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

IN THE MATTER OF:

[redacted]

Reg. No.: 15-008274
Issue No.: 4009
Case No.: [redacted]
Hearing Date: July 22, 2015
County: St. Joseph

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 July 22, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and [redacted], Claimant's neighbor. Participants on behalf of the Department of Health and Human Services (Department) included [redacted], Eligibility Specialist.

During the hearing, Claimant waived the time period for the issuance of this decision in order to allow for the submission of additional records. Documents were received, the record closed on August 21, 2015, and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the State Disability Assistance (SDA) 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 8, 2015, Claimant submitted an application for public assistance seeking SDA benefits (Exhibit A, pp. 3-28).

2. On May 29, 2015, the Medical Review Team (MRT) found Claimant not disabled (Exhibit A, pp. 124-126).

3. On June 1, 2015, the Department sent Claimant a Notice of Case Action denying the application based on MRT's finding of no disability (Exhibit A, pp. 127-130).

4. On June 4, 2015, the Department received Claimant's timely written request for hearing (Exhibit A, p. 152).

5. Claimant alleged disabling impairment due to lower back pain, stroke, depression and anxiety.

6. On the date of the hearing, Claimant was [redacted] years old with a [redacted], birth date; she is [redacted] in height and weighs about [redacted] pounds.

7. Claimant graduated from high school and has some college credits.

8. Claimant has an employment history of work as certified nursing assistant.

9. Claimant's impairments have lasted, or are expected to last, continuously for a period of 90 days 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 State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

A disabled person is eligible for SDA. BEM 261 (July 2014), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

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 substantial gainful activity (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 SDA 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 90 days. 20 CFR 416.922; BEM 261, p. 2.

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). Basic work activities mean the abilities and aptitudes necessary to do most jobs. 20 CFR 416.921(b). Examples include (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. 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).

In the present case, Claimant alleges disabling impairment due to stroke, back pain, depression and anxiety. The medical evidence presented at the hearing, and in response to the interim order, was reviewed and is summarized below.

From July 29 to July 31, 2014, Claimant was hospitalized with left-sided numbness and weakness and was diagnosed with acute right MCA (middle cerebral artery) stroke (Exhibit A, pp. 52-53; Exhibit D). A neurological exam showed left lower facial weakness, dysarthria and left arm weakness, preserved left lower extremity strength, with obvious risk factor including long-standing smoking history (Exhibit D). A July 31, 2014 brain MRI showed numerous nonhemorrhagic infract scattered along the right middle cerebral artery vascular territory (Exhibit A, p. 66). A July 31, 2014 neck MRI was normal (Exhibit A, p 67). A July 31, 2014 head MRI showed thrombus in the proximal right middle cerebral artery of late acute to early subacute age, causing moderate stenosis throughout most of the M1 segment but not complete occlusion (Exhibit A, p 68). A July 31, 2014 echocardiography report did not reveal any abnormality (Exhibit A, pp. 69-70).

Claimant's medical records from office visits with her neurologist from June 2013 to July 2014 (Exhibit A, pp. 85-100, 111-122; Exhibit D) and from November 2014 to April 2015 (Exhibit A, pp. 40-55) show ongoing issue of neck and back pain. In March 2013 Claimant, who had complained of significant pain down her left arm, underwent an anterior cervical discectomy and fusion at C6-C7 to address a large herniated disk compressing at the thecal sac well as the left neuroforamen. The records show that six months after the surgery she began to experience neck pain radiating down her right arm with shoulder spasms (Exhibit A, pp. 85-100, 111-116). In September 2013

Claimant had a second anterior cervical discectomy and fusion for herniated disk and adjacent level disease (Exhibit A, pp. 82, 106, 120-122). The neurologist's notes indicate that Claimant had been doing well, with no pain in her neck or down her arms or shoulders until March 2014 when she reported pain down her right arm radiating down from the shoulder into the middle three fingers (Exhibit A, pp. 120-1122). A November 4, 2014 MRI showed good alignment, some fluid in the facets at L4-L5, mild stenosis at L4-L5 without neural foraminal stenosis, centralized disk bulge with facet arthropathy narrowing the lateral recess, compressing the traversing left S1 nerve root and narrowing moderately on the right S1 nerve root (Exhibit A, pp. 83, 109-110). Notes from the November 24, 2014 visit show that Claimant had recovered from the right basal ganglia stroke in July 2014 that had left significant left facial weakness, left arm weakness and difficulties with speech. However, since the stroke, she had noticed pain down her left leg that radiated to the bottom of her foot, occasionally in the right leg as well (Exhibit A, p. 106). Records for December 2014 show treatment for L5-S1 and S1 radiculopathy with pain radiating down the left leg to the foot and separate back pain, minimal compared to the leg. The doctor recommended left L5-S1 microdiscectomy, medial facetectomy and laminotomy, followed by the same procedure on the right (Exhibit A, p. 84), (Exhibit A, p. 82-83).

