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

IN THE MATTER OF:

[redacted]

Reg. No.: 14-012179
Issue No.: 2009
Case No.: [redacted]
Hearing Date: November 19, 2014
County: Oakland-District 2

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, an in-person hearing was held on November 19, 2014, from Madison Heights, Michigan. Participants on behalf of Claimant included Claimant; [redacted], Claimant's mother; and [redacted], appeals representative with [redacted], Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included [redacted], Eligibility Specialist.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

FINDINGS OF FACT

1. On April 8, 2014, Claimant submitted an application for public assistance seeking MA-P benefits with retroactive coverage to February 2014.

2. On May 9, 2014, the Medical Review Team (MRT) found Claimant not disabled.

3. On June 16, 2014, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability.

4. On September 9, 2014, the Department received Claimant's timely written request for hearing.

5. Claimant alleged physical disabling impairment due to congestive heart failure, shortness of breath, sleep apnea, kidney failure, high blood pressure, strokes, diabetes, arthritis, eye disease, and obesity.

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

7. At the time of hearing, Claimant was [redacted] years old with a [redacted], birth date; he was [redacted] in height and weighed [redacted] pounds.

8. Claimant has a GED and some college and has completed programs at the [redacted] and at [redacted].

9. Claimant has an employment history of work as a delivery person, cameraman, race track announcer, and simulcast operator.

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

CONCLUSIONS OF LAW

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.

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).

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 260); BEM 261 (July 2013), p. 1. Disability for MA-P purposes is established by meeting the standard for disability for receipt of Supplemental Security Income (SSI) as provided under Title XVI of the Social Security Act. 20 CFR 416.901. The Social Security Act defines disability for SSI purposes as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a).

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

(1) whether the individual is engaged in SGA;
(2) whether the individual's impairment is severe;

(3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
(4) whether the individual has the residual functional capacity to perform past relevant work; and
(5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

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

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

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

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii).

The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

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

In the present case, Claimant alleges the following physical disabling impairments: congestive heart failure, shortness of breath, sleep apnea, kidney failure, high blood pressure, strokes, diabetes, arthritis, eye disease, and obesity. He also alleges mental disabling impairment due to depression and anxiety. The medical evidence presented at the hearing was reviewed and is summarized below.

The bulk of Claimant's medical file concerned his hospitalization from February 10, 2014 to February 26, 2014 (Exhibit 1, pp. 36-349). The records from this hospitalization noted that Claimant had been hospitalized three times the past month: (1) January 16, 2014 to January 18, 2014, for hyperkalemia, chronic kidney failure, and uncontrolled diabetes mellitus; (2) January 28, 2014 to February 8, 2014, with a discharge for chronic heart failure; and (3) the current February 10, 2014 to February 26, 2014 hospitalization (Exhibit 1, p. 53).

Claimant's medical records from the January 28, 2014 admission show a diagnoses for chronic kidney disease, stage V; type 2 diabetes mellitus; morbid obesity with BMI of 50.0-59.9; diabetes mellitus with peripheral circulatory disorders, type II or unspecified

type, uncontrolled; and acute kidney injury. (Exhibit 1, pp. 25-30). A January 29, 2014 transthoracic echocardiogram report showed normal left ventricular size and systolic function with mild left ventricular hypertrophy and an estimated ejection fraction of 55 to 60%, mildly dilated left atrium size; moderate pulmonary hypertension assuming elevated right atrial pressure; no regional wall motion abnormalities; and mild tricuspid regurgitation (Exhibit 1, pp. 338-339).

