

3. On November 18, 2013, Claimant submitted to the Department a request for hearing.
4. The State Hearing Review Team (SHRT) denied Claimant's request.
5. Claimant is 52 years old.
6. Claimant completed education through a GED.
7. Claimant has no substantial gainful employment experience.
8. Claimant's limitations have lasted for 12 months or more.
9. Claimant suffers from back pain, high blood pressure and depression.
10. Claimant has some limitations on physical activities involving sitting, standing, walking, bending, lifting, and stooping.
11. Claimant has some limitations on understanding, carrying out, and remembering simple instructions; use of judgment; responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

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.

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180. 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 blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

The Department conforms to State statute in administering the SDA program.

2000 PA 294, Sec. 604, of the statute states:

Sec. 604. (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the supplemental security income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

- (a) A recipient of supplemental security income, social security, or medical assistance due to disability or 65 years of age or older.
- (b) A person with a physical or mental impairment which meets federal supplemental security income disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

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

...the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.... 20 CFR 416.905.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience are reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927(a)(2).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The Administrative Law Judge

reviews all medical findings and other evidence that support a medical source's statement of disability. 20 CFR 416.927(e).

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence or pace; and ability to tolerate increased mental demands associated with competitive work). 20 CFR, Part 404, Subpart P, Appendix 1, 12.00(C).

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

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

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

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

Secondly, the individual must have a medically determinable impairment that is "severe" or a combination of impairments that is "severe." 20 CFR 404.1520(c). An impairment or combination of impairments is "severe" within the meaning of regulations if it significantly limits an individual's ability to perform basic work activities. An impairment or combination of impairments is "not severe" when medical and other evidence establish only a slight abnormality or a combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work. 20 CFR 404.1521; Social Security Rulings (SSRs) 85-28, 96-3p, and 96-4p. If the claimant does not have a severe medically determinable impairment or combination of impairments, he/she is not disabled. If the claimant has a severe impairment or combination of impairments, the analysis proceeds to the third step.

The third step in the process is to assess whether the impairment or combination of impairments meets a Social Security listing. If the impairment or combination of impairments meets or is the medically equivalent of a listed impairment as set forth in

Appendix 1 and meets the durational requirements of 20 CFR 404.1509, the individual is considered disabled. If it does not, the analysis proceeds to the next step.

Before considering step four of the sequential evaluation process, the trier must determine the claimant's residual functional capacity. 20 CFR 404.1520(e). An individual's residual functional capacity is his/her ability to do physical and mental work activities on a sustained basis despite limitations from his/her impairments. In making this finding, the trier must consider all of the claimant's impairments, including impairments that are not severe. 20 CFR 404.1520(e) and 404.1545; SSR 96-8p.

The fourth step of the process is whether the claimant has the residual functional capacity to perform the requirements of his/her past relevant work. 20 CFR 404.1520(f). The term past relevant work means work performed (either as the claimant actually performed it or as is it generally performed in the national economy) within the last 15 years or 15 years prior to the date that disability must be established. If the claimant has the residual functional capacity to do his/her past relevant work, then the claimant is not disabled. If the claimant is unable to do any past relevant work or does not have any past relevant work, the analysis proceeds to the fifth step.

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

Here, Claimant has satisfied requirements as set forth in steps one, two and three of the sequential evaluation. However, Claimant's impairments do not meet a listing as set forth in Appendix 1, 20 CFR 416.926. Therefore, vocational factors will be considered to determine Claimant's residual functional capacity to do relevant work.

In the present case, Claimant has been diagnosed with back pain, high blood pressure and depression. Claimant has a number of symptoms and limitations, as cited above, as a result of these conditions.

Claimant's medical records included the following.

████████████████████ was diagnosed with polysubstance dependence and major depression. Claimant was noted to have a GAF of 50.

████████████████████ Claimant was seen in the emergency room after falling down steps on his back. He was noted to have some tenderness in the spine and soreness about the elbow. The remainder of his exam was within normal limits. Claimant underwent a CT of the head, cervical spine and lumbar spine. Claimant was discharged with a diagnosis of contusions. Claimant's CT of cervical spine revealed moderate degenerative changes of the cervical spine. No fracture or subluxation. Claimant's CT of his head revealed no acute intracranial hemorrhage or mass effect. Claimant's CT of

the lumbar spine revealed no acute fracture, compression deformity or subluxation. Mild degenerative changes were noted.