In January 2015, Claimant had bilateral L5-S2 diskectomy for her severe back pain with pain radiating down the backs of both legs, left greater than right to treat disk herniation at L5-S1 with compression of the left and right S1 nerve roots. The January 2015 notes showed that after surgery, her back pain was better and her left leg pain was resolved, but the pain in her right leg was worse and she had numbness in her right foot, worsening with standing (Exhibit A, p. 103; Exhibit D).

A January 12, 2015 x-ray of Claimant's chest showed no acute disease (Exhibit A, pp. 62-63). A May 6, 2015 lumbar spine x-ray showed mild degenerative changes and spurring at L2-L3 (Exhibit A, pp. 58-59). A May 6, 2015 ultrasound of Claimant's lower left extremity showed no evidence of acute DVT (deep vein thrombosis) or superficial thrombophlebitis (Exhibit A, pp. 60-61).

Claimant's medical records included records from office visits with her primary care physician from June 2014 to October 2014 and from February 2015 to April 2015 (Exhibit A, pp. 40-55). The notes indicate that Claimant's January 2015 back surgery relieved her left leg sciatica but subsequently she experienced almost constant right leg sciatica, worse with straight leg raising (Exhibit A, p. 44-47). The April 2015 notes noted low back pain due to degenerative disk disease, situational anxiety, insomnia, well-controlled hypertension, and nicotine dependence (Exhibit A, pp. 40-41). The March 13, 2015 notes indicated Claimant had continued bilateral leg pain (Exhibit A, p. 42).

A May 26, 2015 cervical spine MRI showed anterior fusion of C6-C7, mild foraminal stenosis at C3-C4, C4-C5, C6-C7 with no evidence of nerve compression, and normal cervical cord (Exhibit A, p. 72). A May 26, 2015 lumbar spine MRI showed (i) previous laminectomy discectomy at L5-S1 with enhanced granulation tissue about the proximal

descending S1 nerve roots with tiny residual midline disc protrusion but overall improved spinal canal patency and resolution of subarticular recess stenosis compared to the preoperative study and (ii) mild degenerative changes at L2-L3, L3-L4, and L4-L5 (Exhibit A, pp. 73-74).

From June 23 to June 24, 2015, Claimant was hospitalized with complaints of mild headache and left-sided heaviness. A June 24, 2015 brain MRI showed no acute intracranial infarct, hemorrhage or mass; small chronic infarction in the territory of the right recurrent artery of Heubner with residual blood products; small foci of chronic infarctions at the right posterior-frontal cortical/subcortical white matter; few small foci of signal abnormality predominately in the right periventricular white matter, which is seen in patients with chronic microvascular ischemic disease and migraine headaches (Exhibit 1, pp. 6-7). A June 23, 2015 head CT showed no acute intracranial abnormalities and small chronic infarctions in the right frontal and in the territory of the right recurrent artery of Heubner (Exhibit 1, p. 8). In its discharge summary, the hospital indicated that Claimant may have had a TIA (transient ischemic attack) but the brain MRI showed no acute process (Exhibit D, pp. 25-87).

In response to the July 22, 2015 interim order, Claimant's pain management doctor completed a physical exam report, DHS-49, listing Claimant's diagnoses as lumbar spondylosis. The doctor noted that concluded that Claimant's condition was stable and identified the following limitations: (i) she could frequently lift and carry 20 pounds, occasionally lift 25 pounds, and never lift and carry 50 pounds or more; (ii) she could stand and/or walk at least 2 hours in an 8-hour workday. The doctor did not identify any sitting restrictions and indicated that Claimant had no restrictions in using her extremities for repetitive actions (Exhibit C).

