

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-010396
Issue No.: 4009
Case No.: [REDACTED]
Hearing Date: July 20, 2015
County: WAYNE-DISTRICT 15

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, an in person hearing was held on July 20, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist and [REDACTED], Eligibility Specialist.

ISSUE

Whether the Department properly determined that Claimant was not disabled for purposes of the State Disability Assistance (SDA) benefit programs?

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 [REDACTED], the Claimant submitted an application for public assistance seeking State Disability Assistance (SDA).
2. On [REDACTED], the Medical Review Team ("MRT") found the Claimant not disabled.
3. The Department notified the Claimant of the MRT determination on [REDACTED].
4. On [REDACTED], the Department received the Claimant's timely written request for hearing.
5. An Interim Order was issued [REDACTED]. New evidence was received by the undersigned from Claimant and reviewed.

6. The Claimant has not alleged any mental disabling impairments. The Claimant has alleged illiteracy and trouble with both reading and writing with a learning disability and ADD.
7. The Claimant alleges physical disabling impairments due to sever chronic pain in his lumbar spine with pain radiation to legs bilaterally, neck pain, hypertension and diabetes type II, arthritis in back, sleep disturbance and headaches. At the hearing, the Claimant could not straighten his neck which was bent to one side and hurt when lifting to straighten.
8. At the time of hearing, the Claimant was 33 years old with a [REDACTED] birth date. Claimant is 5'11" tall in height; and weighed 210 pounds. The Claimant is right handed.
9. The Claimant completed the 11th grade and was in special education classes due to a learning disability. The Claimant has difficulty reading and writing. The Claimant's work experience included performing work as a in a dialysis clinic in charge of transferring patients, lifting boxes, and stocking supplies. The Claimant also worked packaging CD's and DVD's in shrink wrap. The Claimant also worked as a cook at a fast food restaurant and also stocked supplies.
10. The Claimant's impairments have lasted or are expected to last 12 months or longer.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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 person is considered disabled for SDA purposes if the person has a physical or mental impairment which meets federal Supplemental Security Income (SSI) disability standards for at least ninety days. Receipt of SSI benefits based

on disability or blindness, or the receipt of MA benefits based on disability or blindness, automatically qualifies an individual as disabled for purposes of the SDA program.

Disability is defined as the inability to do any substantial gainful activity 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). The person claiming a physical or mental disability has the burden to establish it 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 ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. 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, is insufficient to establish disability. 20 CFR 416.927.

When determining disability, the federal regulations require several factors to be considered including: (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant 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).

In order to determine whether or not an individual is disabled, federal regulations require a five-step sequential evaluation process be utilized. 20 CFR 416.920(a)(1). The five-step analysis requires the trier of fact to consider an individual's current work activity; the severity of the impairment(s) both in duration and whether it meets or equals a listed impairment in Appendix 1; residual functional capacity to determine whether an individual can perform past relevant work; and residual functional capacity along with vocational factors (e.g., age, education, and work experience) to determine if an individual can adjust to other work. 20 CFR 416.920(a) (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). If impairment does not meet or equal a listed impairment, an individual's residual functional capacity is assessed before moving from Step 3 to Step 4. 20 CFR 416.920(a)(4); 20 CFR 416.945. Residual functional capacity is the most an individual can do despite the limitations based on all relevant evidence. 20 CFR 945(a)(1). An individual's residual functional capacity assessment is evaluated at both Steps 4 and 5. 20 CFR

416.920(a)(4). In determining disability, an individual's functional capacity to perform basic work activities is evaluated and if found that the individual has the ability to perform basic work activities without significant limitation, disability will not be found. 20 CFR 416.994(b)(1)(iv). In general, the individual has the responsibility to prove disability. 20 CFR 416.912(a). 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). The individual has the responsibility to provide evidence of prior work experience; efforts to work; and any other factor showing how the impairment affects the ability to work. 20 CFR 416.912(c)(3)(5)(6).

As outlined above, the first step looks at the individual's current work activity. In the record presented, the Claimant is not involved in substantial gainful activity and, therefore, is not ineligible for disability benefits under Step 1.

