

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

IN THE MATTER OF:

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████████████████████
████████████████████

Reg. No.: 201411887
Issue No.: 2009; 4000
Case No.: ██████████
Hearing Date: March 12, 2014
County: Wayne (31)

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 March 12, 2014 from Detroit, Michigan. Participants on behalf of Claimant included Claimant ██████████ Participants on behalf of the Department of Human Services (Department) included ██████████
██████████

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. Claimant provided certain medical documents requested, including a ██████ MRI and a current DHS-49D, psychiatric/psychological examination, but not a DHS-49E, mental residual capacity assessment completed by his psychiatrist. The records requested from the Department, specifically a current MRI and ██████ hospital records, were not received, despite the issuance of a second interim order extending the record. The medical documents that were received were forwarded to the State Hearing Review Team (SHRT) for consideration. ██████████ this office received the SHRT determination which found Claimant not disabled. This matter is now before the undersigned for a final determination based on the record presented.

ISSUE

Did the Department fail to process Claimant's application for State Disability Assistance (SDA) program benefits?

Did the Department properly determine 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. Claimant was an ongoing recipient of cash assistance under the Family Independence Program (FIP).
2. On April 19, 2013, Claimant submitted an application for public assistance seeking MA-P benefits.
3. On August 27, 2013, the Department sent Claimant a Notice of Case Action notifying him that his cash assistance case would close effective October 1, 2013 because he no longer had an eligible child in the home.
4. On October 14, 2013, the Medical Review Team (MRT) found Claimant not disabled.
5. On October 17, 2013, the Department sent Claimant a Benefit Notice notifying him that he was still eligible for Adult Medical Program benefits but he was not eligible for SDA based on MRT's finding of no disability.
6. On October 23, 2013, the Department received Claimant's timely written request for hearing concerning the denial of SDA and MA benefits.
7. On November 8, 2013, the Department sent Claimant a Benefit Notice notifying him that he was still eligible for Adult Medical Program benefits but he was not eligible for MA-P based on MRT's finding of no disability.
8. On December 20, 2013 and August 4, 2014, the State Hearing Review Team (SHRT) found Claimant not disabled.
9. Claimant alleged physical disabling impairment due to chronic obstructive pulmonary disease (COPD), degenerative joint disease (DJD), carpal tunnel syndrome (CTS), gastroesophageal reflux disease, and osteoarthritis.
10. Claimant alleged mental disabling impairments due to anxiety/depression.
11. At the time of hearing, Claimant was 44 years old with [REDACTED] birth date; he was 5'9" in height and weighed 187 pounds.

12. Claimant has a GED and online training for mechanics.
13. Claimant has an employment history of work as automotive assembly line worker; construction worker; and lawn care service worker.
14. 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 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).

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.

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.

SDA Eligibility

Claimant requested a hearing concerning the denial of MA-P and SDA benefits. At the hearing, the Department contended that Claimant had not applied for SDA because at the time of his April 19, 2013 MA-P application, he was already receiving cash assistance under the Family Independence Program (FIP). Although the Department was unable to produce the April 19, 2013 application, it established that Claimant received ongoing FIP benefits from April 19, 2013 through September 2013, at which time the Department verified that Claimant's child was 18 years old and had completed high school and closed Claimant's FIP case.

An application is not registered if the client is already active for that program. BAM 110 (January 2013), p. 6. SDA is a cash assistance program for individuals who are not eligible for FIP and are disabled. BEM 214 (January 2010), p. 1. Because Claimant was receiving cash assistance under FIP at the time of his April 19, 2013 application, he was not eligible for SDA benefits at that time. See also BEM 209 (November 2012), p.

1; BAM 105 (March 2013), p. 9. Therefore, the Department acted in accordance with Department policy when it did not consider Claimant's eligibility for SDA in connection with the April 19, 2013 application, even if cash assistance was requested. The Department pointed out that, although it initially sent Claimant an October 17, 2013 Eligibility Notice informing him that he was denied MA-P and SDA eligibility because of MRT's finding that he was not disabled, it subsequently sent him a November 8, 2013 Eligibility Notice clarifying that he was denied only MA-P benefits based on MRT's findings.

Based on the evidence presented, the Department properly did not process Claimant's April 19, 2013 application for SDA eligibility. Therefore, Claimant was not an aggrieved party concerning any alleged SDA application. Mich Admin Code, R. 400.903(1). As such, his hearing request concerning his SDA application is DISMISSED. This Hearing Decision addresses only whether the Department properly concluded that Claimant was not disabled for MA-P eligibility.

MA-P Eligibility

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 260); BEM 261 (July 2013), p. 1. In order to receive MA-P 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-P 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). 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. 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 is only 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 COPD, DJD, CTS, osteoarthritis and gastroesophageal reflux and mental disability due to anxiety/depression.

