

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

IN THE MATTER OF:

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Reg. No.: 14-012648
Issue No.: 2009
Case No.: ██████████
Hearing Date: December 01, 2014
County: Macomb-District 20

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 December 1, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, hearing coordinator with ██████████; Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Human Services (Department) included ██████████, Hearing Facilitator.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On November 8, 2013, Claimant submitted an application for public assistance seeking MA-P benefits, with request for retroactive coverage to August 1, 2013.
2. On March 14, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On June 30, 2014, the Department sent Claimant and the AHR a Notice of Case Action denying the application based on MRT's finding of no disability.
4. On September 19, 2014, the Department received Claimant's timely written request for hearing.

5. Claimant alleged physical disabling impairment due to vision problems, COPD, diabetes, shortness of breath, hypertension, common variable immunodeficiency (CVID), endometriosis of the lungs, heart attacks and arthritis.
6. Claimant alleged mental disabling impairments due to anxiety.
7. Claimant has been prescribed Advair, albuterol, alprazolam, bisoprolol-hydrochlorothiazide, gamunex, insulin injections, Lisinopril, Loratadine, metformin, montelukast, nitroglycerin, pantoprazole, and simvastatin.
8. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; she was [REDACTED]" in height and weighed [REDACTED] pounds.
9. Claimant received a GED.
10. Claimant has an employment history of work as housekeeper and retail store employee.
11. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

Department policies are 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.

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2013); BEM 261 (July 2013), p. 1. Disability for MA-P purposes is defined 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 meet this standard, a client must satisfy the requirements to establish eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, federal regulations require that the trier-of-fact apply a five-step sequential evaluation process to evaluate the following:

- (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 mean the abilities and aptitudes necessary to do most jobs, including (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 physical disabling impairment due to vision problems, COPD, diabetes, shortness of breath, hypertension, CVID, endometriosis of the lungs, heart attacks and arthritis and mental disabling impairment due to anxiety. The medical evidence presented at the hearing was reviewed and is summarized below.

Claimant was hospitalized from October 14, 2013 to October 21, 2013 after complaints of shortness of breath and chest pain. Her discharge diagnoses included multifactorial dyspnea secondary to acute exacerbation of COPD; DKA (diabetic ketoacidosis) secondary to poorly controlled diabetes mellitus 2; stage II hypertension; dyslipidemia; thoracic endometriosis syndrome; diabetes 2; hyperlipidemia; CVID; and glaucoma.

Claimant was treated for DKA and COPD and evaluated by ophthalmology for her visual loss. She was advised to follow a diabetic meal planning guide and discharged in stable condition. (Exhibit 1, pp. 21-69.)

Tests were performed during Claimant's hospitalization. An October 15, 2103 echocardiogram showed left ventricle normal size and wall thickness and ejection fraction of 55 to 60%, impaired relaxation pattern of the left ventricular diastolic Doppler parameters, and mild mitral valve regurgitation. (Exhibit 1, pp. 24, 59-60). An EKG showed sinus tachycardia unchanged from prior studies; a CT of the chest was negative for pulmonary embolism but positive for coronary calcifications and left lung atelectasis; and a chest x-ray showed poor inspiratory effort but otherwise normal with no acute cardiopulmonary process (Exhibit 1, pp. 45, 56-57, 63-64, 65-67). An ultrasound of Claimant's right lower extremity showed no evidence of acute deep venous thrombosis (Exhibit 1, pp. 68-69). The records note that Claimant is overweight, with a BMI of 34 (Exhibit 1, p. 45). Claimant advised doctors that she had been diagnosed with glaucoma but had not pursued treatment, and her vision was examined during her hospitalization (Exhibit 1, pp. 50-51).

On February 6, 2014, a report was prepared by an ophthalmologist who examined Claimant at the Department's request. The doctor concluded as follows:

On examination, the uncorrected visual acuity is count fingers only at distance and near. With a spectacle correction of +0.50 -0.50 x 010, the distance acuity improves to 20/100 on the right side. With a spectacle correction of +0.50 -0.75 x 160, the distance acuity improves to 20/80 on the left side. With an ADD of +2.50, the near acuity measures 20/400 on each side at 14 inches. The pupils are equally reactive and round. The muscle balance is orthophoric. The extraocular muscle movements are smooth and full. Applanation pressures are 28 on the right and 23 on the left. The slit lamp examination shows 3+ posterior subcapsular opacification to the lens on each side. There is no rubeosis. The fundus examination is unremarkable. The cup to disk ratio is 0.2 on each side. There is no retinopathy. The eyelids are unremarkable.

Goldmann visual field test utilizing a III4e stimulus without correction and with good reliability shows 102 degrees of horizontal field on the right and 110 degrees of horizontal field on the left. With a IV4e stimulus, the horizontal field measures 115 degrees on the right and 118 degrees on the left.

The doctor determined Claimant had cataracts and presbyopia and, based on these conditions, she would have difficulties reading small and moderate sized print as well as distinguishing between small objects. The doctor concluded that her vision would continue to decline unless she had cataract surgery but should improve with surgery. (Exhibit 1, p. 5.) The ophthalmologist also completed a DHS 49-I, eye examination report, consistent with his letter including relevant diagrams (Exhibit 1, pp. 6-10.)

On November 18, 2014, Claimant's treating optometrist identified Claimant's vision measurements with best correct for distance and near vision at 200 for the right eye and 200 for the left eye because of cataracts resulting from untreated glaucoma and referred her to an ophthalmologist. (Exhibit B.)

On November 20, 2014, Claimant's treating physician completed a DHS 49, medical examination report identifying Claimant's diagnoses as COPD, hypertension, diabetes mellitus type 2, CVID (common variable immunodeficiency), dyslipidemia, anxiety, GERD, asthma, glaucoma and osteoarthritis. The doctor listed Claimant's visual acuity (best corrected) as 20/200 OD and 20/200 OS. The doctor identified Claimant's condition as stable and indicated she was able to frequently lift less than 10 pounds, occasionally lift 10 pounds, never lift 20 pounds or more and could use both hands/arms to grasp, reach, push/pull, manipulate and both feet/legs to operate foot controls. However, the doctor also indicated that Claimant was unable to do fine manipulation due to her inability to see and that her osteoarthritis limited her ability to do heavy lifting. No sitting or standing restrictions were identified. The doctor indicated that the functional information was strictly from the patient and not based on medical findings. (Exhibit A.)

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.

Claimant alleges vision problems, COPD, diabetes, shortness of breath, hypertension, common variable immunodeficiency (CVID), endometriosis of the lungs, heart attacks and arthritis. There was no medical evidence presented concerning diagnoses and treatment of heart attacks. Based on the objective medical evidence of COPD, shortness of breath, hypertension CVID, arthritis, diabetes, and thoracic endometriosis, the following listings were reviewed and considered: 1.02 (major dysfunction of a joint due to any cause); 1.04 (disorders of the spine); 3.00 (respiratory system), particularly 3.02 (chronic pulmonary insufficiency); 4.04 (ischemic heart disease); and 14.00 (immune system disorders). A review of Claimant's medical record shows that these impairments do not meet, or equal, the severity of any of the listings in Appendix 1.

Claimant's medical records also show diagnosis and treatment for vision problems. Claimant's vision problems were considered under listing 2.02 (loss of visual acuity), 2.03 (contraction of the visual fields in the better eye) and 2.04 (loss of visual efficiency). A loss of visual acuity limits an individual's ability to distinguish detail, read, or do fine work; a loss of visual fields limits her ability to perceive visual stimuli in the peripheral extent of vision. 2.00A1. Statutory blindness is established only if an individual's visual disorder meets the criteria of 2.02 or 2.03A. 2.00A2c. A client does not have statutory blindness if the visual disorder medically equals the criteria of 2.02 or 2.03A or meets or medically equals the criteria of 2.03B, 2.03C, 2.04A, or 2.04B because the disability would then be based on criteria other than those in the statutory definition of blindness. 2.00A2c.

In this case, Claimant provided a DHS-49I from her optometrist showing that she had cataracts due to untreated glaucoma and her vision with best correction in both eyes was "200." The form indicates that Claimant was being referred to an ophthalmologist. (Exhibit C.) Claimant also provided a DHS 49 from her primary care physician showing that visual acuity (best corrected) was 20/200 for each eye. The medical record includes a detailed February 6, 2014 report of the examination performed by a consulting ophthalmologist at the Department's request. Generally, more weight is given to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist. See 20 CFR 404.1527(2)(c)(5). In this case, the medical opinions contained in the DHS 49 and DHS 49I provided by Claimant's primary care physician and her optometrist, respectively, concerning her remaining vision in the better eye do not identify the testing source. Therefore, they do not establish how best-corrected visual acuity is measured. See 2.00A5. Because the February 6, 2014 consultative exam report was prepared by an ophthalmologist and identifies the tests used to measure the visual acuity and fields, the diagnosis in this report is used to assess whether Claimant's visual impairments meet the 2.00 listings.

An individual meets a listing under 2.02 if the remaining vision in the better eye after best correction is 20/200 or less. In measuring the best-corrected central visual acuity, the visual acuity testing for distance is considered. 2.00A5a. The February 6, 2014 consultative exam report shows that, with best correction, Claimant's visual acuity for distance improves to 20/100 on the right side and 20/80 on the left. Therefore, Claimant does not meet the listing under 2.02.

