

**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.: 15-008075
Issue No.: 2009
Case No.: ██████████
Hearing Date: June 25, 2015
County: Macomb-District 12

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 25, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and ██████████, authorized hearing representative with ██████████; Claimant's authorized hearing representative (AHR). Participants on behalf of the Department of Health and Human Services (Department) included ██████████ ██████████, Eligibility Specialist/Hearing Facilitator.

ISSUE

Did the Department properly determine that Claimant was not disabled for purposes of the Medical Assistance (MA-P) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On May 23, 2013, Claimant submitted an application for public assistance seeking MA-P benefits, with retroactive coverage to April 3, 2013 (Exhibit B; Exhibit E, pp. 22-31).
2. On November 18, 2013, the Medical Review Team (MRT) found Claimant not disabled. The medical packet was reviewed and a second MRT decision finding Claimant not disabled was issued on April 3, 2015 (Exhibit C and Exhibit E, pp. 1-2).
3. On April 16, 2015, the Department sent Claimant and the AHR a Benefit Notice denying the application based on MRT's finding of no disability (Exhibit D).

4. On May 1, 2015, the Department received Claimant's timely written request for hearing (Exhibit A).
5. Claimant alleged physical disabling impairment due to neck and back pain from degenerative disc disease, joint pain and high blood pressure.
6. Claimant alleged mental disabling impairments due to panic attacks.
7. At the time of hearing, Claimant was [REDACTED] years old with a [REDACTED], birth date; he was [REDACTED] in height and weighed [REDACTED] pounds.
8. Claimant is a high school graduate.
9. Claimant has an employment history of work as an auto technician, delivery person, and tire repairman.
10. Claimant's impairments have lasted, or are expected to last, continuously for a period of 12 months or longer.

CONCLUSIONS OF LAW

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

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

MA-P benefits are available to disabled individuals. BEM 105 (January 2014), p. 1; BEM 260 (July 2014), pp. 1-4. Disability for MA-P purposes is defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905(a). To meet this standard, a client must satisfy the requirements for eligibility for Supplemental Security Income (SSI) receipt under Title XVI of the Social Security Act. 20 CFR 416.901.

To determine whether an individual is disabled for SSI purposes, the trier-of-fact must apply a five-step sequential evaluation process and consider the following:

- (1) whether the individual is engaged in SGA;
- (2) whether the individual's impairment is severe;
- (3) whether the impairment and its duration meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404;
- (4) whether the individual has the residual functional capacity to perform past relevant work; and
- (5) whether the individual has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work.

20 CFR 416.920(a)(1) and (4); 20 CFR 416.945.

If an individual is found disabled, or not disabled, at any step, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

As outlined above, the first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Claimant has not engaged in SGA activity during the period for which assistance might be available. Therefore, Claimant is not ineligible under Step 1 and the analysis continues to Step 2.

Step Two

Under Step 2, the severity of an individual's alleged impairment(s) is considered. If the individual does not have a severe medically determinable physical or mental impairment that meets the duration requirement, or a combination of impairments that is severe and meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration requirement for MA-P means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 12 months. 20 CFR 416.922.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities regardless of age, education and work experience. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). An impairment, or combination of impairments, is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 CFR 416.921(a); see also *Salmi v Sec of Health and Human Services*, 774 F2d 685, 692 (CA 6, 1985). Basic work activities means the abilities and aptitudes necessary to do most jobs, including (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b).

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the *de minimus* standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Claimant alleges physical disabling impairment due to neck and back pain from degenerative disc disease, joint pain and high blood pressure and mental disabling impairment due to anxiety. The medical evidence presented at the hearing was reviewed and is summarized below.

On July 19, 2012, Claimant's internist completed a physical exam report, DHS-49, listing Claimant's diagnoses as degenerative cervical and lumbar disc joint disease.

