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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-013797
Issue No.: 2009
Case No.: [redacted]
Hearing Date: November 24, 2014
County: Macomb-District 36

ADMINISTRATIVE LAW JUDGE: Alice 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, an in-person hearing was held on November 24, 2014, from Sterling Heights, Michigan. Participants on behalf of Claimant included Claimant and [redacted], Claimant's friend, who also assisted in translating. Claimant was represented by [redacted], hearing representative with [redacted]; Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included [redacted], Hearing Facilitator.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. Three interim orders were issued to allow the AHR to submit requested document. The records received were reviewed with those admitted at the hearing, and this matter is now before the undersigned for a final determination.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program.

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 February 26, 2014, Claimant submitted an application for public assistance seeking MA-P benefits with retroactive coverage to November 2013.

2. On June 27, 2014, the Medical Review Team (MRT) found Claimant not disabled.

3. On July 22, 2014, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.

4. On October 8, 2014, the Department received the AHR's timely written request for hearing.

5. Claimant alleged physical disabling impairment due to hypertrophic cardiomyopathy; back, neck and arm pain; and shortness of breath.

6. Claimant alleged mental disabling impairments due to depression and insomnia.

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 did not attend school in the United States. She can speak English, but her ability to read and write in English is limited.

9. Claimant has an employment history of work as a butcher's helper, cutting and wrapping meat.

10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-3. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) 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). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, federal regulations require that the trier-of-fact apply a five-step sequential evaluation process and consider the following:

(1) whether the individual is engaged in 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)(1) and (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 to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are 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 SGA, then the individual must be considered 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 for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a); see also *Salmi v Sec of Health and Human Services,* 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (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. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. A disability claim obviously lacking in medical merit may be dismissed. *Higgs v Bowen,* 880 F2d 860, 862 (CA 6, 1988). The severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 citing *Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985). However, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

In the present case, Claimant alleges physical disabling impairment due to hypertrophic cardiomyopathy; back, neck and arm pain; and shortness of breath and mental disabling impairment due to depression and insomnia. The medical evidence presented at the hearing, and in response to the interim orders, was reviewed and is summarized below.

In May 2013, Claimant went to the hospital with complaints of heavy vaginal bleeding and shortness of breath. It was noted that she had anemia due to acute blood loss due to vaginal bleeding and an intrauterine mass. Claimant had a vaginal myomectomy to address a prolapsing fibroid and abnormal uterine bleeding. (Exhibit 1, pp. 388-396.)

On July 18, 2013, Claimant's primary care physician wrote a letter indicating Claimant had the following medical conditions: severe aortic valve regurgitation; arthritis and disc disease of the cervical spine; arthritis of the knee, ankles and lumbar spine; and edema of the lower extremities secondary to venous stasis.

From November 15 2013 to November 17, 2013, Claimant, who has a history of hypertrophic cardiomyopathy with left ventricle outflow tract (LVOT) obstruction, was admitted to [redacted] with complaints of left arm pain and shortness of breath. Test results were negative for ischemia. A ventilation/perfusion lung scan (VQ) scan was negative, lower extremity doppler was negative, and CT dissection was negative. She was seen and cleared by neurology and cardiology (Exhibit 1, pp. 14, 333-356.) A November 15, 2013 x-ray of Claimant's lumbosacral spine was normal with subtle hyperdensities in the lower thoracic and upper lumber vertebral bodies (Exhibit 1, p. 351).

Claimant returned to the hospital on November 19, 2013 complaining of a stabbing chest pain radiating toward her back and shortness of breath. She was admitted and discharged on November 23, 2013. (Exhibit 1, pp. 358-387).

On December 5, 2013, Claimant's treating doctor completed a medical examination report (DHS-49) identifying Claimant's diagnoses as hypertension, asthma, uterine mass, osteoarthritis, hyperdensities in thoracolumbar spine, shortness of breath, lower extremity swelling, aortic stenosis, lower back pain, vertigo, GERD, and left ventricular hypertrophy. She indicated that Claimant's physical exam showed muscle strength of 4/5 in all extremities, 2+ lower extremity edema, bilateral wheezing and systolic murmurs. The doctor indicated that Claimant was in stable condition and had no mental or physical limitations. (Exhibit 1, pp. 322-323.)