Claimant was discharged on February 8, 2014 but returned on February 10, 2014 complaining of generalized weakness and continued falling incidents. He was admitted suffering from ventilator dependent respiratory failure from acute chronic hypercapnia and hypoxia, probably due to sleep apnea and pulmonary edema, as well as morbid obesity and chronic kidney disease, and put on a ventilator for four days. The discharge summary noted that Claimant suffered from morbid obesity, chronic kidney disease, obstructive sleep apnea, diabetes mellitus, and that he came to the hospital with generalized weakness. The chronic kidney disease was identified as stage 4, with GFR (glomerular filtration rate) of 15-29 ml/min; the summary noted that progression of the disease was likely related to diabetic nephropathy and would likely require dialysis in the future. (Exhibit 1, pp. 36-42, 52, 344-353). The hospital records also showed that Claimant had an ongoing "active problem list" that included diabetic neuropathy, bilateral leg edema, unstable balance, depression, gastroparesis due to the diabetes mellitus, gastroesophageal reflex disease, edema, paresthesia, chronic back pain, cerebral infarction with thalamic syndrome, and diabetic proliferative retinopathy (Exhibit 1, pp. 51-52, 157). Anemia was also identified as an issue at admission, with a 7.8 hemoglobin level as the lowest level on file (Exhibit 1, pp. 61, 214). Claimant was also noted to have a creatinine elevated to 4.7, which is higher than his baseline of approximately 3 (Exhibit 1, p. 62). The creatinine levels decreased during his hospitalization (Exhibit 1, p. 193).

Several diagnostic tests were performed during the February 2014 hospitalization. A chest x-ray taken during his hospitalization showed stable cardiomegaly with mild pulmonary vascular congestion, with improved condition during hospitalization (Exhibit 1, pp. 47, 229). A head/brain CT showed diffuse vascular calcifications, leading the doctor to conclude that, while there was no evidence for acute intracranial disease, acute/subacute stroke could not be excluded (Exhibit 1, pp. 48-49). A February 11, 2014 transthoracic echo showed estimated ejection fraction of 65%, no distinct wall motion abnormalities, moderate concentric left ventricular hypertrophy, normal left ventricular diastolic filling, mild tricuspid regurgitation, right ventricular systolic pressure at 40-45 mmHg, and dilated inferior vena cave (Exhibit 1, pp. 246-247). Electrocardiogram results as of February 22, 2104 were abnormal (Exhibit 1, p. 252).

Following a fall while in the hospital, a February 21, 2014 CT of the pelvis/abdomen showed no acute intra-abdominal process; a CT of the cervical spine showed mild narrowing of the spinal canal and mild to moderate neural foraminal narrowing due to bony hypertrophic degenerative change of the uncovertebral joints and facet joints at C3-C4, C4-C5 and C5-C6, and mild to moderate narrowing of the spinal canal and

neural foraminal narrowing of a mild to moderate degree on the right and moderate degree on the left due to bony hypertrophic degenerative change of the uncovertebral joints and facet joints; and a CT of the head/brain showed findings consistent with chronic small vessel white matter ischemic disease and evidence of a small old lacunar infarction (Exhibit 1, pp. 225-228).

On September 23, 2014, Claimant's treating physician completed a medical examination report identifying Claimant's diagnoses as diabetes-insulin dependent; chronic kidney disease; history of stroke; diabetic retinopathy; diabetic neuropathy; chronic lower back pain; morbid obesity (with height at 5'9" and weight at 308 pounds); sleep apnea; diabetic gastroparesis; hypertension; high cholesterol; atrial fibrillation; and pulmonary hypertension. In her physical examination, the doctor noted that Claimant had diffuse pain along the lumbar spine and paraspinal muscles, limited range of motion in the examination of the back, a slow antalgic gait, and pitting edema bilaterally. The doctor identified the following physical limitations: (i) Claimant could frequently lift less than 10 pounds but never lift 10 or more pounds; (ii) he could stand and/or walk less than 2 hours in an 8-hour workday; (iii) he could sit less than 6 hours in an 8-hour workday; (iv) he could not use either hand or arm to grasp, reach, push/pull, or manipulate; and (v) he could not use either foot or leg to operate foot controls. No mental limitations were noted. The doctor concluded that Claimant could meet his needs in the home but his condition was expected to last more than 90 days and was deteriorating. The doctor found that that Claimant had significant limitations due to history of CVA, diabetic neuropathy and severe, stage 5 chronic kidney disease and noted that the exam demonstrated edema, chronic pain and abnormal gait all consistent with his diagnoses. (Exhibit A, pp 1-2.)