On August 11, 2015, Claimant's primary care physician completed a physical exam report, DHS-49, listing Claimant's diagnoses as CVA (cerebral vascular accident), cervical and lumbar degenerative joint disease, and anxiety/depression. The doctor noted that Claimant had left-sided weakness and slight slurring of speech secondary to the CVA. The doctor concluded that Claimant's condition was stable and identified the following limitations: (i) she could occasionally lift and carry up to 10 pounds and never more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she needed a cane or walker; and (iv) she could not use any extremities for repetitive actions (Exhibit C).

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 90 days. 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 if 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 medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Listings 1.04 (disorders of the spine), 11.04 (central nervous system vascular accident), 12.04 (affective disorders), and 12.06 (anxiety-related disorders) were considered. 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 RFC takes into consideration the total limiting effects of all impairments, including those that are not severe. 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.
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> 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 non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., unable to 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 testified that, because of back pain that extended into her legs, she could not walk farther than 200 feet, sit for more than an hour, stand for more than 15 minutes, or bend. She testified that she sometimes used a walker and wore a back

brace otherwise. She fell a lot because of dizziness or back spasms that extended into her legs. She lived alone in an apartment but a neighbor or friend was always with her to help with chores or to help her shower. She could do chores, but only a small amount. She could bathe using a shower chair and was able to dress wearing clothes that she could slide on. She sometimes drove. The Department noted that Claimant was getting uncomfortable during the course of the hearing. Claimant also testified that she had memory loss and concentration issues as a result of her July 2014 stroke.

The medical records showed that Claimant suffered a stroke in July 2014, resulting in left sided weakness, and a possible TIA in June 2014. Despite a cervical discectomy and fusion surgery in March 2013 and another in September 2013 and bilateral L5-S2 discectomy in January 2015, Claimant has had ongoing back pain that extended down her legs. The May 26, 2015 cervical spine MRI showed the anterior fusion of C6-C7 as well as mild foraminal stenosis at C3-C4, C4-C5, C6-C7. A May 26, 2015 lumbar spine MRI showed mild degenerative changes at L2-L3, L3-L4, and L4-L5 and enhanced granulation tissue about the proximal descending S1 nerve roots with tiny residual midline disc protrusion but overall improved spinal canal patency and resolution of subarticular recess stenosis compared to the preoperative study. However, Claimant's primary care physician indicated in the DHS-49 he completed on August 11, 2015 that Claimant's CVA resulted in Claimant having left-sided weakness and slight slurring of speech. The doctor found that Claimant's CVA, her cervical and lumbar degenerative joint disease, and anxiety/depression resulted in the following limitations: (i) she could occasionally lift and carry up to 10 pounds and never more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she needed a cane or walker; (iv) she could not use any extremities for repetitive actions. He also indicated that Claimant had limitations in her sustained concentration, social interaction, and memory due to her previous CVA and the effects from multiple medications. Although Claimant's primary doctor identified substantially greater limitations than those identified by the pain management doctor, the record shows an ongoing relationship between Claimant and her primary care doctor; the record does not reflect an ongoing relationship between Claimant and her pain management doctor. Therefore, greater weight will be afforded to the DHS-49 completed by Claimant's primary care physician. See 20 CFR 416.927(c)(2).

With respect to Claimant's exertional limitations, it is found based on a review of the entire record that Claimant maintains the physical capacity to perform less than sedentary work. The record also indicates that, due to her medication and her stroke, Claimant has memory and concentration issues resulting in mild limitations on her mental ability to perform work related activities.

Claimant's RFC is considered at both steps four and five. 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 less than sedentary work activities and has mild 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 certified nursing assistant (heavy, unskilled). Based on her exertional RFC limiting her to less than sedentary work, 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.

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 substantial gainful employment. 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, at the time of application and the time of hearing, Claimant was [redacted] years old and, thus, considered to be a younger individual (age 18-44) for purposes of Appendix 2. She is a high school graduate with a history of unskilled work experience. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform less than sedentary work activities and has mild limitations on her mental ability to perform work activities. In this case, the Medical-Vocational Guidelines do not support a finding that Claimant is not disabled based on her exertional limitations. The Department has failed to counter with evidence of significant numbers of jobs in the national economy which Claimant could perform despite her limitations. Therefore, the Department has failed to establish that, based on her RFC and age, education, and work experience, Claimant can adjust to other work. Therefore, Claimant is disabled at Step 5.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant **disabled** for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is **REVERSED.**

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

1. Reregister and process Claimant's April 8, 2015 SDA application 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; and

3. Review Claimant's continued eligibility in February 2015.

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

Date Signed: **9/2/2015**

Date Mailed: **9/2/2015**

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]