

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

**IN THE MATTER OF:**

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████████████████████  
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Reg. No.: 2014 28809  
Issue Nos.: 2009, 4009  
Case No.: ██████████  
Hearing Date: July 16, 2014  
DHS County: Macomb County  
DHS (36)

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a three way telephone hearing was held on July 16, 2014, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████, Hearing Facilitator and ██████████, Eligibility Specialist.

Although Advomas did not appear at the hearing, it provided a ██████████ Authorization to Represent and Retention Agreement signed by the Claimant, which authorized ██████████ to act on the Claimant's behalf. ██████████ did not attend the hearing on behalf of the Claimant.

**ISSUE**

Whether the Department properly determined that the Claimant was not disabled for purposes of the Medical Assistance ("MA-P) 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 October 30, 2013, the Claimant submitted an application for public assistance seeking Medical Assistance (MA-P) and State Disability Assistance (SDA).

2. On January 23, 2014, the Medical Review Team (“MRT”) found the Claimant not disabled. (Exhibit 1)
3. The Department notified the Claimant’s AHR of the MRT determination on January 30, 2014.
4. On February 13, 2014, the Department received the Claimant’s written request for hearing.
5. On May 1, 2014, the State Hearing Review Team (“SHRT”) found the Claimant not disabled. (Exhibit 2)
6. An Interim Order was issued July 16, 2014. New evidence was received by the undersigned from Advomas and reviewed.
7. The Claimant has not alleged any mental disabling impairments.
8. The Claimant alleges physical disabling impairments due to right breast mastectomy (ER/PR positive and HER2/neu positive) with radiation and chemotherapy, seizures in remission, lymphedema in her right arm and asthma. The Claimant was prescribed a course of chemotherapy and radiation which was completed on December 16, 2013. The Claimant was then placed on tamoxifen therapy. The Claimant also experienced abdominal pain due to an ovarian cyst, which was removed in a hysterectomy.
9. On May 31, 2013, the Social Security Administration issued a decision which denied Claimant’s application and request for disability assistance. In its decision, the Social Security Administrative Law Judge determined the Claimant had not been under a disability within the meaning of the Social Security Act from February 1, 2012 through the decision date of May 31, 2013. The Claimant has since reapplied for Social Security based on disability, which application is currently pending as of the date of the hearing.
10. At the time of hearing, the Claimant was 40 years old with an [REDACTED] birth date. Claimant is 5’2” tall in height; and weighed 193 pounds. The Claimant is right handed.
11. The Claimant completed high school and also had a certificate to perform work as a certified nurse’s assistant, CAN and was certified as a phlebotomist. Claimant also took two years of college which included accounting. The Claimant’s work experience included performing work as a CNA, as well as working in a supervisory capacity supervising other CNAs. The Claimant also performed work as a CNA traveling from patient-to-patient.

## **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.

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). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's

pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant 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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can 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 to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR 416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for

MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). 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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

*Id.*

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still 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). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant alleges physical disabling impairments due to right breast mastectomy (ER/PR positive and HER2/neu positive) with radiation and chemotherapy, seizures in remission, lymphedema in her right arm and asthma. The Claimant was prescribed a course of chemotherapy and radiation which was completed December 16, 2013. The Claimant was then placed on tamoxifen therapy. The Claimant also experienced abdominal pain due to an ovarian cyst which was removed in a hysterectomy.

The Claimant has not alleged any mental disabling impairments.

A summary of the medical evidence presented at the hearing and received pursuant to the Interim Order follows.

The Claimant underwent surgery on March 19, 2012, and underwent a right simple mastectomy and sentinel lymph node biopsy. The Claimant was deemed stable for discharge on March 20, 2012. The sentinel lymph node biopsy was negative for metastasis carcinoma.

The Claimant was seen and a medical examination report was completed by the Claimant's doctor who had seen her since April 2012, and examined her on September 19, 2012. The report noted lymphedema in in the right arm due to previous surgery. The Claimant's condition was stable and limitations were imposed which were expected to last 90 days or more. The Claimant could lift never more than 25 pounds. She could stand and/or walk at least two hours in an eight-hour workday. No limitations were imposed with respect to sitting. The Claimant could perform simple grasping and reach with both hands, but could not perform pushing/pulling, or fine manipulating with her right hand.

