

**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.: 15-005734  
Issue No.: 4009  
Case No.: ██████████  
Hearing Date: June 03, 2015  
County: Wayne-District 76

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**HEARING DECISION**

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on June 3, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Eligibility Specialist.

**ISSUE**

Whether the Department properly determined 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 January 22, 2015, Claimant submitted an application for public assistance seeking SDA benefits.
2. On March 13, 2015, the Medical Review Team (MRT) found Claimant not disabled.
3. On April 1, 2015, the Department sent Claimant a Health Care Coverage Determination Notice denying the application based on MRT's finding of no disability.
4. On April 1, 2015, the Department received Claimant's timely written request for hearing.
5. Claimant alleged physical disabling impairment due to chronic low back pain, diabetes, hypertension, neuropathy, vertigo, and vision issues.

6. Claimant alleged mental disabling impairment due to depression and bipolar disorder.
7. On the date of the hearing, Claimant was [REDACTED] old with a [REDACTED], birth date; he is [REDACTED] in height and weighs about [REDACTED] pounds.
8. Claimant has a GED.
9. Claimant has an employment history of work as a laborer and HVAC technician.
10. 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 physical disabling impairment due to chronic lower back pain, diabetes, hypertension, neuropathy, vertigo, and vision issues and mental disabling impairment due to depression and bipolar disorder. The medical evidence presented at the hearing was reviewed and is summarized below.

Claimant's medical records showed that Claimant had active diagnoses of diabetes, hypertension, chronic back pain, and bladder outlet obstruction (Exhibit A, pp. 55, 61).

On May 8, 2014, Claimant submitted to an electromyography in response to his complaints of tingling in the third and fourth digits of both hands. The report indicated that there was evidence of primarily demyelinating ulnar mononeuropathies at the bilateral elbows and mild sensory primarily demyelinating median mononeuropathy at the bilateral wrists (carpal tunnel syndrome only if considered symptomatic). The symptoms were found to be suggestive of peripheral polyneuropathy (Exhibit A, pp. 36-42, 53-54).

On August 6, 2014, Claimant had a colonoscopy (Exhibit A, p. 64). On August 13, 2014, Claimant's optometrist completed an eye examination report, DHS-48-I, finding that Claimant had no visual defect, that he did not have constricted visual fields, and that with correction, his eyesight was 20/20 (Exhibit A, pp. 17-18). On September 23, 2014, and October 28, 2014, Claimant was treated for hypertrophy (benign) of prostate (Exhibit A, pp. 59-61, 62-63). On November 13, 2014, a laser photo-vaporization of Claimant's prostate was performed to treat a benign prostatic hypertrophy with bladder outlet (Exhibit A, p. 56).

On February 19, 2015, one of Claimant's primary care physician completed a medical examination report, DHS-49, identifying Claimant's diagnoses as chronic lower back pain, diabetes, hypertension, neuropathy, and radiculopathy. In the DHS-49, the doctor

indicated that Claimant was in stable condition but identified the following physical limitations: (i) he could frequently lift less than 10 pounds but never lift 10 pounds or more, (ii) he could stand and/or walk less than 2 hours in an 8-hour day; (iii) he could sit about 6 hours in an 8-hour workday; and (iv) he could not use his hands or arms for simple grasping or fine manipulating. The doctor also indicated that Claimant had mental limitations concerning comprehension, memory, sustained concentration, following simple directions, reading and writing, and social interaction, noting that he saw a psychiatrist (Exhibit A, pp. 14-16). Claimant's doctor completed a medical needs form, DHS-54A, on May 6, 2015, that reiterated the diagnoses and indicated that Claimant was unable to care for his meal preparation, shopping, laundry, and housework (Exhibit 1). In a May 28, 2015, letter, Claimant's doctor indicated that her practice had been seeing Claimant since June 6, 2013 (Exhibit 2).

On February 28, 2015, Claimant's psychiatrist at [REDACTED], the facility where Claimant was receiving mental health therapy, completed a psychiatric/psychological examination report, DHS 49-D. The doctor noted that Claimants' affect was depressed and that he was intermittently preoccupied and tearful and irritable. The doctor also noted that Claimant was hypervigilant, paranoid, and suspicious with poor short-term memory. Claimant's conduct was consistent with responding to auditory hallucinations. Claimant was found to have poor insight, and fair judgment and cognitive thought process. The doctor concluded that Claimant had major depressive disorder, severe with psychotic systems, post-traumatic stress disorder (Exhibit A, pp. 19-21). A letter Claimant's psychiatrist completed on April 22, 2015 confirmed the diagnosis (Exhibit 1).