The doctor included the following diagnostic results with her report: (1) a January 3, 2013 MRI showing minimal lower lumbar degenerative changes without stenosis; (2) a November 30, 2011 brain MRI showing several foci of diffusion compatible with small acute infarcts, chronic small ischemic foci, and small vessel disease, (3) a February 11, 2014 echocardiogram showing visually estimated ejection fraction of 65% with no distinct wall motion abnormalities identified, moderate concentric left ventricular hypertrophy with normal left ventricular diastolic filling, mild tricuspid regurgitation with right ventricular systolic pressure estimated at 40-45 mmHG, and a dilated inferior vena cava; and (4) progress notes from a February 2014 admission identifying the following impressions: acute kidney injury disease, stage IV; uncontrolled diabetes mellitus, likely due to his diabetic nephropathy, sedentary lifestyle and significant obesity; hematuria; hemodialysis; improved hypertension. (Exhibit A, pp. 3-10.)

The treating doctor's September 23, 2014 medical exam report was consistent with the medical exam report she completed in February 18, 2014. (Exhibit 1, pp. 32-35, 336-337).

On September 5, 2014, Claimant's ophthalmologist completed an eye exam report, DHS-49I, finding that Claimant suffered from diabetic macular edema and proliferative

diabetic retinopathy and with best correction his right eye vision was 20/50 and left eye vision was 20/400. The doctor indicated that Claimant's vision was within legal limits but recommended driving only if Claimant felt safe. The doctor indicated that Claimant's vision was currently stable but his long-term condition was uncertain. (Exhibit B, pp. 11-12.)

The foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

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

The evidence shows diagnosis of, and treatment for, congestive heart failure, morbid obesity, chronic kidney disease, obstructive sleep apnea, diabetes mellitus, neuropathy, bilateral leg edema, unstable balance, depression, gastroparesis due to the diabetes mellitus, gastroesophageal reflex disease, edema, paresthesia, chronic back pain, cerebral infarction, with thalamic syndrome, and diabetic proliferative retinopathy (Exhibit 1, pp. 36-42, 52, 51-52, 157, 344-353). In light of these diagnoses, the following listings were considered: 6.02 (impairment of genito-urinary system); 3.02 (chronic pulmonary insufficiency); 3.10 (sleep-related breathing disorders), which references 3.09 (cor pulmonale secondary to chronic pulmonary vascular hypertension); 9.00 (endocrine disorders); 11.04 (central nervous system vascular accident); 11.14 (peripheral neuropathies); 5.00 (digestive system); 4.02 (chronic heart failure); 7.02 (chronic anemia); 2.02 (loss of visual acuity); 2.03 (contraction of the visual field in the better eye); 2.04 (loss of visual efficiency, or visual impairment in the better eye); 1.04 (disorders of the spine); 12.04 (affective disorders) and 12.06 (anxiety-related disorders).

A review of the medical record shows that Claimant's individual impairments are not of a severity to meet any of the listings identified above. Therefore, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based

on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

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

> Sedentary work.
> Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.
>
> Light work.
> Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, … he or

> she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.
>
> Medium work.
> Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, … he or she can also do sedentary and light work.
>
> Heavy work.
> Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, … he or she can also do medium, light, and sedentary work.
>
> Very heavy work.
> Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, … he or she can also do heavy, medium, light, and sedentary work.
>
> 20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength (or exertional) demands, the individual is considered to have only 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).

In this case, Claimant alleges both exertional limitations due to congestive heart failure, morbid obesity, chronic kidney disease, obstructive sleep apnea, diabetes mellitus, neuropathy, bilateral leg edema, unstable balance, depression, gastroparesis due to the diabetes mellitus, gastroesophageal reflex disease, edema, paresthesia, chronic back pain, cerebral infarction with thalamic syndrome, and diabetic proliferative retinopathy and nonexertional limitations due to depression and anxiety.