The Claimant was seen by her doctor for a consultative opinion regarding a right ovarian cyst on December 16, 2013. At the time of the exam, the Claimant was status post breast cancer in the right breast, diagnosed in February 2012. She had finished radiation and chemotherapy. Claimant was also on tamoxifen therapy. The chief complaint presented was transient abdominal pain which has increased in frequency daily over the past couple months. The Claimant was also complaining of dysmenorrhea as well as chronic pelvic pain. The examination was normal and noted ER/PR positive and HER2/neu positive breast cancer. These cancers tend to be more aggressive than other breast cancers and are resistant to and less responsive to hormone treatment. The treatment plan is for TAHBSO, due to patient's pain as well as her treatment on tamoxifen to lower her side effects from the tamoxifen. Also noted was right arm lymphedema by the anesthesiologist.

On January 9, 2014, the Claimant was admitted to the hospital for a three-day stay with the diagnosis of benign and right ovarian cyst. The Claimant underwent an abdominal hysterectomy, and bilateral Salpingo-oophorectomy. The Claimant was discharged home and prescribed pain medications. She was to follow up with her physician in two weeks.

A Medical Examination Report was conducted on July 15, 2014 by the Claimant's treating doctor, who has a specialty in general surgery. At the time of the examination, the examiner noted some edema in the right arm with range of motion limitation of the right upper extremity due to this edema. At the time of the examination, the Claimant

was rated as stable and certain limitations were imposed which were intended to last more than 90 days. The examiner assessed the Claimant as capable of occasionally lifting less than 10 pounds, eight hours per day, and capable of using her left arm/hand extremity only for reaching, grasping, pushing/pulling and manipulating fine objects. Claimant could stand or walk less than two hours in an eight-hour day, and the examiner checked both a capability to sit less than six hours in an eight-hour workday and sit about six hours in an eight-hour workday. No assistive devices were deemed necessary and Claimant could operate foot/leg controls with both legs. The medical findings offered to support the physical limitations were right arm lymphedema, decreased range of motion and fine motor difficulty. No mental limitations were noted. The doctor also noted that assistance was necessary for overhead work. The Claimant has seen this doctor since June 5, 2012.

On October 28, 2013, the Claimant was seen by her family doctor. The diagnosis was breast cancer, asthma, Gerd, and chronic lymphedema of the right arm. The report noted that the range of motion of the right upper extremity was limited due to edema with decreased grip strength. The EMG was considered and noted to be negative. Claimant was rated as stable and was placed on the following limitations which were expected to last more than 90 days. The Claimant could occasionally lift 10 pounds (one third of an eight-hour day), the Claimant could lift no more than 10 pounds occasionally and never 20 pounds. The report evaluated the Claimant as capable of standing or walking less than two hours in an eight-hour workday, and stand and walk at least two hours in an eight-hour workday. The Claimant could sit less than six hours in an eight-hour workday and sit about six hours in an eight-hour workday. The Claimant could perform all functions evaluated for her hands and arms with the left hand/arm. The medical findings in support of these limitations noted chronic lymphedema of the right arm and decreased range of motion and fine motor skills decreased in right hand/arm. There were no mental limitations noted. The report also noted assistance was needed for overhead work.

The Claimant was seen for follow-up on September 19, 2013, post mastectomy. Findings of a sentinel lymph node biopsy noted seven lymph nodes were negative for the metastatic carcinoma. The assessment at the time noted stage 1T1a, No, Mo invasive ductal carcinoma and hide grade ductal carcinoma in situ. Post mastectomy pain and right-sided pelvic pain was noted.

