

**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.: 14-015900  
Issue No.: 2009  
Case No.: ██████████  
Hearing Date: March 05, 2015  
County: Macomb-District 36

**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 March 5, 2015, from Sterling Heights, Michigan. Participants on behalf of Claimant included Claimant; ██████████, Claimant's husband and interpreter; and ██████████, hearing representative with ██████████, Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (Department) included ██████████, Hearing Facilitator.

**ISSUE**

Whether the Department properly determined that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program.

**FINDINGS OF FACT**

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

1. On April 3, 2014, Claimant submitted an application for public assistance seeking MA-P benefits, with a request for retroactive coverage to January 2014.
2. On June 24, 2014, the Medical Review Team (MRT) found Claimant not disabled.
3. On July 16, 2014, the Department sent Claimant a Benefit Notice denying the application based on MRT's finding of no disability.
4. On August 13, 2014, the Department sent the AHR a Benefit Notice denying the application based on MRT's finding of no disability.

5. On November 7, 2014, the Department received the AHR's timely written request for hearing.
6. Claimant alleged physical disabling impairment due to neck and bone pain.
7. Claimant alleged mental disabling impairments due to depression.
8. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED] 1957, birth date; she was [REDACTED] in height and weighed [REDACTED] pounds.
9. Claimant is an immigrant from [REDACTED] with a [REDACTED] grade education from [REDACTED]; she has limited ability to read and write in English.
10. Within the last fifteen years, Claimant worked in the family business as a cashier.
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 2014), pp. 1-4. 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 for 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, the trier-of-fact must apply a five-step sequential evaluation process and consider 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 means 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. A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence, however, adjudication must continue through the sequential evaluation process. *Id.* If an adjudicator is unable to determine clearly the effect of an impairment or combination of impairments on the individual's ability to do basic work activities, the sequential evaluation process should not end at Step 2; rather, it should be continued. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to neck and bone pain and mental disabling impairment due to depression. The medical evidence presented at the hearing was reviewed and is summarized below.

Claimant was hospitalized from January 30, 2014 to February 1, 2014 for a surgical C6-C7 anterior cervical discectomy and fusion (ACDF) to address the cervical stenosis of her spinal canal. Claimant had experienced a sudden desaturation in walking abilities and upper extremity strength. A pre-surgery MRI of the cervical spine showed

multilevel degenerative changes of the cervical spine, most significant at C6-C7. After surgery, Claimant ambulated without difficulty and her pain was adequately controlled. A cervical spine x-ray after the procedure showed no evidence of fracture and a well-maintained alignment. She was discharged in stable and satisfactory condition. (Exhibit 1, pp. 3-15.)

On April 21, 2014, Claimant's primary care physician completed a medical examination report, DHS-49, identifying Claimant's diagnoses as neck stiffness with severe limitation of movement post neck surgery on January 31, 2014. The doctor indicated that Claimant was limited to occasionally lifting up to 10 pounds and never more and never using either hand or arm to push/pull. No standing, walking or sitting restrictions were identified. (Exhibit C, pp. 23-24.)