While the medical record shows that Claimant was being treated for depression, there was no evidence of any limitations resulting from Claimant's mental conditions. Therefore, Claimant has, at most, mild functional limitations due to mental impairments.

With respect to his exertional limitations, Claimant testified that he could walk a quarter block before his leg would stiffen and he would experience shortness of breath; he had to arrange himself when he sat to avoid pain and to prop himself on pillows so that he could get up; he could carry a gallon of milk but it would be painful; he could stand about 5 minutes; he could not bend or squat because of his weight; and he could take stairs, but very slowly. He was observed after the hearing having to make a concerted effort to stand up from the seated position and using a cane when he walked. Claimant further testified that he lived with his mother and she did most of the chores because he lacked the energy to do them; he did not drive often because his doctor limited his driving; he could bathe and dress himself but he had modified his bathroom and his attire to make both tasks easier; he could shop but he had to lean on the grocery cart and he tired easily; and he slept most of the day. He also added that, because of his kidney issues, he was scheduled to start dialysis in two weeks.

Claimant's treating physician completed a September 23, 2014 medical exam report, DHS 49, concluding that, based on Claimant's diagnoses, he had the following physical limitations: (i) Claimant could frequently lift less than 10 pounds but never lift 10 or more pounds; (ii) he could stand and/or walk less than 2 hours in an 8-hour workday; (iii) he could sit less than 6 hours in an 8-hour workday; (iv) he could never use either hand or arm to grasp, reach, push/pull, or manipulate; and (v) he could never use either foot or leg to operate foot controls. The doctor concluded that Claimant could meet his needs in the home but his condition was expected to last more than 90 days and was deteriorating. (Exhibit A, pp. 3-10.) The DHS-49 identified Claimant as morbidly obese at[redacted] and [redacted] pounds, making his BMI 45.5. A DSH-49I, eye exam report, completed by Claimant's ophthalmologist on September 5, 2014, shows that Claimant's vision, with best correction, was 20/50 in his right eye and 20/400 in his left eye.

The medical record shows supports Claimant's allegations that he suffers from numerous medical conditions, and the reports from his treating doctors support his testimony that he suffers from a litany of impairments that together limit his physical ability to perform basic work activities. Ultimately, after review of the entire record to include Claimant's testimony, it is found, based on Claimant's mental and physical conditions, that Claimant maintains the physical capacity to perform less than sedentary work as defined by 20 CFR 416.967(a) and has, at most, mild limitations with respect to his mental capacity to engage in basic work activities.

Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

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 SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id*.; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to less than sedentary work activities and mild limitations on his ability to engage in the mental demands of work. Claimant's work history in the 15 years prior to the application consists of work as a delivery person (unskilled, medium), a cameraman (skilled, light), race track announcer (semi-skilled, light), and a simulcast operator (skilled, light). In light of the entire record and Claimant's RFC, particularly his exertional limitations, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

In step 5, an assessment of Claimant's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain SGA. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 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). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, 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 as defined in 20 CFR 416.967(a). At the time of hearing, Claimant was [redacted] years old and, thus, considered to be a closely approaching advanced age (50-54) individual for MA-P purposes. Claimant is a GED recipient with some college. While Claimant's

work experience involves skilled/semi-skilled qualities, because Claimant is unable to maintain the physical demands in connection with these jobs, his skills are not transferable. See 20 CFR 416.968(d). Accordingly, after review of the entire record and in consideration of Claimant's age, education, work experience, RFC to perform less than sedentary work activities, and using the Medical-Vocational Guidelines (20 CFR 404, Subpart P, Appendix II) as a guide, specifically Rule 201.14, Claimant is found disabled at Step 5.

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.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

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

1. Process Claimant's April 8, 2014, MA-P application, with request for retroactive coverage to Feburary 2014, 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 December 2015.

Alice Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/11/2014**

Date Mailed: **12/11/2014**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc: [redacted]