

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

IN THE MATTER OF:

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Reg. No.: 15-008199
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 25, 2015
County: Wayne-District 18

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 3-way telephone hearing was held on June 25, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, authorized hearing representative with ██████████; Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Medical Contact Worker.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. The documents were received, the record closed on July 27, 2015, and this matter is now before the undersigned for a final determination.

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 April 3, 2014, Claimant submitted an application for public assistance seeking MA-P benefits, with request for retroactive coverage to January 2014 (Exhibit A, pp. 153-156).
2. On May 18, 2015, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 2-4).

3. On an unknown date, the Department sent Claimant a Health Care Coverage Determination Notice denying the application based on MRT's finding of no disability.
4. On May 29, 2015, the Department received the AHR's timely written request for hearing (Exhibit A, pp. 145-152).
5. Claimant alleged disabling impairment due to chronic obstructive pulmonary disease (COPD), asthma, foot pain, myocardial infarction, migraines, coronary artery disease, degenerative disc disease (DDD), depression, and anxiety.
6. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; she was [REDACTED] in height and weighed [REDACTED] pounds.
7. Claimant is a high school graduate with a two year college associates' degree.
8. Claimant has an employment history of work as bartender and deli counter worker.
9. 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 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.

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.

The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

Claimant's medical history included doctor's notes from office visits to her primary care physician after she slipped and fell at her home and fractured her ankle. On February 24, 2013, surgery was performed on the ankle. An x-ray of the ankle revealed excellent alignment of the fracture dislocation, with retained hardware, anatomically reduced,

well-placed and positioned. Claimant's ankle pain had reduced as of the August 14, 2013, office visit (Exhibit 1, pp. 1-27.) The doctor's notes indicate that Claimant was a light smoker and was advised to stop smoking in April 2013, June 2013, and August 2013 (Exhibit 1, pp. 2, 8, 14.)

On November 11, 2013, Claimant's doctor completed a medical assessment of ability to do work related activities (physical) form, indicating that Claimant had last visited in August 2012 and she was diagnosed with COPD, ASCAD (atherosclerotic coronary artery disease), and mild depression. The doctor indicated that her COPD and ASCAD were unlikely to improve and her dyspnea limited her ability to do some activities of daily living, noting that she was likely to miss more than four days of work per month because of her condition. The doctor also noted that Claimant had continued to smoke even after her diagnosis (Exhibit 3.)

On January 4, 2014, Claimant was seen at the emergency department for tongue swelling and increased difficulty breathing with coughing. At the hospital, she complained of chest pain. A chest x-ray showed no acute process in the chest. Claimant was diagnosed with influenza, treated, and released (Exhibit A, pp. 126-140.)

A May 15, 2014, chest x-ray showed a 9 mm oval density in the periphery of the left lower lung possibly representing a granuloma but no evidence of acute cardiopulmonary disease (Exhibit A, pp. 62, 94).

A May 25, 2014, cervical spine MRI showed (i) small disc herniation C4-C5 near the midline with the AP dimension of the sac remaining within normal limits without effacement of the spinal cord and with the lateral recesses and neural foramina appearing patent and (ii) mild disc narrowing at C5-C6 eccentric to the right with small disc herniation measuring 3 mm in diameter and the AP dimension of the sac relatively well-preserved measuring 10mm (Exhibit A, pp. 64, 95.)

From February 22, 2015, to February 23, 2015, Claimant was hospitalized complaining of shortness of breath and coughing. She indicated she was a tobacco user, smoking three cigarettes daily, down from two packs daily. She was diagnosed with chlamydia pneumonia infection, which was improving on the second day, and COPD (Exhibit A, pp. 42-54, 74-86.) A February 22, 2015, chest x-ray showed no evidence of acute cardiopulmonary process (Exhibit A, pp. 40-41, 72-73).

On March 9, 2015, Claimant submitted to a consultative physical examination at the Department's request and asserted that she had a history of asthma since 2004 aggravated by the weather as well as fumes and smoke; hypertension since 2005; bronchitis since 2004; chronic back pain since 2005, with a history of herniated disc and osteoporosis; and depression. The consulting doctor noted that Claimant did not use a cane or aid for walking; she was able to get on and off the examination table slowly; she could slowly tandem walk, heel walk, and toe walk; she could squat to 70% of the distance and recover and bend to 90% of the distance and recover; her straight leg

raising was 0 to 50 degrees while lying and 0 to 90 degrees while sitting. The doctor concluded that Claimant had a history of asthma (currently on inhalers), hypertension, chronic back pain, low vitamin D, and depression (currently on Zoloft). The doctor noted that Claimant's forward hip flexion was 50 degrees bilaterally (normal is 0 to 100 degrees) but all other range of motion assessments were normal and that she could stand, bend, stoop, carry, push and pull with pain and squat, get on and off the examination table, and climb stairs with pain (Exhibit A, pp. 15-22, 27-34.)

A March 9, 2015, pulmonary function report showed that Claimant was 5'3" and (i) her best FEV₁ pre-test was 1.16 and the best post-test was 1.55 and (ii) her best FVC pre-test was 1.58 and the best post-test was 2.18. Claimant's FEV₁ was assessed at 45% of predicted, with a lung age of 121. She was found to have moderate obstruction and low vital capacity possibly due to restriction (Exhibit A, pp. 23-26, 35-38.)