The Claimant underwent a full body imaging from the base of the skull to the proximal thighs on a dedicated pet-CT scanner. The exam findings were normal, but a soft tissue density cystic ovary was noted as was one lymph node which was mildly increased. The Claimant also underwent planor imaging of the heart which noted no abnormalities and ejection fraction of 67%. A second imaging performed November 14, 2013 noted that this cystic ovary had mildly decreased inside. There were no enlarged lymph nodes in

the chest and the small left axillary lymph node on prior study had been resolved. The imaging of the heart noted in ejection fraction of 67% again.

The Claimant was hospitalized on July 19, 2012 briefly for a one-day stay and was discharged in stable condition on pain medications with a diagnosis of gastritis.

A MediPort was installed on May 9, 2012 so that the Claimant could undergo chemotherapy for her breast cancer, which was installed in the left internal jugular vein with no complications noted. The MediPort was repaired in November 2012.

After surgery in April 2012, the patient was approved for driving, showering and her drainage tubes taken out.

The Claimant also received physical therapy for her lymphedema in October and November 2012, two times a week. At the time of the initial certification of her physical therapy plan, difficulty with fine motor control was noted, such as buttoning her shirt and difficulty putting on her winter coat.

On June 7, 2012, the Claimant was seen by a doctor referred to her for concerns of right chest and right upper extremity edema. At the time of the exam, there was no significant swelling or edema in the right chest. There was some redundant tissue noted in the right arm when compared to the left side of the chest, due to having no breast tissue, causing that tissue to go back towards her axilla. She does have some right posterior arm numbness which is expected post operatively. Vascular noted good radial pulse bi-laterally. Based on this assessment, it was determined that no surgical intervention was needed.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that she does have some physical limitations on her ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant alleges physical disabling impairments due to right breast mastectomy (ER/PR positive and HER2/neu positive) with radiation and chemotherapy, seizures in remission, lymphedema in her right arm and asthma. The Claimant was prescribed a course of chemotherapy and radiation

which was completed December 16, 2013. The Claimant was then placed on tamoxifen therapy. The Claimant also experienced abdominal pain due to an ovarian cyst which was removed in a hysterectomy.

Listing 13.10 Breast, in the section entitled Malignant Neoplastic Diseases sections of the listing **13.10 Breast (except sarcoma—13.04)** (See 13.00K4); was reviewed in light of the medical evidence, it provides:

A. Locally advanced carcinoma (inflammatory carcinoma, tumor of any size with direct extension to the chest wall or skin, tumor of any size with metastases to the ipsilateral internal mammary nodes).

B. Carcinoma with metastases to the supraclavicular or infraclavicular nodes, to 10 or more axillary nodes, or with distant metastases.

OR

C. Recurrent carcinoma, except local recurrence that remits with antineoplastic therapy.

Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of Listing 13.10 based upon the available medical evidence.

**Listing 1.02 Major dysfunction of a joint(s) (due to any cause):** Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:.

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

Section 1.00B2 c requires: What we mean by inability to perform fine and gross movements effectively. Inability to perform fine and gross movements effectively means an extreme loss of function of both upper extremities; i.e., an impairment(s) that interferes very seriously with the individual's ability to independently initiate, sustain, or complete activities. To use their upper extremities effectively, individuals must be capable of sustaining such functions as reaching, pushing, pulling, grasping, and fingering to be able to carry out activities of daily living. Therefore, examples of inability

to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files, and the inability to place files in a file cabinet at or above waist level.

Based on the requirements of Listing 1.02, the Claimant based upon her own testimony as to her capabilities and the evaluations of her doctors, does not satisfy the requirements of the listing.

A careful review of the medical evidence was made and it was found that neither Listing 13.10 nor Listing 1.02 were met. Therefore, the Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). 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). 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). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* 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. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function 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 (e.g., 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.*

The Claimant's prior work history consists of employment performing work as a Certified Nurse Assistant, requiring hands on cooking, cleaning and bathing of clients. The Claimant also performed office supervisory work of other CNAs. Both these jobs required lifting of supplies, typing and some fine motor skills such as cutting of food,

which the Claimant credibly testified she could no longer do. The supervisory job required sitting much of the day and some clerical work such as ordering supplies, checking of timecards and scheduling of employee's work schedules and typing. The medical evaluations limit the Claimant's lifting and the Claimant further testified that she had difficulty with writing and typing and thus can no longer perform such work. The CNA job required seeing and driving to 4 to 7 locations for different clients per day, requiring cleaning and cooking on a level the Claimant can no longer perform. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as semi-skilled light work.