██████████ MRI of Claimant's cervical spine showed mild degenerative changes at multiple levels and slight fullness in the left superior tonsillar pillar with mild bilateral lymph node enlargement in the neck. As part of his findings, the doctor noted that there was a mild posterior disc protrusion at C5-C6 with mild spinal canal stenosis. There was no spinal cord compression but there was mild uncovertebral joint arthropathy causing mild bilateral neural foraminal narrowing.

██████████ letter, a hand surgeon concluded that Claimant had bilateral carpal tunnel syndrome after a physical exam revealed he had a positive carpal tunnel compression test on both the right and left hand and positive Phalen's and Tinel's signs. The doctor found no evidence of thenar or hypothenar atrophy, a negative grind test, a negative elbow flexion test, and minimal tenderness on the flexor tendon sheath of all fingers in the palm of the hand. X-ray findings were normal. Claimant was prescribed wrist bracelets and scheduled for a bilateral EMG.

██████████ nerve conduction study was conducted in response to Claimant's complaints of severe right neck pain with paresthesia in the right hand and lower back pain with radiation into lower extremities associated with numbness and tingling. The report revealed abnormal results indicative of moderate sensory polyneuropathy and moderate bilateral tibial motor neuropathy at the ankle (tarsal tunnel syndrome).

██████████ medical examination report, DHS 49, Claimant's treating physician reported Claimant's diagnosis as COPD, lumbago, DJD, CTS, gerd and osteoarthritis, and depression. The doctor noted that because of Claimant's CTS and nerve damage, Claimant needed assistance with his activities of daily living, and because of his COPD,

he suffers from shortness of breath. The doctor noted that Claimant used a cane for support because of his nerve damage and DJD. The doctor found that Claimant was in stable condition but limited activities as follows: he could lift less than 10 pounds occasionally (1/3 of an 8-hour day) but never lift any greater weight; he could stand and/or walk less than 2 hours in an 8-hour day; he could never use either hand or arm to reach, push/pull or do any fine manipulation. The doctor indicated that Claimant needed assistance with meeting his needs in the home and that he was limited in his memory; his comprehension; and his ability to sustain concentration, read and write, follow simple directions and interact socially. The doctor's report was consistent with the DHS-49 he completed [REDACTED]. Records for Claimant's office visits with his treating physician beginning [REDACTED] and continuing once a month for most months through [REDACTED] show that Claimant raised ongoing complaints of joint, hand, and back pain and shortness of breath. Beginning [REDACTED] the records reflect the doctor's concerns of Claimant's anxiety and/or depression on fairly consistent basis.

[REDACTED] Claimant was examined at the request of the Department and a physical consultative examination report was prepared in response. Claimant reported to the consulting doctor that he was shot in the chest several years previously, had had three surgeries, had recurring chest pain resulting in his left side going numb and requiring him to lie down for the pain to go away, was always short of breath and used two inhalers, and had ongoing back, neck and joint pain. The doctor noted that Claimant wore bilateral wrist braces because of pain. In his physical exam, the doctor noted that Claimant's gait was normal, he was able to get on and off the examination table, he was able to raise both arms above head level, and had normal respiratory movements. With respect to Claimant's cardiovascular health, the doctor noted that Claimant's air entry was decreased and there were occasional ronchi. The doctor found that Claimant's neck and lower back movements were restricted to about 65% of normal range. The doctor's range of motion assessment for Claimant showed restricted cervical spine and lumbar spine movement with remaining ranges of motion for all other joints as normal. A pulmonary function report showed that Claimant had mild obstruction and indicated that his lung age was 61.

The consulting physician concluded that Claimant suffered from chronic recurrent cervical and lumbar myofascitis with restriction of movement; history of CTS, previous gunshot wound injury involving surgery, chest pain, GERD, COPD; pulmonary insufficiency; and chronic pain. The doctor summarized Claimant's condition as involving multiple complaints, multiple medical problems, and severe anxiety. The doctor concluded that Claimant was not a candidate for work and needed medication, follow-up and treatment.

[REDACTED] chest x-ray showed a clear left lung and stable postsurgical changes of the right hemithorax. There was no acute process noted.

██████████ psychiatric evaluation, the psychiatrist's primary diagnosis of Claimant's condition was major depressive disorder, recurrent severe with psychotic features, and his secondary diagnosis was adjustment disorder with mixed anxiety and depressed mood. Claimant was assigned a global assessment functioning (GAF) score of 50. The doctor noted that Claimant had a constricted affect but spontaneous speech, normal in volume and tone, and intact memory for the present.

In consideration of the de minimis standard necessary to establish a severe impairment under step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe physical and mental impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under step 2, and the analysis will proceed to step 3.