On December 5, 2013, Claimant was admitted to [redacted] with complaints of left arm pain and shortness of breath. Past medical history showed diagnoses for back pain, shortness of breath, arthritis and mitral insufficiency. A cardiac MRT showed (i) subaortic membrane adjacent to the anterior mitral leaflet with opening on the septal side with orifice area of approximately 0.7 cm sq.; (ii) mild aortic valve stenosis; (iii) no other abnormalities (Exhibit 1, p. 39). On December 13, 2013, surgery was performed to resection obstructing congenital subaortic membrane; septal myomectomy; and reconstruct aortic valve with re-suspension of commissures and bovine pericardial sinotubular junction (Exhibit 1, pp. 57, 61-63). Claimant's anemia was noted to be at stable levels, and her deep vein thrombosis (DVT) prophylaxis was treated with heparin and her chronic back pain was treated with Vicodin. (Exhibit 1, p. 49.) She was discharged on February 19, 2013, with a discharge diagnosis of (i) congenital subaortic membrane causing left ventricular outflow obstruction (LVOTO); (ii) asymmetric septal hypertrophy causing additional LVOTO; (iii) chest pain secondary to above; and (iv) aortic valve insufficiency secondary to sinotubular junction effacement (Exhibit 1, pp. 113-114). A chest x-ray on December 18, 2013 showed hypoventilated lungs, mild

cardiomegaly, almost complete resolution of congestive changes, a small right effusion remaining, no pneumothorax (Exhibit 1, pp. 170-171). (Exhibit 1, pp. 14- 116.)

On March 4, 2014, Claimant went to the hospital complaining of abdominal pain. She was diagnosed with a gallbladder polyp. Although the attending physician wanted to admit her for further testing, Claimant declined and was discharged against medical advice. (Exhibit 1, pp. 281-305.)

On August 18, 2014, Claimant was referred by her primary care physician for MRIs of the lumbar spine, cervical spine and thoracic spine. The lumbar spine MRI showed (i) minimal degenerative changes at the lower thoracic and mid-lumbar disc levels, and mild to moderate degenerative changes at the lower lumbar disc level; minimal disc bulges at T1-T12, L1-L-2, L2-L3, and L3-L4; moderate diffuse disc bulge asymmetric to the left and posterior annular tear at L4-L5; mild central disc bulge and posterior annular tear at L5-S1; mild multilevel facet arthrosis; (ii) borderline spinal stenosis at L3-L4; moderate spinal stenosis and moderate left and mild to moderate right neural foraminal narrowing at L4-L5; borderline spinal stenosis and mild left neural foraminal narrowing at L5-S1; (iii) straightening of the normal lumbar lordosis, which might be related to muscle spasm; no spondylolisthesis or fracture. The cervical spine MRT showed (i) herniated discs at C3-C4 and C4-C5 and C5-C6; (ii) areas of small midline prominence of the disc at other levels; and (iii) diffuse enlargement of the thyroid gland. The thoracic spine MRI showed (i) small, focal, midline herniated disc at T7-T8, which encroaches on the subarachnoid space and minimally indents the midline of the thoracic spinal cord; (ii) very mild bulging of the disc at T10-T11; and (iii) multiple levels in the lower thoracic region.

On December 4, 2014, Claimant's primary care physician, who had treated Claimant since 2007, completed a medical examination report, DHS-49, identifying Claimant's current diagnoses and chief complaints as cervical and lumbar disc disease. In his physical examination of Claimant, the doctor indicated that Claimant's cardiovascular system was stable, that she had very painful range of motion of neck and lumbar spine with spasms, and her mental condition showed stress, anxiety and depression. The doctor identified the following limitations: (i) Claimant could frequently lift less than 10 pounds, occasionally lift 20 pounds, and never lift 25 pounds; (ii) she could not use her hands/arms for pushing or pulling; (iii) she could not use her feet/legs for operating foot or leg controls. The doctor did not identify any standing/walking or sitting restrictions or any mental limitations.

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe 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 as to whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The evidence shows diagnosis of, and treatment for chronic back, arm and neck pain and shortness of breath and depression. Her medical record also referenced GERD. Based on the objective medical evidence presented, Listings 1.00 (musculoskeletal system), particularly 1.02 (major dysfunction of a joint due to any cause) and 1.04 (disorders of the spine); 3.00 (respiratory system); 4.00 (cardiovascular system); 5.00 (digestive system); and 12.04 (affective disorders) were considered.

The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the above-referenced listings to be considered as disabling without further consideration. Because Claimant's physical impairments 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). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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

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

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, 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 (i.e., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case Claimant has alleged both physical and mental impairments.

With respect to her physical impairments, Claimant testified that she had back and neck pain, with continuous numbness that radiated down her left arm and leg. She also testified that upon exertion, she experienced shortness of breath and used her inhaler continuously. She stated that, because of her pain, she could walk only two minutes, could stand only two minutes, and could sit for only two to four minutes. She had difficulty using her left hand to grip and grasp. She could lift up to a gallon of milk but could not walk with it. To treat her pain, she took medication, used a belt for her back, and went to physical therapy but those remedies offered only short-term relief. She testified that she was referred for back surgery.

At home, Claimant lived with her husband and relied on family and neighbors to help with cooking and cleaning. She testified that she also needed assistance showering and dressing. She could drive short distances if someone helped her out of the car and could shop if she could move slowly or sit down. She had moved to the bottom floor of her complex so she would not have to take stairs. During the course of the hearing, Claimant stood up, and she appeared visibly in pain. Her friend testified that Claimant's physical condition had gotten worse and she had memory loss and crying spells.

Claimant's medical record showed that she had surgery in December 2013 to resection her congenital subaortic membrane and that her aortic valve was reconstructed. A December 18, 2013 chest x-ray showed hypoventilated lungs, mild cardiomegaly, almost complete resolution of congestive changes, a small right effusion remaining, and no pneumothorax. Claimant admitted at the hearing that her swelling had improved since her surgery although some swelling continued. The record does not support significant exertional limitations arising from any cardiac issues.

Claimant also alleged back, neck and arm pain. While a November 15, 2013 x-ray of Claimant's lumbosacral spine was normal with subtle hyperdensities in the lower thoracic and upper lumber vertebral bodies, the August 18, 2014 MRIs of Claimant's lumbar, thoracic and cervical spine showed degenerative changes and disc bulges at various levels of the spine, which would support Claimant's complaints of pain. Claimant's doctor, who had treated her since 2007 and had referred her for the MRIs, completed a DHS-49, medical examination report, on December 4, 2014. The doctor identified Claimant's diagnosis as cervical and lumbar disc disease and indicated that Claimant had painful range of motion in her neck and lumbar spine with spasms. The doctor identified the following physical limitations: (i) Claimant could frequently lift less than 10 pounds, occasionally lift 20 pounds, and never lift 25 pounds; (ii) she could not use her hands/arms for pushing or pulling; (iii) she could not use her feet/legs for operating foot or leg controls. No walking/standing or sitting restrictions were identified.

While the weight limitations identified by Claimant's doctor render Claimant capable of light work activities as defined by 20 CFR 416.967(b), a job in the light work category requires a good deal of walking or standing or involves sitting most of the time with some pushing and pulling of arm or leg controls. Claimant's doctor indicated that Claimant should never repetitively push or pull or operate foot or leg controls. Although the doctor does not identify any standing or sitting restrictions, Claimant credibly testified that she has limitations on her ability to sit or stand due to pain, particularly with respect to neck and back pain and shortness of breath. The medical record, specifically the spine MRIs, supports the conclusion that Claimant does have back and neck pain. Claimant's pain complaints, which are substantiated by the record, and the restrictions on pushing and pulling reduce her RFC for performing the physical aspects of basic work activities to sedentary as defined by 20 CFR 416.967(a).

While Claimant has also alleged mental impairments resulting from depression and insomnia, the medical evidence presented does not show any limitations resulting from such conditions. To the contrary, in the medical examination report Claimant's treating physician completed on December 4, 2014, the doctor indicated that Claimant was experiencing stress, anxiety and depression but checked that she had "no limitations" with respect to her mental condition.

Ultimately, after review of the entire record to include Claimant's testimony, it is found, based on Claimant's mental and physical conditions, that Claimant maintains the physical capacity to perform sedentary work and has no limitations on her mental capacity to perform basic work activities. Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 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 SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has

the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id*.; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to sedentary work activities and has no limitations on her mental capacity to perform basic work activities. Claimant's work history in the 15 years prior to the application consists of work as a meat wrapper (light to medium, semi-skilled). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In Step 5, an assessment of Claimant's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). 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.*

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 SGA. 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).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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). However, 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 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, at the time of hearing, Claimant was [redacted] years old and, thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. Under 20 CFR Subpart P, Appendix 2, 201.00(h)(1), an individual age 45 to 49 is disabled if the individual (i) is restricted to sedentary work, (ii) is unskilled or has no transferable skills, (iii) has no past relevant work or can no longer perform past relevant work, and (iv) is

unable to communicate in English, or is able to speak and understand English but is unable to read or write in English.

In this case, Claimant is incapable of performing past relevant work. Although her previous employment was of a semi-skilled nature, those skills are not transferrable. Claimant testified that she came to the [redacted] from [redacted] in [redacted]. She was able to understand most of the questions posed to her at the hearing and respond, although her friend sometimes assisted in translating certain questions. Claimant testified that she could read and write in English "but not that much" and admitted she could not read a newspaper in English. A person who cannot read or write a simple message such as instructions or inventory lists is considered illiterate. 20 CFR 416.964. In this case, while Claimant was able to orally communicate in English with minimal assistance, her limited ability to read and write in English rendered her illiterate. In light of these circumstances and under the Medical-Vocational Guidelines, Claimant is disabled based on her age, education, work experience, and physical RFC. 201.17.

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.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

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

1. Process Claimant's February 26, 2014, MA application, with request for retroactive coverage to November 2013, to determine if all the other non-medical criteria are satisfied and notify Claimant of its determination;

2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified;

3. Review Claimant's continued eligibility in March 2016.

Alice Elkin
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/11/2015**

Date Mailed: **3/11/2015**

ACE / tlf

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: [redacted]