The severity of the Claimant's alleged impairment(s) is considered under Step 2. The Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. In order to be considered disabled for MA purposes, the impairment must be severe. 20 CFR 916.920(a)(4)(ii); 20 CFR 916.920(b). 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 916.920(a)(4)(ii); 20 CFR 916.920(c). Basic work activities means the abilities and aptitudes necessary to do most jobs. 20 CFR 916.921(b). Examples include:

1. Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
2. Capacities for seeing, hearing, and speaking;
3. Understanding, carrying out, and remembering simple instructions;
4. Use of judgment;
5. Responding appropriately to supervision, co-workers and usual work situations; and dealing with changes in a routine work setting.

Id.

The second step allows for dismissal of a disability claim obviously lacking in medical merit. *Higgs v Bowen*, 880 F2d 860, 862 (CA 6, 1988). The severity requirement may still be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint. *Id.* at 863 *citing Farris v Sec of Health and*

Human Services, 773 F2d 85, 90 n.1 (CA 6, 1985). An impairment qualifies as non-severe only if, regardless of a Claimant's age, education, or work experience, the impairment would not affect the Claimant's ability to work. *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985).

The Claimant has not alleged any mental disabling impairments. The Claimant has alleged illiteracy and trouble with both reading and writing with a learning disability.

The Claimant alleges physical disabling impairments due to sever chronic pain in his lumbar spine with pain radiation to legs bilaterally, neck pain, hypertension and diabetes type II, arthritis in back, sleep disturbance and headaches.

A summary of the medical evidence presented at the hearing and received pursuant to the Interim Order follows.

The Claimant's doctor of internal medicine completed a DHS-49 dated [REDACTED]. This doctor is considered a treating doctor. The diagnosis was back and neck pain, diabetes type II and hypertension. At the exam, the doctor noted that the Claimant walks with a cane and reported pain 10 out of 10. The Doctor noted cervical and lumbar tenderness. The findings supporting limitations, noted that the Claimant is following up with a pain clinic and doing physical therapy. Limitations were imposed and the Claimant was noted as deteriorating. The Claimant could not lift any weight. The Claimant could stand and/or walk less than two hours in an 8 hour day. There were no limitations of use of hands/arms or use feet/legs to operate foot controls. No limitations on sitting were noted. The Doctor further indicated that home help for meal prep, laundry and house work was required so Claimant could meet his needs in the home. The report also notes numbness in both upper and lower extremities based upon level of activity. The Doctor also based the limitations of a CT of the lumbar/cervical spine. A similar DHS-49 with similar limitations and findings was completed [REDACTED].

A CT of the Cervical Spine dated [REDACTED] noted at C3-C4 central disc protrusion effacing the anterior aspect of thecal sac. No significant neural formlinal or spinal can stenosis. At C4-C5 and C5-C6 the report indicates disc osteophyte complexes effacing the anterior aspect of the thecal sac. The impression was mild degenerative disc disease at C3-C4, C4-C5 and C5-C6.

The Claimant was seen by his neurologist on [REDACTED] for an evaluation. The Claimant has continued to treat with his neurologist. At the evaluation, the neurologist concluded the Claimant appeared to have neuropathy; suggesting Claimant may have an acute form of diabetic neuropathy versus axonal neuropathy. The back pain was noted as severe with possible underlying radiculopathy contributing to the pain. The Claimant was prescribed Lyrica. The examiner felt additional CT scan of lumbosacral spine and an EMG and nerve conductions studies were required. The exam noted straight leg-raising is positive, decreased sensation in feet and in hands as

well with dysesthesias, more toward right. Tinels' sign is mildly positive. Deep tendon reflexes are reduced all over, and stiffness in the neck. Slightly unsteady on tandem gait, with difficulty heel toe walking.

A CT of the lumbar spine was performed on [REDACTED]. The thoracic spine was clear. There was a disc bulge without spinal canal stenosis and foraminal narrowing, at L1-L2. At L2-L3 there is mild disc bulge abutting the ventral thecal sac without significant spinal stenosis with foraminal narrowing below the level of the exiting nerve. At L4-L5 and L6-L7 there is disc bulge without significant spinal canal stenosis with foraminal narrowing below the level of the exiting nerve. The impression was multilevel mild disc bulge without spinal canal stenosis, multilevel foraminal narrowing below the level of the exiting nerve. Mild asymmetric facet hypertrophic arthropathy and hypertrophy of ligamentum flavum noted a L4-L5 and L5-S1 was also noted.