██████████ a therapist completed an FIA-49E indicating that, based upon an examination performed that day, Claimant was moderately limited in twelve of the twenty areas of the mental residual functional assessment. The remaining eight were found to be not significantly limited. Claimant was noted to have a GAF of 50.

██████████ a DHS-49E was completed. The signature on the form is not readable. There is no indication of the licensure, if any, possessed by the person who completed the form. This time, Claimant was found to be moderately limited in three areas of the assessment and markedly impaired in the remaining twenty areas.

██████████ Claimant was examined by a nurse practitioner due to back pain. This nurse practitioner noted on a DHS-49 ██████████ Claimant's condition was deteriorating. This practitioner had first seen Claimant ██████████ ██████████ Claimant was noted to be limited to lifting no weight, could stand or walk at least 2 hours in an 8-hour day, no limitation noted on sitting. Claimant was noted to be restricted on the use of his hands/arms for repetitive movements. The practitioner noted the basis for these findings were chronic pain and hypertension. This practitioner noted Claimant was able to meet his own needs in his own home. This same nurse practitioner completed a clinical assessment of pain form indicating significant pain and significant distraction and medications may be expected to result in severe and limited effectiveness due to distraction, inattention and drowsiness.

This same practitioner completed a medical source statement of ability to do work-related activities ██████████ Claimant was noted to be incapable of lifting any weight and unable to carry any amount of weight. Claimant was noted to only be able to sit, stand and walk an hour at a time without interruption. Claimant was additionally found only to be capable of standing, sitting, and walking 1 hour in an 8-hour day. Claimant was noted to not require a cane for ambulating, nor did Claimant medically require a cane. This practitioner did note that, without a cane, Claimant would be capable of free hand carrying small objects. Claimant was noted to not be capable of using his hands for any basic movements. This practitioner noted this finding based upon x-ray findings. Claimant was noted to only be capable of using his feet occasionally to operate foot controls. Claimant was incapable of performing postural activities such as climbing ladders or scaffolds, balancing, stooping, kneeling, crouching and/or crawling. Claimant was noted to be capable of occasionally climbing stairs and ramps. These limitations were noted to be based upon physical exam findings. Claimant's hearing and vision were not evaluated. Claimant was environmentally limited to no exposure to unprotected heights, moving mechanical parts, humidity and wetness, dust, odors, fumes and pulmonary irritants, extreme cold, extreme heat, vibrations, other (not identified). Claimant was found capable of exposure occasionally to operating a motor vehicle. Claimant was noted to be limited to a noise level similar to that of a library. These limitations were based upon physical exam findings and x-ray findings. Claimant was found capable of activities such as shopping, traveling without a

companion, ambulation without wheelchair, walker or 2 canes or 2 crutches. He was found capable of using public transportation, climbing a few steps, maintaining personal hygiene and preparing a simple meal and feeding himself. Claimant was noted to not be capable of walking a block at a reasonable pace on rough or uneven surfaces and/or sort, handle and use paper files. The report concludes with the practitioner indicating the limitations would last or have lasted 12 months or more.

██████████ Claimant was examined by a consulting physician. This physician completed a DHS-49 and indicated that Claimant's condition was stable. This physician indicated that Claimant was capable of lifting less than 10 pounds frequently and up to 50 pounds occasionally. Claimant was found capable of standing/walking about 6 hours in an 8-hour day and sitting about 6 hours in an 8-hour day. No limitations were noted on Claimant's ability to perform repetitive movements of his hands/arms, nor did Claimant require any limitation regarding the use of his feet/legs for operating foot/leg controls. No mental limitations were noted and he was found capable of meeting his own needs in his own home. This same physician completed a narrative report and indicted the following impression regarding Claimant's condition:

Fine and gross dexterity intact. The patient is right handed. There is no atrophy or sensory changes. Grip and pinch strength was satisfactory. Osteoarthritis and spinal disorder - there is no joint deformity or enlargement. There is no subluxation, contracture or instability. Most of the passive movements were without any limitations. There was no muscle atrophy. There was no circumferential measurement discrepancy. The patient has a good handgrip bilaterally. The patient insisted on this unusual gait. The patient was able to get on and off the examination table. Straight leg raising was normal. Ambulation - he would not do any squatting, as he complained of severe pain all over. The patient managed to do tandem walk very well.