Step Three

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

The evidence shows diagnosis of, and treatment for, DJD, CTS, COPD, osteoarthritis and depression. In light of these conditions, Listings 1.02 (major dysfunction of a joint due to any cause), 1.04 (disorders of the spine), 3.02 (chronic pulmonary insufficiency), 11.14 (peripheral neuropathies), and 12.06 (anxiety-related disorders) were reviewed.

The medical evidence presented fails to establish the severity necessary to meet or equal any of the listings considered. Because the evidence does **not** show that Claimant's impairments meet or equal the required level of severity of a listing to be considered as disabling without further consideration, the disability analysis 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.*

For mental disorders, 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).

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).

In this case, Claimant alleges both exertional and non-exertional limitations to his ability to perform basic work activities due to his joint and back pain and the COPD in his one remaining lung. He testified that he could walk a-half block but then experienced shortness of breath and knee pain. He used a doctor-prescribed cane in walking. He could sit for 45 minutes but then needed to stand and stretch for ten minutes. He could stand for 45 minutes before his joints began to ache. He could not bend or squat because his knees, back and neck hurt. He could not grip or grasp items very well because of tingling in his hands and used wrist braces to help him. He acknowledged

that he could lift an item weighing up to 8 pounds but stated he could not hold it. He could not reach or pull because he could not get his right arm over his shoulder.

With respect to his daily activities, he testified that he lived with his minor son and his son and siblings helped him. He has a chair and rails in his tub but still needs help getting out. He cannot cook because he keeps dropping things, and his family cooks and cleans for him. He does not shop because it requires too much walking and does not do laundry because he cannot carry laundry or go down the stairs. He wears slip-on shoes and prefers zippers over buttons because of the difficulty manipulating buttons. He did not have a driver's license but did not believe he could drive because his joint pain would make it difficult to use the foot pedals.

Claimant also testified that he was depressed and suffered from anxiety, with episodes occurring every three days. He added that he cried all the time and felt that he will "snap." He testified that he heard his mother's voice and saw dead people who told him to hurt others. He testified that he had issues remembering things; his brother concurred that Claimant had memory problems. Claimant also testified that he had difficulties reading.

The medical evidence supported Claimant's complaints concerning joint pain. In a [REDACTED], a hand surgeon concluded that Claimant had bilateral CTS. [REDACTED] - [REDACTED] nerve conduction study showed abnormal results indicative of moderate sensory polyneuropathy and moderate bilateral tibial motor neuropathy at the ankle. In [REDACTED] medical exam report, Claimant's treating physician concluded that Claimant suffered from shortness of breath due to his COPD and because of his CTS and nerve damage, he needed a cane to walk and assistance with his activities of daily living. The doctor found that Claimant was in stable condition but limited activities as follows: he could lift less than 10 pounds occasionally (1/3 of an 8-hour day) but never lift any greater weight; he could stand and/or walk less than 2 hours in an 8-hour day; and he could never use either hand or arm to reach, push/pull or do any fine manipulation. The doctor indicated that Claimant was limited in his memory; his comprehension; and his ability to sustain concentration, read and write, follow simple directions and interact socially. [REDACTED] psychiatric evaluation revealed a primary diagnosis of major depressive disorder, recurrent severe with psychotic features.

Claimant also underwent a consultative physical exam [REDACTED]. The doctor found that Claimant's neck and lower back movements were restricted to about 65% of the normal range. The doctor noted that Claimant's air entry was decreased with occasional ronchi. Although Claimant's pulmonary function reported showed mild obstruction, it indicated that his lung age was 61. The doctor found that Claimant's condition involved multiple complaints, multiple medical problems, and severe anxiety

and concluded that Claimant was not a candidate for work and needed medication, follow-up and treatment.

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 and mental capacity to perform less than sedentary work. 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 less than sedentary work activities. Claimant's work history in the 15 years prior to the application consists of work as a laborer in the construction industry (skilled, heavy), inspector at a steel and an aerotechnical company (unskilled, light) and a lawn care maintenance worker (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

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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 less than sedentary work. At the time of hearing, Claimant was 44 years old and, thus, considered to be a younger individual for MA-P purposes. Claimant has a GED and some online mechanic training. Claimant's reading difficulties and his anxiety and depression made his work skills not transferable.

After review of the entire record and in consideration of Claimant's age, education, work experience, RFC, Claimant is found disabled at Step 5.

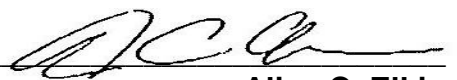
DECISION AND ORDER

As discussed above, Claimant's hearing request concerning SDA is DISMISSED.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit program. Accordingly, the Department's MA-P 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 April 19, 2013 MA-P application 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 September 2015.


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

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Date Signed: August 27, 2014

Date Mailed: August 27, 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:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]