A [REDACTED] report by the same neurologist noted a CT scan of lumbar spine was done and was suggestive of multi-level spinal canal stenosis and spondylosis. On [REDACTED] the Claimant had another follow up evaluation and was advised to increase Cymbalta for pain, there was no stiffness in the neck with full range of motion. Multiple tender spots in back, with slight unsteadiness on tandem gait.

On [REDACTED], the Claimant's neurologist gave another follow up evaluation. The evaluation noted insomnia, break through headaches, obesity, cannot sleep at night and wakes up with a headache. The evaluation suggests the Claimant may have sleep apnea and should be tested. The exam notes also indicated generalized weakness with limited effort in the lower extremities. The Claimant was positive for dysesthesias, deep tendon reflexes are decreased in lower extremity; there was no stiffness in neck, positive stiffness and tenderness in the back with an unsteady gait. The diagnosis was generalized body pain, likely secondary to small fiber neuropathy.

The Claimant was seen by his neurologist on [REDACTED]. The Claimant's condition was the same as the April 2015 evaluation. The Claimant's back and neck pain was now going down into the legs. A CAT scan suggested that the Claimant had degenerative lumbar arthritis.

The Claimant was admitted to the hospital for a one month stay from [REDACTED] to [REDACTED]. The Department did not provide these medical records.

The Claimant was seen in the ER for severe back pain and was examined and discharged with required follow up with his primary care doctor on [REDACTED].

[REDACTED] through [REDACTED], Claimant was admitted with severe abdominal pain and diagnosis of uncontrolled diabetes type II ketoacidosis and high blood pressure. The Claimant was admitted to the ICU. The Claimant was also dehydrated. This was the first onset of diabetes.

As previously noted, the Claimant bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairment(s). As summarized above, the Claimant has presented objective medical evidence establishing that he does have some physical limitations on his ability to perform basic work activities. Accordingly, the Claimant has an impairment, or combination thereof, that has more than a *de minimis* effect on the Claimant's basic work activities. Further, the impairments have lasted continuously for twelve months; therefore, the Claimant is not disqualified from receipt of MA-P benefits under Step 2.

In the third step of the sequential analysis of a disability claim, the trier of fact must determine if the Claimant's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. The Claimant alleges physical disabling impairments due to chronic severe back and neck pain and Diabetes Type II.

Listing 1.04 Disorders of the spine was reviewed in light of the medical evidence submitted regarding the Claimant's chronic back pain. The listing requires demonstration of the following documented medical conditions:

1.04 Disorders of the spine (e.g., herniated nucleus pulposus, spinal arachnoiditis, spinal stenosis, osteoarthritis, degenerative disc disease, facet arthritis, vertebral fracture), resulting in compromise of a nerve root (including the cauda equina) or the spinal cord. With:

A. Evidence of nerve root compression characterized by neuro-anatomic distribution of pain, limitation of motion of the spine, motor loss (atrophy with associated muscle weakness or muscle weakness) accompanied by sensory or reflex loss and, if there is involvement of the lower back, positive straight-leg raising test (sitting and supine);

OR

B. Spinal arachnoiditis, confirmed by an operative note or pathology report of tissue biopsy, or by appropriate medically acceptable imaging, manifested by severe burning or painful dysesthesia, resulting in the need for changes in position or posture more than once every 2 hours;

or

C. Lumbar spinal stenosis resulting in pseudoclaudication, established by findings on appropriate medically acceptable imaging, manifested by chronic nonradicular pain and weakness, and resulting in inability to ambulate effectively, as defined in 1.00B2b.

A review of the CT scans of the Lumbar spine and Cervical spine submitted do not demonstrate the severity requirement necessary as no finding of nerve root compression was found and no positive straight leg raising. Ultimately, it is found that the Claimant suffers from some medical conditions; however, the Claimant's impairments do not meet the intent and severity requirement of Listing 1.04 based upon the available medical evidence.