The psychiatrist also completed a mental residual functional capacity assessment, DHS-49-E, regarding Claimant's mental impairments and how they affected his activities. The psychiatrist concluded that Claimant had no, or no significant, limitations regarding his ability to carry out simple one or two step instructions; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary routine without supervision; maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; and be aware of normal hazards and take appropriate precautions. The psychiatrist concluded that Claimant had moderate limitations regarding his ability to understand and remember one or two-step instructions; maintain attention and concentration for extended periods; make simple work-related decision; and ask simple questions or request assistance. The psychiatrist concluded that Claimant had marked limitations regarding his ability to remember locations and work-like procedures; understand and remember detailed instructions; carry out detailed instructions; work in coordination with or proximity of others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public; accept instructions and respond appropriately to criticisms from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; respond appropriately to change in the work setting; travel in

unfamiliar places or use public transportation; and set realistic goals or make plans independently of other (Exhibit A, pp. 22-23).

On May 28, 2015, a primary care doctor from the practice Claimant frequented completed a physical medical provider statement reiterating the physical and psychological diagnoses. The doctor indicated that Claimant's pain and experiences of stress were constantly severe enough to interfere with the attention and concentration needed to perform simple work tasks. The doctor identified the following limitations: Claimant could not walk one city block without rest or severe pain, he could not climb steps without use of a handrail at a reasonable pace; he had problems with balance when ambulating; he had problems stooping, crouching, and bending; he would need to lie down about 2 hours in an 8-hour work day; he could stand five minutes at one time; he could walk for five minutes at one time; he could sit less than one hour in an 8-hour day; he would need to sit with his leg elevated; he would need to use a cane for standing and walking; he could occasionally lift and up to five pounds, rarely lift but not carry 10 pounds; and never lift or carry 15 pounds or more (Exhibit 2.)

Claimant's medical records show marijuana and tobacco use (Exhibit A, p. 58). His file also showed that he had a medical marijuana card (Exhibit A).

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.

Based on the medical evidence presented, Listings 1.00 (musculoskeletal system), particularly 1.04 (disorders of the spine); 2.00 (specials senses and speech), particularly 2.04 (loss of visual efficiency) and 2.07 disturbance of labyrinthine-vestibular function); 9.00 (endocrine disorders); 11.00 (neurological system), particularly 11.14 (peripheral neuropathies); and 12.00 (mental disorders), particularly 12.04 (affective disorders) and 12.06 (anxiety-related disorders) were reviewed. Claimant's impairments are insufficient to meet, or to equal, the severity of a listing. Therefore, 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.

#### 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., 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 his medical condition.

With respect to his physical limitations, Claimant testified that he could possibly lift 15 to 25 pounds but he could walk no more than a ½ block; sit for only 15 minutes at a time, with elevated feet; and stand for no more than ½ to one hour before his feet would get numb and tingle. While he lived alone and could care for his personal hygiene and care, he could not do any of his own chores.

The primary care doctors Claimant had been seeing since June 2013 provided medical documents that supported the limitations Claimant identified. In a February 19, 2015, medical examination report, DHS-49, one of doctors indicated that, due to chronic lower back pain, diabetes, hypertension, neuropathy, and radiculopathy, Claimant could (i) frequently lift less than 10 pounds but never lift 10 pounds or more, (ii) stand and/or walk less than 2 hours in an 8-hour day; (iii) sit about 6 hours in an 8-hour workday; and (iv) not use his hands or arms for simple grasping or fine manipulating. The doctor also indicated that Claimant had mental limitations concerning comprehension, memory, sustained concentration, following simple directions, reading and writing, and social

interaction, noting that he saw a psychiatrist (Exhibit A, pp. 14-16). A medical needs form, DHS-54A, completed on May 6, 2015, reiterated the diagnoses and indicated that Claimant was unable to care for his meal preparation, shopping, laundry, and housework (Exhibit 1). On May 28, 2015, another doctor from the practice Claimant frequented completed a physical medical provider statement indicating that Claimant's pain and experiences of stress were constantly severe enough to interfere with the attention and concentration needed to perform simple work tasks and identified the following limitations: Claimant could not walk one city block without rest or severe pain, he could not climb steps without use of a handrail at a reasonable pace; he had problems with balance when ambulating; he had problems stooping, crouching, and bending; he would need to lie down about 2 hours in an 8-hour work day; he could stand five minutes at one time; he could walk for five minutes at one time; he could sit less than one hour in an 8-hour day; he would need to sit with his leg elevated; he would need to use a cane for standing and walking; he could occasionally lift and up to five pounds, rarely lift but not carry 10 pounds; and never lift or carry 15 pounds or more (Exhibit 2.)

