years. At the time of the physical examination, the Claimant was noted as chronically ill appearing, and no other notes were made regarding his appearance. Claimant's assessment noted the fact that he was on medications for pneumonia.

On January 14, 2014, the Claimant was seen for his pneumonia. The last laboratory testing done in December 2013 noted the CD4 count was 638 and the VL was 3030.

The Claimant was seen for an office visit on January 14, 2014 for an HIV follow up. At that time he was noted as 100% compliant with his Atripla drug. The notes indicate that the Claimant was feeling better. The physical exam noted no abnormalities the assessment in plan was a new test was to be performed on April 14, 2014.

In February 2014, Claimant began having back problems after being involved in a motor vehicle accident. An MRI taken in April 2014, showed disc herniation at C6/7 and central disc herniation at L4/L5. A May 2014 office visit with his doctor notes back pain

radiating to the left hip. The physical examination shows decreased range of motion in the cervical spine and lumbar spine, with muscle spasm and tenderness in neck and lower back. Straight leg raising was positive at April 14, 2014 office visit with treating Doctor.

On March 11, 2014, the Claimant was seen for follow-up regarding his HIV. He did report pain at that time due to his back problems and noted in automobile accident had occurred on February 13, 2014. The exam notes that he was struck by an automobile in a hit-and-run accident and had neck and back pain, and flare-up of shingles pain.

A laboratory report was reported on January 21, 2014. The reference range for this test was 22-10 million copies/am L. The CD4 count was 374 cu mm and the CD 8 was 1678 cu mm. the CD4/CD8 ratio was 0.22.

The Claimant has difficulty obtaining his HAART medications due to lack of insurance, so is not fully compliant with his AIDS medications. The Claimant was seen by his infectious disease doctor for an office visit on June 10, 2014, at that time the CD4 and CD8 flow and HIV – 1 RNA

On March 17, 2014, the Claimant was reevaluated by his treating Doctor for his back and cervical problems. At that time, the Claimant was complaining about neck pain, and radiating pain from the lower back and the left hip. The musculoskeletal exam noted decreased range of motion in both cervical and lumbar spine, with muscle spasm and tenderness. The impression was lumbar sprain, left hip pain, neck sprain status post motor vehicle accidents and positive HIV. The Claimant was given pain medications and was prescribed physical therapy and given work disability, housework assistance and transportation assistance.

The Claimant was seen on May 12, 2014 for a re-evaluation by his then treating doctor for his lower back and neck area, due to pain resulting from a motor vehicle accident. The doctor notes that the test results showed that the patient has C-spine multiple level disc herniation, mainly at C6 – C7. The lumbar spine MRI showed disc herniation, mainly at L4 – L5. The doctor notes decreased range of motion in the C-spine in all spine area, with muscle spasm tenderness in neck and lower back, and the left hip area. The Claimant was advised to follow physical therapy for four more weeks; disability was prescribed with housework help, and transportation assistance.

An initial evaluation was performed on April 14, 2014, after a motor vehicle accident. At the time, the Claimant complained of cervical neck pain with a pain level of 10 out of 10. The Claimant also complained of radicular symptoms along with lumbar radiculopathy radiating to right foot. Noted numbness in toes. An x-ray of the left hip was negative for fracture. On examination, right-sided scabbing of the thoracic dermatomes due to shingles. The examining Doctor noted that there was tenderness to palpation of the cervical and lumbar spine. Range of motion on turning the head to the right and to the left reproduces the cervical pain. Some tenderness also noted with palpation of the left

superior aspect of the trapezius. Straight leg raising test is positive bilateral. The diagnosis and impression was cervical radiculopathy with strain, and lumbar strain with radiculopathy. A prescription for physical therapy was provided and the Claimant was deemed fully disabled.

Claimant was seen on March 17, 2014, for a re-evaluation of his neck and back injuries. At the time, the Claimant was undergoing physical therapy with pain medications. On examination, there was decreased range of motion in the cervical and lumbar spine area with muscle spasm and tenderness in the neck and lower back. The Claimant was deemed disabled, prescribed physical therapy, and the doctor found that the Claimant required assistance with housework and transportation.

An initial evaluation was performed on February 17, 2014, post motor vehicle accident. At the time of the examination, the doctor noted decreased range of motion in the lumbar spine area. There was pain noted in the cervical spine neck and lumbar lower back area. At the time, the impression was lumbar sprain, neck sprain, left hip pain and HIV status – positive. Claimant was prescribed physical therapy three times a week for four weeks, with household replacement services and transportation assistance to and from doctors' visits. The Claimant was prescribed pain medications.

An EMG/nerve conduction study was also performed and showed no evidence of myopathy, neuropathy or radiculopathy, and essentially normal examination to the bilateral back and legs. The date of the examination was August 18, 2014. Notwithstanding this study, the prescribing doctor referred the Claimant to physical therapy on the basis of the examination.

On July 8, 2014, a consultative examination was performed at the request of the Claimant's treating doctor for pain management of the Claimant's lumbar pain. At the time, a L4-L5 and sacral ala medial branch block with local anesthetic and steroid for diagnostic/therapeutic purposes.

An MRI of the cervical spine was performed on April 28, 2014. The impression after examination was multilevel disc herniation's greatest at C6-C7, that encroach the respective epidural spaces and it's C6-C7 neural foramina encroachment, particularly on the left.

An MRI of the lumbar spine was performed on April 28, 2014. The impression noted that a large broad – based central disc herniation L4-L5. The findings show that the herniation is 2.3 cm that encroaches on the anterior epidural space and with facile change the bilateral inferior nerve root recesses. There is no central canal stenosis however.

During the period after his automobile accident, the Claimant was given a disability note by his treating doctor through September 17, 2014, who evaluated him as requiring assistance with shopping, meals preparation, cooking and washing dishes, as well as

household cleaning. Driving was also noted, noting that due to physical disability and the pain medications which were prescribed, the doctor also prescribed eight weeks of physical therapy on July 23, 2014 for both the Claimant's lumbar and cervical spine. The physical therapy was scheduled for three times per week. The doctor also concluded that It was difficult/impossible/dangerous to operate a vehicle. The doctor also indicated the Claimant was not capable of working at that time.

The Claimant was seen for a consultative mental status evaluation on March 15, 2014. At the time of the examination, the Claimant was not on any medications for depression. The diagnosis at the time of the exam was major depressive disorder due to another medical condition, HIV. The prognosis/treatment noted that Claimant's condition even with intervention will continue to deteriorate. He should be encouraged to look at community and agency support systems for HIV patients. A medication review with his primary care physician should be done to determine whether he may need and/or benefit from psychotropic medications treating depression. Claimant was rated as capable of managing his benefits, the functional assessment noted that as regards ability to understand and remember simple instructions and complex instructions, the Claimant is not impaired. Claimant's ability to interact appropriately with others including public, supervisors and workers during an eight-hour workday is mildly impaired due to the fact that he is sleeping so much, and the progress of his HIV status. Additional capabilities that were also affected were his recent hospitalization (a sign of AIDS), noting that Claimant's ability to work a consistent job is moderately impaired.

After a review of the medical evidence, it is determined that the Claimant has met the severity requirement and de minimis standard of Step 2, as the evidence demonstrates that he has a serious impairment.

Listings 1.04 Disorders of the Spine, and 12.04 Affective Disorders (Depression) were reviewed in light of the Medical Evidence and it is determined that none of the listings were met. The MRI evidence did not clinically meet the requirements of the listing. Listing 12.04 was also not met as the Claimant was only mildly impaired in his functional limitations. Lastly Listing 14.08 **was reviewed it requires in relevant part the following requirements be met:**

***Human immunodeficiency virus (HIV) infection.*** With documentation as described in 14.00F and one of the following:

**A. Bacterial infections:**

1. Mycobacterial infection (for example, caused by *M. avium-intracellulare*, *M. kansasii*, or *M. tuberculosis*) at a site other than the lungs, skin, or cervical or hilar lymph nodes, or pulmonary tuberculosis resistant to treatment; or
2. Nocardiosis; or
3. *Salmonella* bacteremia, recurrent non-typhoid; or

4. Multiple or recurrent bacterial infections, including pelvic inflammatory disease, requiring hospitalization or intravenous antibiotic treatment three or more times in a 12-month period.

OR

**B. Fungal infections:**

1. Aspergillosis; or
2. Candidiasis involving the esophagus, trachea, bronchi, or lungs, or at a site other than the skin, urinary tract, intestinal tract, or oral or vulvovaginal mucous membranes; or
3. Coccidioidomycosis, at a site other than the lungs or lymph nodes; or
4. Cryptococcosis, at a site other than the lungs (for example, cryptococcal meningitis); or
5. Histoplasmosis, at a site other than the lungs or lymph nodes; or
6. Mucormycosis; or
7. *Pneumocystis* pneumonia or extrapulmonary *Pneumocystis* infection.

OR

**C. Protozoan or helminthic infections:**

1. Cryptosporidiosis, isosporiasis, or microsporidiosis, with diarrhea lasting for 1 month or longer; or
2. Strongyloidiasis, extra-intestinal; or
3. Toxoplasmosis of an organ other than the liver, spleen, or lymph nodes.

OR

**D. Viral infections:**

1. *Cytomegalovirus* disease (documented as described in 14.00F3b(ii)) at a site other than the liver, spleen or lymph nodes; or
2. Herpes simplex virus causing:
  - a. Mucocutaneous infection (for example, oral, genital, perianal) lasting for 1 month or longer; or

- b. Infection at a site other than the skin or mucous membranes (for example, bronchitis, pneumonitis, esophagitis, or encephalitis); or
  - c. Disseminated infection; or
3. Herpes zoster:
- a. Disseminated; or
  - b. With multidermatomal eruptions that are resistant to treatment; or
4. Progressive multifocal leukoencephalopathy.

OR

**E. Malignant neoplasms**

Although the Claimant did have pneumonia and herpes zoster (shingles), the medical evidence did not demonstrate that the severity of either of these conditions met the requirements of the listing.

At the hearing, the Claimant testified that he could only grocery shop with a motorized cart, and cannot perform laundry and vacuuming duties. Currently, the Claimant is still certified by his doctor as requiring household assistance, as well as transportation assistance. The Claimant credibly testified that he could stand approximately 10 minutes due to his low back pain, and could sit approximately 15 minutes for the same reason and due to his right foot pain. He does wear a back brace, which although not required, is prescribed as needed. The Claimant can walk only short distances due to back pain, cannot perform a squat and can bend forward, backward and sideways, only small amounts. The Claimant can shower and dress himself and tie his shoes. Currently, the Claimant has a pain level of 7 to 8 without medications. The pain medications that he takes do affect him and cause him to become extremely drowsy, sometimes causing him to sleep for 12 hours or more. The Claimant currently experiences left sided pain, and numbness in his left hip and numbness in his right foot. The Claimant testified that he could carry approximately 20 pounds.

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 past employment was as performing manual labor delivering newspapers door to door. Presently, the Claimant cannot drive due to the pain medications he is prescribed for his back and his physical condition. Although no DHS 49 was presented as requested by the Interim Order, the Claimant's treating doctor continues to disable him from work due to lumbar radiculopathy and cervical pain, and has prescribed a nerve block in the lumbar spine.

The Claimant described that the newspaper delivery work required him to assemble while standing the papers to be delivered and load up to 15 pounds worth of papers at a time. The work also required him to constantly get in and out of the car to deliver the papers to 225 customers. This Administrative Law Judge finds, based on the medical evidence that the Claimant is not capable of the physical activities required to perform any such position and cannot perform past relevant work, and 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 her 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 53 years of age and thus, will be considered to be closely approaching advanced age for MA-P purposes.

The Claimant has a high school grade education. Additionally, the Claimant's skills are unskilled and are non-transferable.

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). Individuals approaching advanced age (age 50-54) may be significantly limited in vocational adaptability if they are restricted to sedentary work. 20 CFR 416.963(d).

After a review of the entire record, including the Claimant's testimony and medical evidence presented, as well as the MRI results, it is determined that Claimant's impairments have a major effect on his ability to perform basic work activities. In addition, deference was given to the Claimant's treating doctor for his chronic lumbar

and cervical injuries and conditions, who has found that he cannot drive and needs assistance with some activities of daily living. In light of the foregoing, it is found that the Claimant maintains the residual functional capacity for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Based upon the foregoing review of the entire record using the Medical-Vocational Guidelines [20 CFR 404, Subpart P, Appendix II] as a guide, specifically Rule 201.12, it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the MA-P benefit program.

Accordingly, the Department's determination is 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 application dated November 23, 2013, if not done previously, to determine Claimant's non-medical eligibility.
2. A review of this case shall be set for October 2015.



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

Date Signed: **10/1/2014**

Date Mailed: **10/1/2014**

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 48909-07322

cc:

