

6. On the date of the hearing, Claimant was 49 years old with a [REDACTED] birth date; she is 5'6" in height and weighs about 180 pounds.
7. Claimant received a GED and certification in a medical assistance program.
8. Claimant has an employment history of work as a patient care technician and an airport prescreening and security worker.
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 physical disabling impairment due to back, joint and foot pain, stomach pain, and asthma. The medical evidence presented at the hearing was reviewed and is summarized below.

A [REDACTED] lumbar spine x-ray showed degenerative changes with sclerosis and spurring (Exhibit A, pp. 34-335). A March 21, 2014, MRI of Claimant's lumbosacral spine showed moderate disc space narrowing from L3 through S1 with facet joint hypertrophic change L2 through S1 and 3 mm anterior subluxation L4 pan L5 and no fracture or pars defects (Exhibit A, pp. 32-33, 36-37).

A [REDACTED] MRI of Claimant's lumbar spine showed diffuse degenerative facet joint changes but no significant spinal canal stenosis or disc protrusion (Exhibit 1, pp. 16). An x-ray of Claimant's lumbar spine was obtained on [REDACTED] and compared to the [REDACTED] MRI. The x-ray showed minimal degenerative grade 1 retrolisthesis of L3 on L4 and degenerative grade 1 anterolisthesis of L4 on L-5, stable during flexion and extension, and mild spondyloscoliosis (Exhibit 1, p. 20).

On [REDACTED] Claimant's doctor completed a medical examination report, DHS-49, identifying Claimant's diagnoses as back pain, disc herniation, bilateral knee pain, asthma. The doctor noted that Claimant was obese, used a cane because of her back pain, and limped to the right. He indicated that an MRI of Claimant's lumbar spine showed L3-L4 disc protrusion. He identified her condition as deteriorating and listed the following limitations: (i) she could frequently lift and carry less than 10 pounds daily, occasionally lift and carry 10 pounds, and never lift and carry more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she could sit less than 6 hours in an 8-hour workday; (iv) she could use both hands and arms and both legs and feet for repetitive actions (Exhibit A, pp. 28-30; Exhibit 1, pp. 17-19). In a June 2, 2014, letter, Claimant's doctor indicated that an x-ray of Claimant's back showed degenerative changes with sclerosis and spurring (Exhibit A, p. 31).

On [REDACTED] a physical exam report was prepared by a consulting doctor who examined Claimant. The doctor noted that Claimant did not use a walking aid or cane; she was able to get on and off the table slowly; she could slowly tandem walk, heel walk and toe walk; she was able to squat to 70% of the distance and recover and bend to 70% of the distance and recover; her knee flexion was 0 to 150; her straight leg raise was 0 to 50 while lying and 0 to 90 while sitting. The doctor also noted mild tenderness to palpation in the lower lumbar area and paresthesia in the left lower extremity. Claimant, at 5'5" and 204 pounds, was found to be obese. In examining Claimant's range of motion, the doctor noted the following limitations: (i) flexion of the lumbar spine was limited to 70 degrees (normal is 90); (ii) forward flexion of the bilateral hips was 50 degrees (normal is 100). Claimant was able to stand, bend, stoop, carry, and push and pull with pain (Exhibit A, pp. 38-45).

A [REDACTED] x-ray of Claimant's knees showed degenerative changes in both knees, with slight asymmetrical narrowing of the medial tibiofemoral joint compartment and slight peripheral articular spur formation arising from the distal femur and proximal tibia (Exhibit A, p. 46).

In a medical opinion form Claimant's primary care doctor completed on [REDACTED] Claimant's doctor indicated that Claimant could lift and carry less than ten pounds, could sit and stand and walk less than 2 hours in an 8-hour day. The doctor indicated that Claimant could sit for 20 minutes before needing to change position and stand for 5 to 10 minutes before changing position. The doctor relied on Claimant's MRI showing L3-L4 disc herniation to support the limitations (Exhibit 1, pp. 12-14).

Claimant's doctor's notes from the [REDACTED] showed that Claimant reported that her lumbar pain began in 2012, without a precipitating event, and was exacerbated in 2014 after lifting heavy linen bags. She was assessed with acquired spondylolisthesis and scoliosis with other conditions (Exhibit 1, pp. 4-8).

In consideration of the *de minimus* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 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 1.02 (major dysfunction of a joint) and 1.04 (disorders of the spine); 5.00 (digestive system); and 3.00 (respiratory system), particularly 3.03 (asthma), were reviewed. Claimant's medical record in this case is not sufficient to support a finding that her impairments meet, or equal the severity of, any of the considered listings. 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.

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 exertional limitations due to her medical condition. Claimant testified that she had to alternate between walking, sitting and lying down because of her pain; she could not bend at all; she could not lift a gallon of milk without back pain; she had a difficult time taking stairs; and she had difficulties with her left

hand in gripping and grasping things. She lived with her adult son and he or her brother-in-law did most of the chores. Although she sometimes cooked, she would limit her cooking to microwaving items or making sandwiches. She explained that if she went shopping, she would usually use a scooter. She could use a car when she was not in severe pain. She testified that her medication made her dizzy and gave her stomach pain. The Department testified that Claimant was in visible pain during the hearing and appeared quite agitated. Claimant testified that, because her medication made her ill, she had lost 60 pounds in the six months prior to the hearing and now weighed 180 pounds. The DHS-49 showing Claimant's weight at 235 as of [REDACTED] supported Claimant's testimony of significant weight loss; the Department worker also noted that Claimant had lost a considerable amount of weight.

Claimant's medical records show that Claimant does have back and joint problems. A [REDACTED], MRI of Claimant's lumbar spine showed diffuse degenerative facet joint changes but no significant spinal canal stenosis or disc protrusion (Exhibit 1, pp. 16). An x-ray of Claimant's lumbar spine obtained on [REDACTED] and compared to the [REDACTED] MRI showed minimal degenerative grade 1 retrolisthesis of L3 on L4 and degenerative grade 1 anterolisthesis of L4 on L-5, stable during flexion and extension, and mild spondyloscoliosis (Exhibit 1, p. 20). A [REDACTED] x-ray of Claimant's knees showed degenerative changes in both knees, with slight asymmetrical narrowing of the medial tibiofemoral joint compartment and slight peripheral articular spur formation arising from the distal femur and proximal tibia (Exhibit A, p. 46).

In the medical examination report, DHS-49, Claimant's doctor completed on [REDACTED], the doctor noted that Claimant was obese, used a cane because of her back pain, and limped to the right. Relying on the MRI of Claimant's lumbar spine showing an L3-L4 disc protrusion, he indicated that Claimant's condition was deteriorating and listed the following limitations: (i) she could frequently lift and carry less than 10 pounds daily, occasionally lift and carry 10 pounds, and never lift and carry more; (ii) she could stand and/or walk less than 2 hours in an 8-hour workday; (iii) she could sit less than 6 hours in an 8-hour workday; (iv) she could use both hands and arms and both legs and feet for repetitive actions (Exhibit A, pp. 28-30; Exhibit 1, pp. 17-19). The medical opinion form Claimant's primary care doctor completed on April 17, 2015, also supported Claimant's testimony that she needed to switch positions from standing, sitting, and lying down in response to her pain (Exhibit 1, pp. 12-14).

The [REDACTED] physical exam report prepared by a consulting doctor who examined Claimant found that the only limitations to Claimant's range of motion were that her flexion of the lumbar spine was limited to 70 degrees (normal is 90) and forward flexion of the bilateral hips was 50 degrees (normal is 100). The doctor noted that she could get on and off the table slowly; she could slowly tandem walk, heel walk and toe walk; she was able to squat to 70% of the distance and recover and bend to 70% of the distance and recover; her knee flexion was 0 to 150; and her straight leg raise was 0 to 50 while lying and 0 to 90 while sitting; and her ability to stand, bend, stoop, carry, and push and pull was with pain (Exhibit A, pp. 38-45).

With respect to Claimant's exertional limitations, a review of the entire record and Claimant's testimony, it is found that Claimant she maintains the physical RFC to perform sedentary work.

Claimant's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Claimant's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

As determined in the RFC analysis above, Claimant is limited to sedentary work activities. Claimant's work history in the 15 years prior to the application consists of work as a patient care technician (heavy, unskilled) and airport prescreening and security worker (heavy, unskilled). In light of the entire record and Claimant's RFC, 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 SGA. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v*

Campbell, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983).

In this case, Claimant was 48 years old at the time of application and 49 years old at the time of hearing and, thus, considered to be a younger individual (age 45-49) for purposes of Appendix 2. She received a GED and medical assistance program training with a history of unskilled or nontransferable skills 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 sedentary work activities. In consideration of Claimant's age, education, work experience, and physical RFC, the Medical-Vocational Guidelines, 201.21, establish that Claimant is **not** 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 not disabled for purposes of the SDA benefit program.

DECISION AND ORDER

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



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

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

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

ACE / pf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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]