The medical limitations identified by Claimant's doctor are consistent with the limitations expressed by Claimant at the hearing. With respect to Claimant's exertional limitations, a review of the entire record, and Claimant's testimony, shows that Claimant maintains the physical capacity to perform, at best, sedentary work as defined by 20 CFR 416.967(a).

Claimant also alleged nonexertional limitations due to his mental condition. For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

With respect to his physical condition, Claimant testified that he was very paranoid and avoided people. He had a lot of anger issues and heard voices encouraging him to hurt others. He also testified that he was fatigued.

Claimant's medical record shows that he was diagnosed with major depressive disorder, severe with psychotic systems, and post-traumatic stress disorder. On February 28, 2015, his psychiatrist completed a DHS 49-D, noting that Claimants' affect

was depressed and that he was intermittently preoccupied and tearful and irritable; that he was hypervigilant, paranoid, and suspicious with poor short-term memory; and that his conduct was consistent with responding to auditory hallucinations. Claimant was found to have poor insight and fair judgment and cognitive thought process (Exhibit A, pp. 19-21; Exhibit 1).

The psychiatrist also completed a mental residual functional capacity assessment, DHS-49-E, regarding Claimant's mental impairments and how they affected his activities. The psychiatrist concluded that Claimant had no, or no significant, limitations regarding his ability to carry out simple one or two step instructions; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; sustain an ordinary routine without supervision; maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; and be aware of normal hazards and take appropriate precautions. The psychiatrist concluded that he had moderate limitations regarding his ability to understand and remember one or two-step instructions; maintain attention and concentration for extended periods; make simple work-related decision; and ask simple questions or request assistance. The psychiatrist concluded that he had marked limitations regarding his ability to remember locations and work-like procedures; understand and remember detailed instructions; carry out detailed instructions; work in coordination with or proximity of others without being distracted by them; complete a normal workday and worksheet without interruptions from psychologically based symptoms and perform at a consistent pace without an unreasonable number and length of rest periods; interact appropriately with the general public; accept instructions and respond appropriately to criticisms from supervisors; get along with co-workers or peers without distracting them or exhibiting behavioral extremes; respond appropriately to change in the work setting; travel in unfamiliar places or use public transportation; and set realistic goals or make plans independently of other (Exhibit A, pp. 22-23).

With respect to his mental condition, the medical record and Claimant's testimony supports a conclusion that Claimant has moderate limitations on his mental ability to perform basic work 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 to no more than sedentary work activities and has moderate limitations in his mental capacity to perform basic work activities. Claimant's work history in the 15 years prior to the application consists of work as a laborer (very heavy work, unskilled) and HVAC technician (heavy work, semi-skilled). In light of the entire record and Claimant's RFC, particularly his exertional limitations, it is found that Claimant is unable to perform past relevant work. Accordingly, Claimant cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

### **Step 5**

In Step 5, an assessment of Claimant's RFC and age, education, and work experience is considered to determine whether an adjustment to other work can be made. 20 CFR 416.920(4)(v). If the individual can adjust to other work, then there is no disability. Disability is found if an individual is unable to adjust to other work.

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 hearing and of application, Claimant was [REDACTED] years old and, thus, considered to be advanced age (age 55 and over) for purposes of Appendix 2. He has a GED and a history of work experience with non-transferable skills. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform sedentary work activities and has moderate

limitations on his mental ability to perform work activities. Based on his age, experience, and physical RFC, the Medical-Vocational Guidelines result in a finding that Claimant is disabled. 201.06. It is further noted that Claimant's medical record also shows nonexertional limitations resulting in moderate restrictions in his mental ability to perform basic work activities, further limiting his ability to perform basic work activities. After review of the entire record, including Claimant's testimony, and in consideration of Claimant's age, education, work experience, physical as well as mental RFC, Claimant is found disabled at Step 5 for purposes of SDA benefit program.

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. Process Claimant's January 22, 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;
3. Review Claimant's continued eligibility in December 2015.



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

Date Signed: **6/23/2015**

Date Mailed: **6/23/2015**

ACE / tlf