From March 17, 2015, to March 19, 2015, Claimant was hospitalized after complaining of shortness of breath not relieved by her bronchodilators and coughing fits with abdominal pain. Chest x-rays showed no acute cardiopulmonary process, and abdominal x-rays were unremarkable. An abdominal ultrasound showed a possible hematoma or resolving hematoma. She was diagnosed with COPD exacerbation, insomnia, depression and migraines. She was treated with steroids and Percocet, and her abdominal pain and breathing improved. The abdominal CT revealed an avascular necrosis (AVN) which it was noted would benefit from an orthopedic evaluation (Exhibit 2, pp. 1-30.)

On April 17, 2015, Claimant submitted to a consultative mental status examination at the Department's request. The consulting doctor diagnosed Claimant with depressive disorder due to general physical condition, generalized anxiety disorder, and nicotine use disorder. He noted that even though Claimant did not describe herself as depressed at the time of her exam, she appeared quite anxious and was wringing her hands. The doctor concluded that Claimant was not able to function at a fully sustained basis but might be able to work part-time after she had some relief from her pain and continuing follow up for her physical problems and some therapeutic intervention concerning her anxiety and depression. The doctor identified Claimant's prognosis as guarded to fair (Exhibit A, pp. 5-8.)

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 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.

Initially, Claimant's impairment under 3.02 (chronic pulmonary insufficiency) was considered. To meet a listing under 3.02A or B, Claimant, who is [REDACTED]", must have a forced expiratory volume (FEV₁) equal to or less than 1.15 liters, body temperature and pressure saturated with water vapor (L, BTPS) or a forced vital capacity (FVC) equal to or less than 1.35 L, BTPS, documented in pulmonary function testing performed by spirometry in accordance with 3.00E. This requires three satisfactory forced expiratory maneuvers, with two of the satisfactory spirograms reproducible (i.e., not differing from the largest value by more than 5 percent or 0.1 L, whichever is greater). The highest of three satisfactory forced expiratory maneuvers used to measure an individual's FEV₁ and FVC, both before bronchodilator use and ten minutes after bronchodilator use, is used to assess the severity of the respiratory impairment. 3.00E. In this case, Claimant's highest FEV₁ value was 1.55 L after bronchodilator use and her highest FVC value was 2.02. Therefore, she did not meet the severity of a listing under 3.02.

Claimant's impairments were also considered under listing 1.04 (disorders of the spine), 3.03 (asthma), 4.04 (ischemic heart disease), 12.04 (affective disorders), and 12.06 (anxiety-related disorders). 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 due to her medical condition. She testified that she suffered one to two anxiety attacks weekly, each lasting a couple of hours; she had some problems with her memory and concentration; she did not use a walking aid but could walk less than a block; she could not sit for longer than 3 minutes without shifting in her chair in response to pain; she could stand only a few minutes at a time; she could bend and squat but would have to lean on something to pull herself back up; she could not lift more than a gallon of milk; and her right hand went numb twice a day. She lived with her husband who did all of the chores. She could bathe and dress herself although she had trouble tying her shoes. The worker at the hearing noted that Claimant was continuously shifting in her seat and alternating between sitting and standing in order to alleviate her discomfort.

Claimant's medical file includes a May 2014 cervical MRI that showed a small disc herniation at C4-C5 and mild disc narrowing at C5-C6. The consulting doctor did not find any significant restrictions with respect to Claimant's range of motion other than the forward flexion involving both hips but did note that, while she did not use a walking aid, she experienced pain when standing, bending, stooping, carrying, pushing, pulling, squatting, getting on and off the examination table, and climbing stairs. She also noted that her straight leg raising was 0 to 50 degrees while lying and 0 to 90 degrees while sitting. Claimant's activities are further restricted by her breathing issues. Although her COPD does not meet the level of severity to meet a listing, the pulmonary function test results show that, even after taking her bronchodilator, her highest FEV₁ was 55% of predicted. Claimant's past medical history supports her diagnosis of asthma (Exhibit 2, p. 1), which Claimant testified was exacerbated by exposure to cold and dust.

With respect to mental impairments that affected her ability to engage in sustained work activities, in the April 17, 2015, consultative exam, the psychiatrist concluded that Claimant suffered from depressive disorder due to her general physical condition, generalized anxiety disorder, and nicotine use disorder. She concluded that, while Claimant responded well to the sensorium and mental capacity portion of the exam, her evident anxiety made her unable to function at a fully sustained basis.

Ultimately, after review of the entire record to include Claimant's testimony, it is found that Claimant maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a) and she had moderate limitations on her mental capacity to engage in 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 and has moderate limitations in her mental capacity to perform basic work activities. Claimant's work history in the 15 years prior to the application consists of work as a bartender (medium, unskilled) and deli counter worker (medium, unskilled). Based on her exertional RFC, 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). 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 ■ years old at the time of application and ■ years old at the time of hearing, and, thus, considered to be a closely approaching advanced age (age ■) for purposes of Appendix 2. Claimant has a history of unskilled work experience. She is a high school graduate with an associate's degree. Her education does not provide for direct entry into skilled work. See SSR 83-10. As discussed above, she maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and has moderate limitations on her mental ability to perform work activities on a sustained basis. In this case, the Medical-Vocational Guidelines, 201.12, result in a disability finding based solely on Claimant's exertional limitations.

There is evidence on the record that Claimant was a smoker and was advised by her treating physician to cease tobacco use and failed to do so until just before the hearing. However, there is no evidence on the record that Claimant's engagement in tobacco cessation treatment would clearly restore her capacity to engage in SGA. See SSR 82-59. In the absence of such evidence, Claimant's tobacco use does not preclude the conclusion that she is disabled.

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 August 2016.



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

Date Signed: **8/21/2015**

Date Mailed: **8/21/2015**

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]