On May 13, 2014, Claimant underwent a consultative physical examination. Claimant reported a longstanding history of neck pain, with cervical fusion surgery of C6-C7 in January 2014 with continuing pain in the area with movement; left knee pain for six years without any x-ray of the area; heart palpitations and hand tremor developing 15 years prior at which time she was diagnosed with overactive thyroid and prescribed medication which she has continuously taken since then; and a four-year history of high blood pressure which had not resulted in emergency room care or hospitalization for chest pain, myocardial infarction, congestive heart failure or stroke. The doctor concluded that Claimant had (i) recent cervical fusion with ongoing tenderness on palpation and in active and passive movement and with diminished range of movement; (ii) no swelling, tenderness, crepitation, effusion or subluxation of the knee, with full range of movement, which did not affect Claimant's ambulation or gait or ability to get up from the chair and on and off the examination table without assistance; (iii) normal thyroid gland function; (iv) blood pressure within normal limits, with no symptoms of angina or signs of congestive heart failure and no neck vein distension, heart murmur, gallop, pulmonary rales, visceromegaly, or leg edema. The doctor concluded that Claimant's range of motion was normal in all respects except concerning her cervical spine in which her range of motion was limited as follows: 0 to 20 degrees flexion (normal is 0 to 50 degrees); 0 to 10 degrees extension (normal is 0 to 60 degrees); 0 to 10 degrees right lateral flexion (normal is 0 to 45 degrees); 0 to 10 degrees left lateral flexion (normal is 0 to 45 degrees); 0 to 30 degrees right rotation (normal is 0 to 80 degrees); 0 to 30 degrees left rotation (normal is 0 to 80 degrees). The doctor concluded that Claimant had no limitations on her current abilities and her reflexes were all normal. (Exhibit C, pp. 25-33.)

On May 13, 2014, Claimant underwent a consultative mental status examination. Based on the examination, the doctor concluded that Claimant presented with symptoms of an adjustment disorder secondary to recovery from back surgery, unemployment and worries about her finances. Her prognosis was fair. The doctor noted that she was not evidencing any major depression, disturbance of thought or impaired memory or concentration that would in any way interfere with her ability to

follow 2 and 3 step directions, appropriately interact with others or do work-related activities at a sustained pace. (Exhibit C, pp. 33-36.)

On November 17, 2014, Claimant's primary care physician completed another medical examination report, DHS-49, and identified Claimant's diagnoses as cervical myelopathy, cervical stenosis of the spinal canal with post-surgery status of severe stiffness to neck and residual pain, thyrotoxicosis, depression, gastritis, and hypertension. In her examination of Claimant, the doctor noted that Claimant experienced neck pain with stiffness, leading to limited driving ability and limited ability to carry weights, limitation to head movement to all directions, and depressed mood with decreased initiative and sleep. The doctor indicated that Claimant was in stable condition and identified the following physical limitations for Claimant: (i) she could occasionally lift less than 10 pounds but never more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she could sit less than 6 hours in an 8-hour workday; (iv) she was limited in her use of her hands and arms for repetitive reaching and pushing/pulling. The doctor also identified mental limitations in Claimant's sustained concentration and memory due to her depressed mood. (Exhibit 1, pp. 1-2.)

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, 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, cervical neck pain, thyroid issues, high blood pressure and adjustment disorder. Based on the objective medical evidence of these conditions, Listings 1.00 (musculoskeletal system), particularly 1.04 (disorders of the spine); 4.00 (cardiovascular); 9.00 (endocrine disorders); and 12.00 (mental disorders), particularly 12.04 (affective disorders), were considered.

The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the above-referenced listings to be considered as disabling without further consideration. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, 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 alleges exertional and nonexertional limitations due to her impairments.

With respect to her exertional limitations, Claimant testified that she felt pain throughout her body; the pain in her lower back and legs limited her ability to walk to 20 to 30 minutes and her ability to stand to five minutes; she could lift no more than three pounds; she had difficulty standing from the sitting position; she used a handrail to help her up stairs; she could not bend or squat; and she had issues dropping items, sometimes experiencing numbness in her hands. With respect to her daily living activities, Claimant testified that she lived with her husband who sometimes assisted her with bathing and dressing; she had difficulty cooking and cleaning because of her leg pain and fatigue; and she could drive short distances and shop for up to a half hour as long as someone was with her to pick up items and carry bags. She testified that, while surgery had helped a bit for her neck pain, she continued to experience fatigue. She also noted that she was taking thyroid pills and had high cholesterol.