This physician noted that Claimant had a normal range of motion in all areas except for the lumbar spine. Claimant was noted to be slightly limited in lumbar flexion and extension. The remaining lumbar areas were found to be within normal range. This physician also noted malingering in Claimant's gait.

Claimant testified to the following symptoms and abilities: lower back pain, feelings of hopelessness and uselessness, nervous and anxiety issues, uses a cane for walking, can walk a block, can stand 5-10 minutes, not able to bend or squat frequently only periodically, left hand has a weak grip, limited to lifting 5-8 pounds, not able to perform household chores, not able to perform grocery shopping, not able to drive, crying spells, suicidal thoughts occurring once a month, can sit 10-15 minutes before his back pain increases and he needs to stretch out his back, the pain in his back is not always the same, he lays down 3-4 times a day on either a bed or couch elevating his legs, he elevates his legs from the waist up when laying down, he takes both pain medication and psychiatric medications. He takes 3-4 naps a day. His medications make him drowsy. He is able to manage personal care but needs reminders to take his medications. He has a couple friends but doesn't visit them. He isolates himself in his home. He avoids people other than his sister. He eats once a day due to no appetite.

When considering the medical evidence as submitted, this Administrative Law Judge must consider whether the medical opinions expressed are supported by objective medical. In the instant case, the opinions fail to be supported by the objective medical evidence submitted. The opinion expressed by the Nurse Practitioner cannot be treated as a treating source as it appears the Practitioner had limited contact with Claimant. Further, the CT exams performed [REDACTED] fail to demonstrate conditions that would support the Practitioner's extreme restrictions on lifting and/or carrying of weight. The DHS-49E completed by an unknown person was given no weight as the drafter's name and/or licensure could not be determined. The FIA-49 E form completed by Claimant's therapist [REDACTED] will be given treating source weight as it appears that this person works for the same organization as the physician who completed a mental evaluation [REDACTED]. Therefore, it appears that Claimant has been receiving treatment from this organization, even if sporadic.

In sum, a review of the medical evidence fails to support the extreme restrictions indicated by the Nurse Practitioner and/or support the degree of limitations Claimant testified to suffering.

The fourth step of the analysis to be considered is whether the claimant has the ability to perform work previously performed by the claimant within the past 15 years. The trier of fact must determine whether the impairment(s) presented prevent the claimant from doing past relevant work. In the present case, the Claimant has no past relevant work experience at an SGA level. Therefore the analysis must continue to the next step. 20 CFR 416.920(e).

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

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

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

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor. 20 CFR 416.967.

Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. 20 CFR 416.967(a).

Light work. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little; a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b).

Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 CFR 416.967(c).

Heavy work. Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work. 20 CFR 416.967(d).

See *Felton v DSS* 161 Mich App 690, 696 (1987). Once the claimant makes it to the final step of the analysis, the claimant has already established a *prima facie* case of disability. *Richardson v Secretary of Health and Human Services*, 732 F2d 962 (6th Cir, 1984). Moving forward, the burden of proof rests with the State to prove by substantial evidence that the claimant has the residual function capacity for SGA.

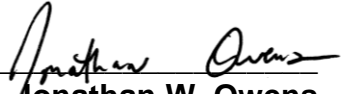
This Administrative Law Judge finds that Claimant has the residual functional capacity to perform work at least at a sedentary level.

Claimant is an individual closely approaching advanced age. 20 CFR 416.963. Claimant has a high school equivalent education. 20 CFR 416.964. Claimant has no relevant work experience. Federal Rule 20 CFR 404, Subpart P, Appendix 2, contains specific profiles for determining disability based on residual functional capacity and vocational profiles. Under Table I, Rule 201.12, Claimant is disabled for purposes of the Medical Assistance and/or State Disability Assistance programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that Claimant is medically disabled as of June 2013.

Accordingly, the Department's decision is hereby REVERSED and the Department is ORDERED to initiate a review of the application dated September 19, 2013, if not done previously, to determine Claimant's non-medical eligibility. The Department shall inform Claimant of the determination in writing. A review of this case shall be set for December 2016.



Jonathan W. Owens
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: January 6, 2015

Date Mailed: January 6, 2015

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:

2014-17000/JWO

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

JWO/pf

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]