The doctor noted that Claimant had cervical and lumbar paraspinal muscle tenderness and positive right straight leg raise. The doctor concluded that Claimant's condition was deteriorating and identified the following limitations: (i) he could never lift and carry 10 pounds or more; (ii) he could stand and/or walk less than 2 hours in an 8-hour workday; (iii) he could sit less than 6 hours in an 8-hour workday; (iv) he could use neither arm or hand to grasp, reach, push/pull, or fine manipulate; and (v) he could use neither foot or leg to operate foot and leg controls (Claimant's Exhibit 1, pp 1-2).

Claimant was treated for kidney stones in February and April 2013 (Exhibit E, pp. 32-37, 44-50, 55, 63-64, 67-69, 74-81).

A December 22, 2012, MRI of Claimant's cervical spine showed no acute fracture or subluxation, no cord edema, cerebellar tonsillar actopia/borderline Chiari malformation, and endplate and facet degenerative changes contributing to bilateral foraminal stenosis at C3-C4 through the C6-C7 levels (Exhibit E, pp. 53-54, 72-73). A January 23, 2013, lumbar spine MRI showed mild lumbar spondylosis and posterior disc bulge at L5-S1 with mild bilateral foraminal stenosis but no central stenosis (Exhibit E, pp. 51-52, 70-71). A September 13, 2013, lumbar spine MRI showed degenerative disc disease of moderate severity at L5-S1, degenerative disc disease at T11-T12 and T12-L1, no evidence of disc herniation, central canal, or foraminal stenosis (Exhibit E, pp. 98-99). On October 17, 2013, Claimant's orthopedic specialist identified Claimant's diagnosis as degenerative disc disease, noting he had a central bulge at L5-S1 with disc desiccation, making him unable to bend, lift, crawl, or stoop and limiting his walking and standing. He was restricted to never lifting any weight. (Exhibit A, pp. 3-5).

On May 19, 2014, Claimant's doctor's notes indicate that he had pain in his lower back that radiated to both legs. The doctor noted that forward flexibility was significantly limited due to lumbar discomfort but that he had full motor strength in the bilateral lower extremity muscle groups so that any limitations were due to pain and not a motor deficit (Exhibit E, pp. 95-97). He continued to complain of incapacitating pain at the June 16, 2014, visit and L5-S1 fusion surgery was scheduled (Exhibit E, pp. 102-104).

L5-S1 fusion surgery was performed on July 10, 2014 (Exhibit E, pp. 105-106). At the July 28, 2014 exam, the orthopedic surgeon found no nerve root tension signs or motor deficits (Exhibit E, pp. 131-132). The surgeon's nurse practitioner indicated in a December 30, 2014 letter to Claimant's internist that x-rays revealed that the fusion was solid at L5-S1 with positive bone consolidation. She noted that Claimant ambulated with a steady gait, did not have any lower extremity motor deficits, and his manual muscle testing was 5/5 bilaterally (Exhibit E, pp. 140-141).

A June 1, 2014, lumbar spine MRI compared to the September 15, 2013, MRI showed (i) degenerative disc disease at the L5-S1 level along with a small broad-based but predominately central disc protrusion with no nerve root compression; (ii) degenerative disc disease at the T11-T12 and T12-L1 level with no evidence of stenosis (Exhibit E, pp. 100-101, 123-124).

Claimant visited his doctor for post-surgery follow-up visits on July 28, 2014; September 30, 2014; and December 30, 2014 (Exhibit E, pp. 107-117). At the December 30, 2014 visit he reported to his doctor that he had occasional pain down his anterior thigh with no dermatomal distribution. The doctor found 5/5 motor strength in both lower extremities, negative straight leg raise, and a steady gait (Exhibit E, pp. 113-115).

On October 29, 2014, Claimant's orthopedic doctor indicated that Claimant's condition following lumbar fusion at the L5-S1 was stable but he could never lift 10 pounds or more (Claimant's Exhibit 1, pp. 3-4).

