

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201368662
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: February 5, 2014
County: Wayne (76)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on February 5, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Assistance Payment Supervisor.

During the hearing, Claimant waived the time period for the issuance of this decision, and an Interim Order Extending the Record was issued on February 5, 2014, ordering the Department to obtain and submit additional documents. No documents were received from the Department by the due date, the Department explaining that it believed that the requested documents were already included in the record. A Second Interim Order Extending the Record was issued on April 2, 2014, ordering the Department to provide the requested documents within 30 days. No response was received. The record was closed, and this matter is now before the undersigned for a final determination based on the record admitted into evidence on the hearing date.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the 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 May 15, 2013, Claimant submitted an application for public assistance seeking SDA benefits.
2. On September 6, 2013, the Medical Review Team (MRT) found Claimant not disabled.
3. On September 11, 2013, the Department sent Claimant a Notice of Case Action denying the application based on failure to verify.
4. On September 16, 2013, the Department received Claimant's timely written request for hearing.
5. On October 25, 2013, the State Hearing Review Team (SHRT) found Claimant not disabled.
6. Claimant alleged physical disabling impairment due to back pain and anemia.
7. Claimant alleged mental disabling impairments due to depression, bipolar disorder and anxiety.
8. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; she was [REDACTED] in height; and weighed [REDACTED] pounds.
9. Claimant completed the [REDACTED] grade.
10. Claimant has an employment history of work as painter, landscaper, and light assembly work.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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

As a preliminary matter, it is noted that, although the September 11, 2013 Notice of Case Action denied Claimant's SDA application on the basis of failure to verify address, at the hearing, the Department testified that the verification issue had been resolved and that Claimant's application was denied because MRT concluded that she was not disabled. The hearing proceeded to address the disability finding.

SDA benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. A person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based on disability, or the receipt of MA benefits based on disability, automatically qualifies an individual as disabled for purposes of the SDA program. BEM 261 (July 2013), p. 2. In order to receive MA benefits based upon disability, Claimant must be disabled as defined in Title XVI of the Social Security Act. 20 CFR 416.901. Disability for MA purposes is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a).

In order to determine whether or not an individual is disabled, federal regulations require application of a five-step sequential evaluation process. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider (1) whether the individual is engaged in substantial gainful activity (SGA); (2) whether the individual's impairment is severe; (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) whether the individual has the residual functional capacity to perform past relevant work; and (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health

professional that an individual is disabled or blind, absent supporting medical evidence, 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 substantial gainful activity (SGA), then the individual must be considered as not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

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

Step Two

Under step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). For MA purposes, the duration requirement means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922. However, for SDA purposes, the duration requirement means that the impairment has lasted, or is expected to last, for a continuous period of at least 90 days. BEM 261 (January 2012), p. 1.

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. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 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 only is a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs* at 862.

As previously noted, Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). In the present case, Claimant alleges physical disability due to back pain and anemia and mental disability due to depression, bipolar disorder and anxiety. Although Claimant testified at the hearing that she had fallen and broken her hand in December 2013, because this incident arose after Claimant's April 15, 2013 application and is unrelated to any of the other conditions alleged in her application, it is not considered for purposes of assessing Claimant's disability.

On May 2, 2012, Claimant completed a psychiatric evaluation. Claimant reported having a history of bipolar disorder and feeling depressed since the death of her sister and mother. She admitted to experiencing mood swings, being hyperactive and hyperverbal, and having racing thoughts. She denied hearing any voices or feeling paranoid. She indicated that she took Seroquel; no side effects were observed. She also reported back pain and anemia. She admitted to a history of crack cocaine abuse, five times a month, and alcohol abuse, a fifth of liquor to a pint daily, but stated that she was participating in an out-patient rehabilitation program and had been clean for the past month.

The doctor noted that Claimant's affect was restricted; she was oriented to space, time and location; her memory was grossly intact; and her insight and judgment were poor. Her diagnosis was bipolar affective disorder, mixed, history of polysubstance abuse. Claimant's global assessment of functioning (GAF) score on the date of the exam was 50.

The record included a Mental Residual Functional Capacity Assessment (DHS-49E) form addressed to the doctor who completed the psychiatric evaluation, which showed marked limitations in most categories of sustained concentration and persistence, social interaction, and adaption. However, the form was not signed. The Department did not provide an updated form as requested in the two interim orders.