Claimant's record shows that, following her cervical spine surgery, Claimant continued to experience neck pain. The doctor who completed the consultative physical exam on



May 13, 2014 verified continuing limited range of motion of Claimant's cervical spine as follows: 0 to 20 degrees flexion (normal is 0 to 50 degrees); 0 to 10 degrees extension (normal is 0 to 60 degrees); 0 to 10 degrees right lateral flexion (normal is 0 to 45 degrees); 0 to 10 degrees left lateral flexion (normal is 0 to 45 degrees); 0 to 30 degrees right rotation (normal is 0 to 80 degrees); 0 to 30 degrees left rotation (normal is 0 to 80 degrees). Although the consulting doctor did not identify any limitations on Claimant's activities due to her cervical spine issues, Claimant's primary care physician completed a DHS-49 on November 17, 2014 identifying the following physical limitations for Claimant: (i) she could occasionally lift less than 10 pounds but never more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she could sit less than 6 hours in an 8-hour workday; and (iv) she was limited in her use of her hands and arms for repetitive reaching and pushing/pulling. Based on Claimant's testimony and the medical record, Claimant is capable, at best, of performing the physical demands of work classified as sedentary.

Claimant also alleged mental impairments that prevented her from participating in basic work activities. She testified that she has trouble remembering things and has crying spells daily. In the May 13, 2014 mental status consultative exam report, the consulting doctor found that Claimant suffered from adjustment disorder due to her recovery from back surgery, unemployment and financial concerns but concluded that her condition not interfere with her ability to follow 2-3 step directions, appropriately interact with others or do work related activities at a sustained pace (Exhibit C, p. 35). However, Claimant's primary care physician identified mental limitations in Claimant's sustained concentration and memory due to her depressed mood. (Exhibit 1, pp. 1-2.) Based on the medical evidence and Claimant's testimony, Claimant has mild limitations on her mental ability 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 no more than sedentary work activities and has mild limitations in her mental capacity to perform basic work activities. At the hearing, Claimant testified that she had worked as a secretary in her native country but that employment ended in 2000. Since Claimant's employment as a secretary was not within the last 15 years, it is not considered.

Further, because of Claimant's language limitations, particularly with respect to her ability to read and write English, Claimant does not possess the skills necessary to continue employment as a secretary in the U.S. Claimant also testified that she was employed as a cashier in her husband's wine and beer shop. Although Claimant did not get paid for this employment, it is nevertheless SGA. See 20 CFR 416.972. Although Claimant testified that she stood for only an hour daily during her time at this job and she did not have to lift, she also testified that she put purchased beer and wine in the bag. The Dictionary of Occupational Titles identifies the strength classification for cashiers as "light" and indicates that a retail trade cashier may have to stock shelves, weigh items and bag merchandise. In light of Claimant having an RFC to perform only sedentary work activities, 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 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 advanced age (age 55 and over) for purposes of Appendix 2. She is an immigrant from [REDACTED] with a [REDACTED] grade [REDACTED] education; she has limited ability to read and write in English. She was able to understand many of the questions posed to her at the hearing and respond, but her husband sometimes assisted in translating certain questions. Claimant testified that she could read and write in English "but not too well" and

admitted she could not read a newspaper in English. A person who cannot read or write a simple message such as instructions or inventory lists is considered illiterate. 20 CFR 416.964. In this case, while Claimant was able to orally communicate in English with minimal assistance, her limited ability to read and write in English rendered her illiterate for purposes of the disability assessment.

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 mild limitations on her mental ability to perform work activities. The Medical-Vocational Guidelines result in a disability finding based on Claimant's exertional limitations under 201.01. After review of the entire record, including Claimant's testimony, and in consideration of Claimant's age, education, work experience, physical as well as mental RFC, Claimant is found **disabled** at Step 5 for purposes of MA-P benefit program.

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 programs

### **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 3, 2014 MA-P application, with request for retroactive coverage to January 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 March 2016.



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**Alice C. Elkin**  
Administrative Law Judge  
for Nick Lyon, Interim Director  
Department of Human Services