On March 4, 2015, a consultative physical examination report was prepared that concluded that Claimant had hypertension at goal with current medication, hyperlipidemia currently on statin, arthritis at the elbow with flexion deformity at 135 degrees with decreased range of motion, chronic persistent low back pain with continuing bilateral radiculopathy and decreased range of motion of the lumbar spine after July 2014 fusion surgery, and bilateral knee pain with decreased range of motion, probably secondary to degenerative disc disease with associated joint instability. Claimant reported spinal fusion surgery in July 2014 with titanium rod and screws placed at L5-S1 level and subsequent physical therapy 2-3 times per week. He continued to have back pain, with stabbing pain that shot down his legs and made prolonged sitting, standing and walking difficult. He used a back brace and cane for stability and to lessen the pain. He also reported that he had problems with his right elbow for three years, with difficulty extending the elbow, and knees that tended to give out and cause him to fall from time to time. He takes Norco four times daily, valium twice daily. He took medication to treat his hypertension and high cholesterol. In examining Claimant's musculoskeletal system, the doctor noted that Claimant's gait was antalgic favoring the left with a cane on the right; he could bend and stoop 60%, squat 80%; his straight leg raise in supine position was 60 degrees on the right and 70 degrees on the left with complaints of back pain. The following range of motion limitations were noted: (i) in the lumbar spine, flexion was limited to 0-60 (normal is 0-90), extension was limited to 0-15 (normal is 0 to 25), right lateral flexion was limited to 0-15 (normal is 0 to 25), left lateral flexion was limited to 0-15 (normal is 0 to 25); (ii) in the right elbow, a flexion deformity appeared at 135, supination was limited to 0-60 (normal is 0 to 80), and pronation was limited to 0-60 (normal is 0 to 80). His Jamar grip strength was 55 pounds in the right hand and 30 pounds in the left hand (Exhibit E, pp. 144-152).

In consideration of the de minimus standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Claimant suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 12 months. Therefore, Claimant has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination of whether the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

The medical evidence presented does **not** show that Claimant's impairments meet or equal the required level of severity of any of the above-referenced listings to be considered as disabling without further consideration. Listings 1.02 (major dysfunction of a joint), 1.04 (disorders of the spine), 4.00 (cardiovascular system), and 12.06 (anxiety-related disorders) were considered. Because Claimant's impairments are insufficient to meet, or to equal, the severity of a listing, Claimant is not disabled under Step 3 and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Step 4, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. Impairments, and any related symptoms, may cause physical and mental limitations that affect what a person can do in a work setting. 20 CFR 416.945(a)(1). RFC is the most an individual can do, based on all relevant evidence, despite the limitations from the impairment(s) and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4). The total limiting effects of all impairments, including those that are not severe, are considered. 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicants takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If the limitations and restrictions imposed by the individual's impairment(s) and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b). To determine the exertional requirements, or physical demands, of work in the national

economy, jobs are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a).

Sedentary work.

Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

Light work.

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, [an individual] must have the ability to do substantially all of these activities. If someone can do light work, ... he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

Medium work.

Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, ... he or she can also do sedentary and light work.

Heavy work.

Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, ... he or she can also do medium, light, and sedentary work.

Very heavy work.

Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, ... he or she can also do heavy, medium, light, and sedentary work.

20 CFR 416.967.

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of nonexertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings (i.e., can't tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi).

In this case, Claimant testified that he had continuing back, neck, and joint pain both before and after his July 2014 L5-S1 spinal fusion surgery. Claimant testified that he could walk no more than ½ block, lift less than a full gallon of milk, stand less than 45

minutes, and sit less than 45 minutes. He used a back brace and cane. He used a shower chair and sought assistance in putting his socks and shoes on. He relied on friends to do chores. The Department noted that, consistent with his testimony, Claimant had stood up after about 10 minutes to relieve his back pain and then sat back down after a few minutes.