At the hearing, the Claimant testified that she is capable of driving short distances, cooking simple meals and could not cut up foods. She is capable of doing laundry with assistance carrying the laundry upstairs. The Claimant also testified she could walk less than a half a mile, stand 30 minutes and sit 30 minutes. She could not perform a full squat and has some pain when bending forward on the right side. The Claimant can dress and shower by herself, had difficulty with tying her shoes and could touch her toes. The Claimant's current level of pain was described as a 6 with medications. The Claimant has some arthritis in both her knees. The heaviest weight the Claimant could carry with both hands was 8 pounds, and using her left hand only 10 pounds for a short distance. The Claimant also noted that she sleeps in a recliner as it relieves some pain in her chest and right arm, is capable of cleaning her kitchen slowly. The Claimant naps daily and often is exhausted.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; due in large part the lifting requirements and the requirements of fine motor skills such as typing and writing and some significant diminishment of the full use of the right hand as relates to fine motor skills, reaching, pushing/pulling and assistance with overhead reaching. Thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). The Claimant is 40 years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant also completed high school and two years of college and has a certificate as a Certified Nurse's Assistant. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to substantial gainful employment. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding

supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

Based upon the foregoing objective medical evidence while there is no evidence that the Claimant would have difficulty while sitting and has some limitations on standing imposed by her doctors and has the full use of her left hand only and serious limitations with regard to the use of her right hand/arm these limitations do not support a finding that Claimant is capable of performing sedentary work. Sedentary work requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

This Administrative Law Judge does take into account Claimant's complaints of pain in that the diagnosis of lymphedema does support such a claim. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a Claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529-416.929.

Both the Claimant's treating doctors note serious restrictions with the use of Claimant's right hand or arm due to lymphedema and that she has only full use of her left hand. The Claimant is also right hand dominant and cannot type or write effectively. These limitations compromise her ability to perform one-handed sedentary work activities on a regular and continuing basis. See Social Security Ruling 87-11C. The loss or loss of use of a hand or arm is not disabling *per se*. Federal case law has held that an individual who has lost, or has lost the use of, an arm or hand can still engage in substantial gainful activity. See *Knott v Califano*, 559 F2d 279 (5<sup>th</sup> Cir, 1977). Claimant has the full use of her left hand and arm.

The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing and clinical observations of two of the Claimant's treating physicians that completed the DHS 49s who place the Claimant at less than sedentary. The total impact caused by

the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the Claimant's physical impairments have a major impact on her ability to perform even basic work activities. In consideration of the foregoing and in light of the medically objective physical limitations and pain, and the fact that the Department did not present any vocational evidence to support whether any jobs exist in the national economy that the Claimant could perform given her limitations, accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a).

After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is disabled for purposes of the MA-P program at Step 5.

### **DECISION AND ORDER**

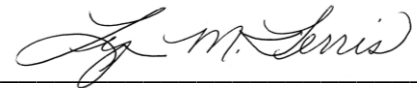
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant is disabled for purposes of the MA-P and SDA benefit programs.

Accordingly, the Department's determination is REVERSED.

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

1. The Department is ORDERED to initiate a review of the application dated October 30, 2013, if not done previously, to determine Claimant's non-medical eligibility.
2. The Department shall issue a supplement for any SDA benefits the Claimant is otherwise entitled to receive in accordance with Department policy.

3. A review of this case shall be set for January 2016.



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**Lynn M. Ferris**  
Administrative Law Judge  
for Nick Lyon, Acting Director  
Department of Human Services

Date Signed: January 6, 2015

Date Mailed: January 6, 2015

**NOTICE OF APPEAL:** The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely Request for Rehearing or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted 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 rose in the hearing request.

The Department, AHR or the Claimant 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 the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

2014-28809/LMF

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

LMF/tm

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