An individual meets a listing under 2.03 if there is contraction of the visual field in the better eye with (A) the widest diameter subtending an angle around the point of fixation no greater than 20 degrees; OR (B) an MD of 22 decibels or greater, determined by automated static threshold perimetry that measures the central 30 degrees of the visual field (see 2.00A6d); OR (C) a visual field efficiency of 20 percent or less, determined by kinetic perimetry (see 2.00A7c). The February 6, 2014 consulting ophthalmologist's report shows that, under Goldmann visual field test utilizing a III4e stimulus without correction and with good reliability, Claimant has 102 degrees of horizontal field on the

right and 110 degrees of horizontal field on the left. Further, in the DHS 49-I the consulting ophthalmologist completed with his exam report, he indicated that the visual fields were not constricted. Therefore, Claimant does not meet the listing under 2.03.

An individual meets a listing under 2.04 for loss of visual efficiency, or visual impairment, if in the better eye she has (A) a visual efficiency percentage of 20 or less after best correction or (B) a visual impairment value of 1.00 or greater after best correction. According to the February 6, 2014, consultative exam report, Claimant's better eye, her left eye, has a best corrected visual acuity of 20/80. This results in a visual acuity efficiency of 60%. 2.00A7b. Because Claimant's visual efficiency percentage is greater than 20%, she does not meet the listing under 2.04A. Under the evidence presented, the visual field impairment value for Claimant's vision cannot be calculated. As such, the visual impairment value cannot be calculated, and Claimant cannot be found to meet the listing under 2.04B. 2.00A8; Program Operations Manual System (POMS) DI 24535.006. Therefore, Claimant does not meet the listing under 2.04A or 2.04B.

Because Claimant's impairments do not meet, or equal, the severity of any of the listings, 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 nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional 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 has alleged exertional due to COPD, diabetes, shortness of breath, hypertension, CVID, endometriosis of the lungs, and arthritis and nonexertional limitations due to anxiety. Claimant's treating doctor completed a DHS 49 which limited Claimant to frequently lifting less than 10 pounds and occasionally lifting 10 pounds and never lifting more. There were no sitting, walking or standing restrictions identified and no limitations to Claimant's use of her extremities for repetitive actions. (Exhibit B.) Based on the weight restrictions, Claimant is limited to performing sedentary work as defined by 20 CFR 416.967(a). While there was some reference in the medical file to anxiety, there were no limitations identified with respect to Claimant's mental ability to perform basic work activities. Therefore, Claimant's mental RFC imposes, at most, mild limitations on her ability to perform basic work activities.

Claimant has also alleged vision problems. Where a vision impairment imposes environmental restrictions which may cause limitations and restrictions that affect other work-related abilities, any resulting limitations and restrictions which may reduce Claimant's ability to do past work and other work must be assessed in deciding the RFC. 20 CFR 416.945(d).

In this case, Claimant's doctor noted in his DHS-49 that because of her visual impairment, Claimant is unable to perform fine manipulation. In his February 6, 2014 exam report, the consulting ophthalmologist stated that, in addition to her distance visual acuity limiting her vision with best correction to 20/80 in her left eye, with an ADD of +2.50, her near acuity measures 20/400 on each side at 14 inches. He concludes that, with such vision, Claimant would have difficulties reading small and moderate sized print as well as distinguishing between small objects. (Exhibit 1, pp. 6-10.) Therefore, the effect of Claimant's vision to her ability to perform basic work activities will also be considered in assessing her RFC to perform 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

Step 4 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 sedentary work activities, primarily tied to lifting restrictions, and has mild limitations in his mental capacity to perform basic work activities. She also has significant limitations in her ability to see, particularly with respect to reading and distinguishing between small objects. Claimant's work history in the 15 years prior to the application consists of work as a housekeeper (light, unskilled), and retail sales (light, unskilled). At the hearing, Claimant testified that she was unable to maintain the cleanliness standard required for her housekeeping employment due to her poor eyesight. Claimant's limited ability to distinguish between small items and to read small and moderate print would also affect any employment in retail sales. In light of the entire record and Claimant's RFC, particularly her visual impairments, 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 nonexertional aspects of work-related activities Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, 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, at the time of hearing, Claimant was [REDACTED] years old and, thus, considered to be an advanced age individual (age 55 and over) for Appendix 2 purposes. She has a GED and unskilled work experience. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and has, at most, mild limitations on her mental ability to perform work activities. She also has significant vision limitations. In this case, based on her age and exertional limitations, the Medical-Vocational Guidelines, specifically 201.04, lead to a conclusion that Claimant is disabled at Step 5 for purposes of MA-P benefit program. It is further noted that, in addition to Claimant's exertional limitations, Claimant's vision problems impose additional limitations to Claimant's ability to perform basic work activities, and the Department has failed to identify any positions in the national economy that Claimant could perform in light of her visual impairment. See *Wilson v Heckler*, 743 F2d 218, 222 (CA4 1984).

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 November 8, 2013 MA-P application, with request for retroactive coverage to August 1, 2013 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 January 2016.



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

Date Signed: **12/17/2014**

Date Mailed: **12/17/2014**

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