The medical evidence showed a basis for Claimant's physical complaints. A June 1, 2014, lumbar spine MRI compared to the September 15, 2013 MRI showed (i) degenerative disc disease at the L5-S1 level along with a small broad-based but predominately central disc protrusion with no nerve root compression; (ii) degenerative disc disease at the T11-T12 and T12-L1 level with no evidence of stenosis. (Exhibit E, pp. 3-5, 100-101, 123-124.) Claimant's orthopedic doctor indicated on October 29, 2014 that Claimant's condition following lumbar fusion at the L5-S1 was stable but he could never lift 10 pounds or more. (Claimant's Exhibit 1, pp. 3-4.)

In a March 4, 2015, consultative physical examination report, the consulting doctor noted arthritis at Claimant's elbow with flexion deformity at 135 degrees with decreased range of motion, chronic persistent low back pain with continuing bilateral radiculopathy and decreased range of motion of the lumbar spine after the July 2014 fusion surgery, and bilateral knee pain with decreased range of motion, probably secondary to degenerative disc disease with associated joint instability. Claimant used a back brace and cane for stability and to lessen the pain but continued to have stabbing pain that shot down his legs and made prolonged sitting, standing and walking difficult. In examining Claimant's musculoskeletal system, the doctor noted that Claimant's gait was antalgic favoring the left with a cane on the right; he could bend and stoop 60%, squat 80%; his straight leg raise in supine position was 60 degrees on the right and 70 degrees on the left with complaints of back pain. The following range of motion limitations were noted: (i) in the lumbar spine, flexion was limited to 0-60 (normal is 0-90), extension was limited to 0-15 (normal is 0 to 25), right lateral flexion was limited to 0-15 (normal is 0 to 25), left lateral flexion was limited to 0-15 (normal is 0 to 25); (ii) in the right elbow, a flexion deformity appeared at 135, supination was limited to 0-60 (normal is 0 to 80), and pronation was limited to 0-60 (normal is 0 to 80). His Jamar grip strength was 55 pounds in the right hand and 30 pounds in the left hand. (Exhibit E, pp. 144-152.)

The medical evidence supports Claimant's testimony concerning his limitations. Consequently, it is found that, based on the medical evidence and Claimant's testimony, Claimant has an exertional RFC making him capable of less than sedentary work.

Claimant also alleged nonexertional limitations due to anxiety triggered by crowds and stress. 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). In this case, there is no medical evidence supporting Claimant's allegations of nonexertional limitations. Therefore, the record supports a finding that

Claimant has at most mild limitations on his nonexertional ability to perform basic work activities.

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 less than sedentary work activities and has mild 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 an auto technician (very heavy, skilled), delivery person (heavy, unskilled), and tire repairman (heavy, semi-skilled). 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. *Id.*

At this point in the analysis, the burden shifts from Claimant to the Department to present proof that Claimant has the RFC to obtain and maintain SGA. 20 CFR 416.960(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that

directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Claimant was ■ years old at the time of application and thus considered to be a younger individual (age 45-49) for purposes of Appendix 2. He is a high school graduate with a history of skilled work experience dependent on being capable of heavy work activity. Therefore, Claimant's employment skills are not transferable. As discussed above, Claimant maintains the RFC for work activities on a regular and continuing basis to meet the physical demands to perform less than sedentary work activities and has mild limitations on his mental ability to perform work activities. In this case, the Medical-Vocational Guidelines, Appendix 2 do not support a finding that Claimant is not disabled based on his exertional limitations. The Department has failed to counter with evidence of significant numbers of jobs in the national economy which Claimant could perform despite his limitations. Therefore, the Department has failed to establish that, based on his RFC and age, education, and work experience, Claimant can adjust to other work. Therefore, Claimant is disabled at Step 5.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds Claimant disabled for purposes of the MA-P benefit programs.

DECISION AND ORDER

Accordingly, the Department's determination is REVERSED.

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

1. Process Claimant's May 23, 2013, MA-P application, with request for retroactive coverage to April 2013, 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 July 2016.



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