Therefore, Claimant cannot be found disabled, or not disabled, at Step 3. Accordingly, the Claimant's eligibility is considered under Step 4. 20 CFR 416.905(a).

The fourth step in analyzing a disability claim requires an assessment of the Claimant's residual functional capacity ("RFC") and past relevant employment. 20 CFR 416.920(a)(4)(iv). An individual is not disabled if he/she can perform past relevant work. *Id.*; 20 CFR 416.960(b)(3). Past relevant work is work that has been performed within the past 15 years that was a substantial gainful activity and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). 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). RFC is assessed based on impairment(s) and any related symptoms, such as pain, which may cause physical and mental limitations that affect what can be done in a work setting. RFC is the most that can be done, despite the limitations.

To determine the physical demands (exertional requirements) of work in the national economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967.

Sedentary work involves lifting of no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying objects weighing up to 10 pounds. 20 CFR 416.967(b). Even though 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. *Id.* 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. *Id.* An individual capable of light work is also capable of sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time. *Id.*

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). An individual capable of performing medium work is also capable of light and sedentary work. *Id.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). An individual capable of heavy work is also capable of medium, light, and sedentary work. *Id.* Finally, very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying objects weighing 50 pounds or more. 20 CFR 416.967(e). An individual capable of very heavy work is able to perform work under all categories. *Id.*

Limitations or restrictions which affect the ability to meet the demands of jobs other than strength demands (exertional requirements, e.g., sitting, standing, walking, lifting, carrying, pushing, or pulling) are considered nonexertional. 20 CFR 416.969a(a). In considering whether an individual can perform past relevant work, a comparison of the individual's residual functional capacity to the demands of past relevant work must be made. *Id.* If an individual can no longer do past relevant work, the same residual functional capacity assessment along with an individual's age, education, and work experience is considered to determine whether an individual can adjust to other work which exists in the national economy. *Id.* Examples of non-exertional limitations or restrictions include difficulty function 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 (e.g., 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). 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). The determination of whether disability exists is based upon the principles in the appropriate sections of the regulations, giving consideration to the rules for specific case situations in Appendix 2. *Id.*

The Claimant's prior work history consists of employment performing work in the following jobs. The Claimant's work experience included performing work in a dialysis clinic in charge of transferring patients, (lifting) and stocking supplies. The Claimant also worked packaging CD's and DVD's in shrink wrap. The Claimant also worked as a cook at a fast food restaurant and also stocked supplies. All of these jobs required that the Claimant stand for extended periods and the dialysis clinic job required lifting patients repeatedly into and out of wheelchairs onto dialysis equipment and required lifting 100 pounds or more. In addition, the Claimant also lifted boxes every day. Exhibit 1, p. 373. The packaging job also required lifting boxes of between 20 to 30 pounds and standing all day. The fast food restaurant jobs required the Claimant be on his feet all day and stocking supplies, loading dishes, and when cooking standing for extended periods.

The Claimant credibly testified he could no longer do these jobs due to the day long standing and lifting requirements. In addition, based upon the above documented limitations by the Claimant's treating doctor and his neurologist's findings, it is clear that the Claimant's current restrictions: necessity with home help, use of a cane and deteriorating condition would no longer allow the Claimant to perform any of his prior work. In light of the Claimant's testimony and records, and in consideration of the Occupational Code, the Claimant's prior work is classified as unskilled heavy (dialysis clinic); unskilled light work (restaurant) and medium unskilled (CD and DVD packaging).

At the hearing, the Claimant credibly testified that he could walk a block and an half, and has difficulty bending at the waist due to back and neck pain. He cannot do a squat due to leg pain and stiffness in his legs. He cannot bend over to tie his shoe. He does not drive because of pain. Claimant credibly testified that he could stand only 10-15 minutes and sit for the same period due to pain, and frequently he has to move. He is capable of walking only short distances, and uses a cane. Claimant also experiences chronic pain in his legs and feet. The Claimant has sleep interruptions several times a night due to ongoing back pain (sleeping 2 hours per night). The Claimant cannot do laundry due to the lifting required. It must also be noted that at the hearing the Claimant could not straighten his neck to upright throughout the hearing, it rested near his shoulder and hurt to hold it erect. In addition the Claimant has a learning disability with difficulty writing, spelling and reading. See hearing request filed by Claimant.