Claimant's medical record contained medication review records from June 29, 2012 to April 29, 2013. At the June 29, 2012, review, Claimant admitted to getting along fair at home and in the community without any behavioral problems. She denied any hallucinations, delusions, depression, or suicidal or homicidal ideation and no

hyperactivity, pressured speech or flight of ideas was noted. She was deemed marginally stable and improving with her medical regiment. At the July 31, 2012, review, Claimant admitted to getting along fair at home and in the community without any behavioral problems but admitted to feeling scared to go into a group of people and feeling depressed. She also admitted to being hyperactive and hypervocal although no pressured speech or flight of ideas were noted. The evaluator marked her as marginally stable. At the September 7, 2012 review, Claimant admitted getting along fair at home and in the community without any behavioral problems. She denied any hallucinations, delusions, depression, suicidal or homicidal ideation and no hyperactivity, pressured speech or flight of ideas were noted. At the October 12, 2012, review, Claimant admitted feeling depressed, being hypervocal and having racing thoughts, although she denied hallucinations, delusions, suicidal or homicidal ideation. The psychiatrist concluded that Claimant was symptomatic since not taking medication. At the November 27, 2012 and February 26, 2013 reviews, Claimant was a little depressed and at times hypervocal but there was no hyperactivity, pressured speech or flight of ideas noted. At the April 29, 2013, review, Claimant was observed as depressed, tearful and upset following break-ins to her home. She was hypervocal and had labile affect, pressured speech and mood swings although she denied any hallucinations, delusions or suicidal or homicidal ideation.

On May 2, 2013, Claimant's treating physician completed a medical examination report, DHS-49, identifying Claimant's current diagnosis as lower back pain, overactive bladder, emotional disorder, anemia and diabetes mellitus. The doctor described Claimant's condition as stable and indicated that she could lift less than 10 pounds frequently (2/3 of an 8 hour day) but could not lift any greater weight. The doctor indicated that Claimant could not (i) stand and/or walk less than 2 hours in an 8-hour workday, (ii) stand and/or walk at least 2 hours in an 8-hour workday or (iii) stand and/or walk about 6 hours in an 8-hour workday. In response to the questions concerning the amount of time Claimant could spend sitting in an 8-hour day, the doctor wrote in "don't work." There were no limitations on repetitive actions for hands and feet other than fine manipulating. There was an indication that Claimant had a mental disorder and limitations concerning comprehension, sustained concentration, following simple directions and social interactions. The doctor noted that Claimant was unable to meet her needs in the home.

A June 11, 2013 radiology report showed cystic follicles in Claimant's ovaries, the largest measuring 16 mm. Claimant was hospitalized on June 26, 2013 for a hysterectomy secondary to uterine fibroids resulting in anemia requiring blood transfusion. Claimant continued to improve throughout her hospitalization, and, as of the June 28, 2013 discharge date she was eating and voiding, her pain was well-controlled, and she was walking without difficulty. The discharge summary also showed that she was asymptomatic from an anemia standpoint. An Emergency Department record from July 13, 2013 shows that Claimant had a staple removed from the June 26,

2013 hysterectomy for fibroids and blood loss anemia. The notes showed that Claimant had a relatively normal postoperative course after transfusion of blood and was doing well although one staple was accidentally left in post-surgery.

In a July 26, 2013 letter, a therapist from Gateway reported that Claimant had enrolled in the Gateway program on May 7, 2012 to address both mental health and substance problems; that she was required to, and faithfully did, attend the program five days per week from 8 am to 4 pm; that she received both group therapy and individual therapy sessions; that she received psychiatric evaluations and services, as well as psychotropic medication as needed for her bipolar affective disorder diagnosis and her history of mood swings and racing thoughts; and that she was required to take random urinalysis tests at least once a month.

As summarized above, Claimant has presented medical evidence establishing that she does have some mental and physical limitations on her ability to perform basic work activities that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, in consideration of the de minimis standard necessary to establish a severe impairment, Claimant has satisfied the requirements under Step 2 and the analysis proceeds to Step 3.

Step Three

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

The evidence shows diagnosis of, and treatment for back pain, bipolar disorder/depression, anxiety, lower back pain and anemia.

Based on the objective medical evidence of lower back pain and anemia, Listing 1.00 (musculoskeletal system), specifically Listing 1.04 (disorders of the spine), and Listing 7.00 (hematological disorders), specifically Listing 7.02 (chronic anemia), were considered. Claimant's medical evidence does not establish a compression of the nerve root or spinal cord necessary to satisfy the requirements for a listing under Listing 1.04 or one or more blood transfusions on an average of at least once every 2 months for her anemia to satisfy the requirements to meet Listing 7.02. Accordingly, Claimant cannot be found disabled at Step 3 based on her physical condition.

Based on the objective medical evidence of bipolar disorder, depression and anxiety, Listing 12.00 (mental disorders), particularly Listings 12.04 (affective disorders) and 12.06 (anxiety-related disorders), were considered. The evaluation of disability on the

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

Although Claimant's treating physical noted in the DHS-49 that Claimant had limitations with respect to comprehension, sustained concentration, following simple directions and social interactions, there was no evidence indicating the degree of Claimant's impairment-related functional limitations. As previously indicated, although the mental residual functional capacity assessment form (DHS-49E) indicates that Claimant has a considerable number of marked limitations as a result of her mental condition, the form is unsigned and, as a result, is not competent medical evidence from a qualified medical source. Although the Department was requested to obtain a signed DHS-49E in the two interim orders issued in this case, it failed to respond to either order. Therefore, based on the medical evidence presented, Claimant cannot be found disabled at Step 3 based on her mental condition. Because Claimant's condition does not meet, or equal, the severity of a Listing, Claimant's disability assessment proceeds 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, non-exertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

Sedentary work.

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

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, . . . he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, . . . he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, . . . he or she can also do medium, light, and sedentary work.

Very heavy work.

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

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands (i.e. sitting, standing, walking, lifting, carrying, pushing, or pulling), the individual is considered to have only non-exertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional 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). If the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

In this case, Claimant alleges both exertional and non-exertional limitations. When a person has a combination of exertional and non-exertional 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).

Claimant testified that she had back pain two to three times weekly that lasted until she took medication to relieve her pain. She testified that the pain limited her ability to walk, sit properly, bend or squat, or to stand for more than 20 or 30 minutes. In the May 2013 Medical Examination Report, Claimant's treating doctor concluded that Claimant was not able to stand and/or walk in an 8-hour workday. In response to how long Claimant could sit in an 8-hour workday, the doctor stated "don't work." The doctor also limited Claimant to lifting less than 10 pounds frequently (2/3 of an 8 hour day). Although the limitations imposed by Claimant's doctor place Claimant's physical limitations at less than sedentary, because of the lack of objective medical evidence supporting the treating physician's conclusions and Claimant's testimony, Claimant is deemed capable of sedentary work.

The medical evidence also supported Claimant's allegations of limitations due to mental conditions. With respect to non-exertional limitations, the functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1).

Claimant alleged that she suffered anxiety attacks once or twice monthly and had problems with her memory. She experienced continuous crying spells and quickly angered. She admitted she had attempted suicide when she was [REDACTED] years old. Claimant's May 2, 2012 psychiatric evaluation showed that she was diagnosed with bipolar disorder and was receiving medication to control her symptoms. Her medication reviews show that Claimant was persistently hypervocal but that, other than at the April 29, 2013 review after her home had been broken into and she had to move in with her

family, she reported getting along fair at home and in the community without any behavioral problems. No side effects were reported from Claimant's medication. When Claimant reported being depressed and hyperverbal and having racing thoughts at the October 12, 2012 review, the psychiatrist concluded that Claimant was symptomatic because she was not taking her medication. The February 26, 2013, medication review, reported that Claimant appeared marginally stable.

Based on the record presented, Claimant's mental conditions do not substantially interfere with her ability to function independently, appropriately, effectively, and on a sustained basis. At most, they impose a mild to moderate limitation on her ability to perform basic work activities. It is noted that, while the medical file included a mental residual functional capacity assessment form with several categories concerning Claimant's behavior marked "markedly limited," this form was not signed or dated. Accordingly, it is not afforded any weight.

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 as defined by 20 CFR 416.967(a) and has only mild to moderate limitations with respect to her mental capacity to perform basic work activities. Claimant's RFC is considered at both steps four and five. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

The fourth step in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to no more than sedentary. Claimant testified that her work history in the 15 years prior to the application consists of work as a house painter (semi-skilled, light), a landscape planter (unskilled, light), both positions according to Claimant's testimony requiring no significant lifting, and a small parts assembly line worker (semi-skilled, light). There was also evidence in the file that Claimant worked as a babysitter (unskilled, light). In light of the entire record and Claimant's RFC, it is found that Claimant is unable to perform past relevant work. Accordingly, the Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In step 5, an assessment of Claimant's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). The age for younger individuals (under 50) generally will not seriously affect the ability to adjust to other work. 20 CFR 416.963(c). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.*

In this case, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical and mental demands required to perform sedentary work as defined in 20 CFR 416.967(a). Her skills are *not* transferable. At the time of hearing, the Claimant was 48 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant has a 10th grade education. Additionally, she has mild to moderate limitations in performing basic work activities due to her mental condition. Accordingly, after review of the entire record and in consideration of Claimant's age, education, work experience, RFC, Claimant is found **not** disabled at Step 5.

In this case, Claimant is found **not** disabled for purposes of the MA-P program and, therefore, **not** disabled for purposes of SDA benefit program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law finds Claimant **not** disabled for purposes of the SDA benefit program.

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


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

2013-68662/ACE

Date Signed: May 30, 2014

Date Mailed: May 30, 2014

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides or has its principal place of business in the State, 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

ACE/tlf

cc:



2013-68662/ACE