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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-006276
Issue No.: 2009
Case No.: [redacted]
Hearing Date: June 03, 2015
County: Wayne-District 19

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, a telephone hearing was held on June 3, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [redacted], authorized representative with [redacted]; Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and 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

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

1. On July 18, 2013, Claimant submitted an application for public assistance seeking MA-P benefits, with retroactive coverage to April 2013.

2. On March 17, 2015, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 13-15).

3. On June 23, 2014, the Social Security Administration (SSA) approved Claimant's August 14, 2013, application for Supplemental Security Insurance (SSI) benefits with an August 1, 2013, date of eligibility and MA effective date of September 1, 2013 (Exhibit B).

4. On March 17, 2015, the Department sent Claimant a Benefit Notice denying her MA-P application based on MRT's finding of no disability (Exhibit A, pp. 3-4).

5. On April 15, 2015, the Department received the AHR's timely written request for hearing.

6. Claimant alleged physical disabling impairment due to avascular necrosis, chronic back pain, hip pain, shoulder pain, chronic obstructive pulmonary disease (COPD), emphysema, asthma, vertigo, and headaches.

7. Claimant alleged mental disabling impairments due to depression, anxiety, and bipolar disorder.

8. At the time of hearing, Claimant was [redacted] old with an [redacted], birth date; she was [redacted] in height and weighed [redacted] pounds.

9. Claimant is a high school graduate, with two years of college education.

10. Claimant has no employment history.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and 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 Department of Human Services) 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.

In this case, the evidence at the hearing established that Claimant was approved for SSI benefits by the SSA with an August 1, 2013 eligibility date and a September 1, 2013 MA effective date (Exhibit B). The AHR contends that the conditions leading SSA to conclude that Claimant was disabled are the same conditions identified in the medical record presented to MRT in connection with the July 18, 2013 MA application, with request for retro to April 2013. However, the AHR did not provide a copy of the SSA decision to support its argument. Therefore, the medical file presented is reviewed to determine whether Claimant is disabled for SSI purposes, and therefore eligible for MA-P benefits, for April 2013 to the date of SSA approval.

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. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, 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 v Bowen,* 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services,* 773 F2d 85, 90 n.1 (CA 6, 1985). 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 or if the effect of an impairment or combination of impairments on the individual's ability to do basic work

activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to avascular necrosis, chronic back pain, hip pain, shoulder pain, COPD, emphysema, asthma, vertigo, and headaches and mental disabling impairment due to depression, anxiety, and bipolar disorder (Exhibit A, pp. 17, 19). The medical evidence presented at the hearing was reviewed. Pages 27 and 28 of Claimant's Exhibit 1 concerned a patient who was not Claimant and was removed from Claimant's medical file. The remaining documents are summarized below.

An November 27, 2013, MRI of Claimant's lumbar spine showed trace grade 1 retrolisthesis L4 on L5 with mild degenerative spondylosis at that level (Exhibit A, p. 43). A December 5, 2013, MRI of Claimant's shoulder showed possible focal full-thickness tear involving the far anterior insertional fibers of the supraspinatus tendon and minimal osteoarthritic changes at the acromioclavicular joint (Exhibit A, pp. 44-45). A December 4, 2013, MRI of Claimant's cervical spine revealed mild reversal of the curve of the cervical spine with slight posterior prominence of the disc at C5-C6 and mild broad-based bulging of the disc at C3-C4 and C5-C6 (Exhibit A, pp. 46-37).

Claimant's medical file included notes from her visits to her doctor at [redacted] on February 3, 2014; March 24, 2014; June 2, 2014; July 11, 2014; August 25, 2014; September 2, 2014; October 2, 2014; November 11, 2014; and December 23, 2014. The notes indicate that Claimant suffered from injuries related to a June 2013 car accident. The notes showed that an MRI taken before the February 3, 2014, visit demonstrated a lumbar HNP (herniated nucleus pulposus) (or disc herniation) L4-5 and cervical HNP C4-5 and C5-6. The doctor noted decreased axial rotation with facet pain, decreased lumbar extension with facet pain, decreased lumbar flexion with facet pain, and lateral bending to the left and right with facet pain to the mid-thigh. Gait was normal but left-crossed straight leg was positive for leg pain. Pain was 9/10. Claimant received spinal injections at each visit. At the June 2, 2014, visit, Claimant described the pain as lower back pain radiating down her legs to her toes and neck pain radiating to her fingers. At the July 21, 2014, and August 25, 2014, and November 11, 2014, visits, the doctor noted that Claimant had seen no significant changes in her current symptoms and surgery was recommended. (Exhibit A, pp. 24-42; Exhibit 1, pp. 1-4).

On June 28 and 29, 2014, Claimant went to the emergency department and was treated for hip pain and left thigh pain (Exhibit A, pp. 79-97).

On October 28, 2014, Claimant's doctor completed a DHS-54A, medical needs form, indicating that, because of a displaced lumbar intervert disc and lumbar facet syndrome, Claimant would need assistance with chores and grooming and dressing and that she would not be able to work any job until December 31, 2014 (Exhibit 1, p. 31).

On December 2, 2014, Claimant had a lumbar discogram with manometry and subsequent disc decompression at L4-5 with no complications noted (Exhibit 1, pp. 12-13, 22-25). Claimant attended physical therapy after surgery but indicated that she did not feel that the surgery was effective (Exhibit 1, pp. 14-21).

Claimant's doctor's February 3, 2015, notes from [redacted] indicated that Claimant continued to complain of back pain radiating into bilateral lower extremities. The doctor reported that Claimant participated in outpatient physical therapy which helped approximately 90 percent. The doctor noted that Claimant's bilateral straight leg raise testing was positive for back pain, she walked with the assistance of a cane, and she had decreased lumbar extension with facet pain, decreased lumbar flexion with facet pain, lateral bending decreased to the left and right with facet pain to the mid-thigh. The doctor ordered cervical injection and physical therapy three times weekly for six weeks and indicated that a discogram and possibly a posterior spinal fusion with instrumentation at L4-5 by a minimally invasive process may be appropriate. (Exhibit 1, pp. 39-40.)

On February 18, 2015 and March 4, 2015 Claimant was treated with a cervical/thoracic epidural for her displaced cervical intervert disc. The pre- and post-operative notes indicate cervical stenosis, cervical spondylosis, and cervical disc herniation (Exhibit 1, pp. 6-11).

Claimant visited her primary care physician on February 17, 2015; January 21, 2015; December 29, 2014; November 20, 2014; October 6, 2014; August 28, 2014; June 30, 2014. Diagnoses of COPD, avascular necrosis of the right hip, hypertension, bipolar disorder, chronic back pain are identified. The notes also indicate that Claimant uses a CPAP machine to treat sleep apnea and has a BMI of 40 or greater. (Exhibit A, pp 48-78.) The June 30, 2014, notes showed that Claimant had total left hip replacement surgery scheduled in July 2014 (Exhibit A, p. 76). At the August 28, 2014, visit, Claimant indicated that she had recently had hip surgery that markedly improved her back pain though she used crutches to ambulate (Exhibit A, p. 70). At the October 6, 2014 visit, Claimant indicated she was able to better ambulate but still used a cane (Exhibit A, p. 67). On February 17, 2015, Claimant reported continued back pain; the doctor noted that Claimant continued to see neurosurgery for persistent back pain and that she wore a back brace (Exhibit A, pp. 48-50).

Viewed in its entirely, Claimant's medical record presented shows that Claimant had ongoing back, hip and knee issues following a June 22, 2013, auto accident. The medical evidence presented shows her ongoing treatment for those issues and includes her medical records from her visits with her doctor at [redacted] on February 3, 2014; March 24, 2014; June 2, 2014; July 11, 2014; August 25, 2014; September 2, 2014; October 2, 2014; November 11, 2014; and December 23, 2014; and February 3, 2015. Other than the March 24, 2014, notes that reference a January 2013 slip and fall, the remaining notes all reference "June 22, 2013" as the date of injury due to a MVA (motor vehicle accident) (Exhibit A, pp. 24, 28, 31, 33, 3739, 41; Exhibit 1, pp. 3, 39).

The notes from her visits with her primary care physician with diagnoses of COPD, bipolar, obesity, lower back pain, gastroesophageal disease, anxiety, headaches, sleep apnea are from February 17, 2015; January 21, 2015; December 29, 2014; November 20, 2014; October 6, 2014; August 28, 2014; June 30, 2014; and June 29, 2014 (Exhibit A, pp. 48, 53, 62, 67, 70, 76).

The medical record presented all arises after the June 2013 car accident. In fact, there is not even any documentation for the April 2013 hospitalization for which MA-P coverage is being sought. In the absence of any medical documentation establishing any impairment prior to the June 2013 motor vehicle accident, Claimant has failed to establish that she satisfies the severity requirements at Step 2 for the requested retro months of April 2013 and May 2013. As such, Claimant is not disabled for April 2013 and May 2013 and the disability analysis stops at Step 2 for those months.

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the medical evidence is sufficient to establish that Claimant suffered from severe impairments beginning June 2013 that has lasted or is expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2 for June 2013 ongoing, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination of 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.

Based on the objective medical evidence presented in Claimant's medical file, Listings 1.00 (musculoskeletal system), particularly 1.02 (major dysfunction of a joint), 1.03 (reconstructive surgery or surgical arthrodesis of a major weight bearing joint), and 1.04 (disorders of the spine); 2.00 (special senses and speech), particularly 2.07 (disturbance of labyrinthine–vestibular function); 3.00 (respiratory system), particularly 3.02 (chronic pulmonary insufficiency) and 3.30 (asthma); and 12.00 (mental disorders), particularly 12.04 (affective disorders) and 12.06 (anxiety-related 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 both exertional and nonexertional limitations. With respect to her physical limitations, she testified that she used a cane and a back brace but continued to experience pain down her legs that prevented her from walking more than a block or standing more than two minutes. She could sit but her back hurt and leg went numb after 30 minutes. She testified that she could not lift more than 5 to 10 pounds. A home health aide assisted in performing her daily chores and in bathing her.

In July 2014, Claimant had hip replacement surgery (Exhibit A, pp. 70, 76). The notes from Claimant's visits to her doctors at [redacted] showed that an MRI taken before her February 3, 2014 visit demonstrated a lumbar HNP (herniated nucleus pulposus) (or disc herniation) L4-5 and cervical HNP C4-5 and C5-6. The notes also showed that Claimant described the pain as lower back pain radiating down her legs to her toes and neck pain radiating to her fingers and indicated to her doctors that she had seen no significant changes in symptoms. The doctor noted decreased axial rotation with facet pain, decreased lumbar extension with facet pain, decreased lumbar flexion with facet pain, and lateral bending to the left and right with facet pain to the mid-thigh. Even after spinal injections and a December 2, 2014 lumbar discogram with manometry and subsequent disc decompression at L4-5, Claimant continued to experience pain

and did not feel that subsequent physical therapy was effective (Exhibit A, pp. 24-42; Exhibit 1, pp. 1-4, 12-21, 22-25). Claimant's doctor's February 3, 2015 notes from [redacted] indicated that Claimant continued to complain of back pain radiating into bilateral lower extremities. The doctor noted that Claimant's bilateral straight leg raise testing was positive for back pain, she walked with the assistance of a cane, and she had decreased lumbar extension with facet pain, decreased lumbar flexion with facet pain, lateral bending decreased to the left and right with facet pain to the mid-thigh. (Exhibit 1, pp. 39-40.) On February 18, 2015 and March 4, 2015, Claimant was treated with a cervical/thoracic epidural for her displaced cervical intervert disc. The pre- and post-operative notes indicate cervical stenosis, cervical spondylosis, and cervical disc herniation (Exhibit 1, pp. 6-11).

On October 28, 2014, Claimant's doctor completed a DHS-54A, medical needs form, indicating that, because of a displaced lumbar intervert disc and lumbar facet syndrome, Claimant would need assistance with chores and grooming and dressing and that she would not be able to work any job until December 31, 2014 (Exhibit 1, p. 31). Claimant's doctor's notes through February 2015 also indicate that Claimant had ongoing back pain, that she used a CPAP machine to treat sleep apnea, and she had a BMI of 40 or greater. (Exhibit A, pp 48-78.)

The medical evidence presented, coupled with SSA's finding that Claimant had a disability onset date of August 1, 2013, is sufficient to establish that Claimant's exertional limitations made her capable of performing less than sedentary work activities for June 2013 ongoing. This conclusion is further supported by Claimant's doctor's diagnosis of obesity. The record shows that Claimant is 5'3" and her weight has fluctuated between 216 and 250 pounds, with resulting BMI of between 38.3 and 44.3. Claimant's obesity, and resulting sleep apnea, also limits her ability to engage in basic work activities and, consequently, her exertional RFC. Social Security Ruling 02-1p.

Claimant also alleged nonexertional limitations due to depression, anxiety and bipolar disorder and testified that she experienced anxiety attacks, memory loss, crying spells, and mood swings. Although there is reference in Claimant's medical file to diagnoses of depression and anxiety, there is nothing presented in the medical file to establish that she has any nonexertional limitations in her ability to perform basic work activities due to her mental condition. Therefore, Claimant has mild to no limitations on her mental capacity to perform basic work activities.

Therefore, after review of the entire record to include Claimant's testimony, it is found, based on Claimant's mental and physical conditions for June 2013 ongoing, that Claimant maintains the physical capacity to perform less than sedentary work activities and has mild to no limitations on her mental capacity 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).

In this case, Claimant has no work history. Because 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). However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). 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 was [redacted] years old at the time of application and [redacted] years old at the time of hearing and, thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. She is a high school graduate with some college education

but no work experience. As discussed above, for June 2013 ongoing, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform less than sedentary work activities and has, at most, mild limitations on her mental ability to perform work activities. In this case, the Medical-Vocational Guidelines result in a disability finding based on Claimant's exertional limitations. Therefore, based on her age, education, work experience, and physical RFC, Claimant is found disabled at Step 5 for purposes of MA-P benefit program for June 2013 ongoing.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds for purposes of the MA-P benefit program that Claimant was (i) not disabled for April 2013 and May 2013 and (ii) disabled for June 2013 ongoing.

DECISION AND ORDER

Accordingly, the Department's determination is AFFIRMED IN PART with respect to its denial of Claimant's MA-P application for the retro months of April 2013 and May 2013 REVERSED IN PART with respect to its denial of Claimant's MA-P application for the June 2013 ongoing.

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 July 18, 2013, MA-P application and retroactive coverage to determine if all the other non-medical criteria for the months from June 2013 until Claimant received SSI MA are satisfied and notify Claimant of its determination; and

2. Supplement Claimant for lost benefits, if any, that Claimant was entitled to receive if otherwise eligible and qualified from June 2013 ongoing.

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

Date Signed: **7/01/2015**

Date Mailed: **7/01/2015**

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]