If the impairment or combination of impairments does not limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. 20 CFR 416.920. In consideration of the Claimant's testimony, medical records, and current limitations, it is found that the Claimant is not able to return to past relevant work; due in large part the lifting requirements and moving requirements including stooping, crawling, and climbing stairs and his limited ability to walk any significant distance and standing. Thus, the fifth step in the sequential analysis is required.

In Step 5, an assessment of the individual's residual functional capacity 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). The Claimant is 33 years old and, thus, is considered to be an individual of younger age for MA purposes. The Claimant also completed the 11th grade. Disability is found if an individual is unable to adjust to other work. *Id.* At this point in the analysis, the burden shifts from the Claimant to the Department to present proof that the Claimant has the residual capacity to 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). Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix II, 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).

Based upon the foregoing objective medical evidence, particularly the limitations imposed by the Claimant's treating doctor, and in light of the limitations imposed by the treating doctor's evaluation including, ongoing degenerative disc disease, pain in legs and feet, evaluation of deteriorating health for months, the use of a cane, the Claimant's difficulty doing heel toe walk, positive straight leg raising and gait was compensated, imitations were noted restricting standing for less than two hours in an 8 hour work day and restrictions from any weight lifting, these limitations do not support a finding that Claimant is capable of performing sedentary work. Also considered, was the condition presented by the Claimant at the hearing regarding the inability to hold his head erect. In addition, the Claimant's neurologist noted the following conditions; straight leg raising is positive, decreased sensation in feet and in hands as well with dysesthesias (more toward right). Tinels' sign is mildly positive. Deep tendon reflexes are reduced all over, and stiffness in the neck. Slightly unsteady on tandem gait, with difficulty heel toe walking was also documented. The neurologist also noted a CT report demonstrating disc deterioration at multi levels with degenerative changes and foraminal narrowing below the level of the exiting nerve, based upon a CT performed on the lumbar spine.

Sedentary work requires lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. 20 CFR 416.967(a). 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. *Id.* Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met. Also considered, is Claimant's learning disabilities that limit his ability with respect to many jobs.

This Administrative Law Judge does take into account Claimant's complaints of pain in that the diagnosis of chronic back pain does support such a claim based upon medical pain management, limitations imposed and the CT testing provided. Subjective complaints of pain where there are objectively established medical conditions that can reasonably be expected to produce the pain must be taken into account in determining a Claimant's limitations. *Duncan v Secretary of HHS*, 801 F2d 847, 853 (CA6, 1986); 20 CFR 404.1529-416.929.

The evaluations and medical opinions of a "treating" physician is "controlling" if it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. 20 CFR§ 404.1527(d)(2), Deference was given by the undersigned to objective medical testing and clinical observations of the Claimant's treating physician that completed several of the DHS-49's, which place the Claimant at less than sedentary. The total impact caused by the physical impairment suffered by the Claimant must be considered. In doing so, it is found that the Claimant's physical impairments have a major impact on his ability to perform even basic work activities. In consideration of the foregoing and in

light of the medically objective physical limitations and pain, and the fact that the Department did not present any vocational evidence to support whether any jobs exist in the national economy that the Claimant could perform given his limitations, accordingly, it is found that the Claimant is unable to perform the full range of activities for even sedentary work as defined in 20 CFR 416.967(a).

After review of the entire record, and in consideration of the Claimant's age, education, work experience and residual functional capacity it is found that the Claimant is **disabled** for purposes of the MA-P program at Step 5.

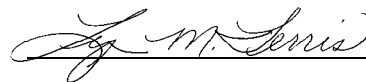
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Claimant disabled for purposes of the SDA benefit program.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

THE DEPARTMENT IS ORDERED TO INITIATE 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. The Department shall process the Claimant's [REDACTED] application for SDA to determine Claimant's non-medical eligibility, if it has not previously done so.
2. The Department shall issue a supplement to the Claimant for SDA benefits he is otherwise entitled to receive in accordance with Department policy.
3. A review of this case shall be scheduled for September 2016.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/4/2015**

Date Mailed: **9/4/2015**

LMF / hw

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:

