

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS & RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

SOAHR Docket No. 2006-3886REHD
DHS Reg No: 2006-19367
Case No: [REDACTED]

[REDACTED],

Claimant

_____ /

ADMINISTRATIVE LAW JUDGE: Marya A. Nelson-Davis

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order of Rehearing granted on October 20, 2008. Claimant was represented by [REDACTED]. The record was held open to allow Claimant's representative to obtain additional medical documentation. After the additional documentation was received, it was forwarded to the State Hearing Review Team (SHRT) for review.

ISSUE

Did the department properly determine that claimant did not meet the disability standard for Medical Assistance based on disability (MA-P) and State Disability Assistance (SDA)?

FINDINGS OF FACT

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

- (1) On August 4, 2006, Administrative Law Judge (ALJ) Jay W. Sexton issued a decision & Order in which he upheld the Department of Human Services (DHS) denial of Claimant's application for MA-P benefits; and the ALJ found that Claimant was not eligible for SDA benefits.
- (2) On May 9, 2005, Claimant applied for MA-P and SDA benefits.
- (3) Claimant applied for disability benefits based on a severe physical impairment due to a C5-6 disc herniation since 2000. (Exhibit 1, p. 17)

- (4) On May 10, 2005, the Medical Review Team (MRT) approved Claimant for SDA benefits, but denied his request for MA-P benefits; and the medical review for SDA was scheduled for August 2005. (Exhibit 1, p. 39)
- (5) On July 13, 2005, the Department sent Claimant written notice of the denial of MA-P benefits. (Exhibit 1, p. 5)
- (6) On September 29, 2005, the Department received Claimant's hearing request, protesting the denial of MA-P and retro MA-P benefits.
- (7) Claimant was denied SDA benefits effective August 30, 2005. (ALJ III)
- (8) On September 18, 2004, an MRI of Claimant's cervical spine revealed a large herniated disc at C5-C6 with marked narrowing of both lateral recesses; and arthropathic changes were seen throughout the cervical spine. (Claimant Exhibit C-1-pp. 264 & 265)
- (9) According to a laboratory report dated January 11, 2005, Claimant has a history of an abnormal EKG, but his myoview stress study revealed only mild apical hypokinesia. (C/1-p. 262)
- (10) Claimant's Echocardiographic Report dated January 21, 2005, revealed: Non-dilated congestive cardiomyopathy with moderate reduction in left ventricular function; no clinically significant valvular disorder was identified; and normal sinus rhythm. (C-1, p. 279)
- (11) On February 28, 2005, Claimant underwent an anterior cervical discectomy and fusion for his C5-C6 herniated disk. (Exhibit 1, pp. 59 & 60)
- (12) According to a physical examination report dated August 8, 2005: Claimant was not complaining of any discomfort in the neck, head, shoulders or arms, and he did not report any weakness or tingling; Claimant stated that his depression was under good control, and he was not on medical therapy for depression; and Claimant's musculoskeletal exam revealed good muscle tone and strength in the upper extremities with good range of motion of the cervical neck as well as shoulders and arms, and good grip strength. (C/1-p. 248)
- (13) According to a physical examination report dated September 6, 2005: Claimant underwent an anterior cervical discectomy and fusion and did quite well postoperatively with pain nearly gone; the doctor noted that Claimant was still taking methadone-10mg-1 to ½ tablets as needed, and it was unclear if this medication at that dosage was necessary since he had surgical correction of his problem; Claimant was not complaining of

- any further problems, and he did not have any problems with grip strength or chronic neck pain or headaches; Claimant did not have low back pain or radiculopathy down the lower extremities; and Claimant's musculoskeletal exam revealed good muscle tone and strength, good grip strength, good range of motion of the cervical neck and upper arms, and no muscle atrophy or wasting. (Claimant Exhibit C/1-p. 247)
- (14) According to a physical examination report dated October 19, 2005: Claimant's neck examination did not revealed any significant abnormal findings; the examination of claimant's chest reveal early COPD changes; Claimant's heart examination was normal; the examination of Claimant's extremities was normal; Claimant's back examination revealed tenderness over the SI joints, bilaterally, with evidence of stiffness in the lower back and paraspinous muscle spasms; Claimant's neurological examination revealed reasonable grip strength and intact sensation in the upper extremities, and lower extremities failed to show evidence of lumbar radiculopathy; and Claimant was diagnosed with cervical disk disease at C5-C6, and lower back pain with probable degenerative spine disease with possible sacroilitis. (Claimant Exhibit C-1-pp. 244-246)
- (15) According to Claimant's Mental Status examination/Discharge Report dated December 5, 2006: Claimant was admitted to the [REDACTED] in [REDACTED] on [REDACTED]; Claimant's thoughts were goal directed and spontaneous; there was no evidence of delusions, hallucinations, paranoia, or homicidal/suicidal ideations; his judgment of his situation was intact as well as his motivation for treatment; his insight into his illness was good; Claimant was oriented to person, time, and place; Claimant was given an Axis I diagnosis of a depressive disorder-not otherwise specified; and Claimant was given a Global Assessment of Functioning (GAF) score of 60. (New Claimant Exhibit E)
- (16) According to a Consultation Report from [REDACTED], dated [REDACTED], Claimant was diagnosed with hyperlipidemia, but his liver function was normal, and he was prescribed medication for his medical condition. (Claimant Exhibit E)
- (17) Claimant has a history of substance abuse. (Claimant Exhibit E)
- (18) Claimant has a GED and past relevant work experience as a heavy laborer/construction worker.
- (19) Claimant was not engaged in substantial gainful activity at any time relevant to this matter.

- (20) Claimant was denied Supplemental Security Income (SSI) by the Social Security Administration (SSA), but had an SSI appeal pending at the time relevant to this matter.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Family Independence Agency (FIA or agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 4000.105; MSA 16.490 (15). Agency policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

The State Disability Assistance (SDA) program, which provides assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM), and the Program Reference Manual (PRM).

Current legislative amendments to the Act delineate eligibility criteria as implemented by agency policy set forth in program manuals. 2000 PA 294, Sec. 604, of the statute states:

Sec. 604 (1) The department shall operate a state disability assistance program. Except as provided in subsection (3), persons eligible for this program shall include needy citizens of the United States or aliens exempted from the Supplemental Security Income citizenship requirement who are at least 18 years of age or emancipated minors meeting 1 or more of the following requirements:

(b) A person with a physical or mental impairment which meets federal SSI disability standards, except that the minimum duration of the disability shall be 90 days. Substance abuse alone is not defined as a basis for eligibility.

Pursuant to Federal Rule 42 CFR 435.50, the Family Independence Agency uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

Pursuant to Federal Rule 42 CFR 435.50, the Department of Human Services uses the federal Supplemental Security Income (SSI) policy in determining eligibility for disability under the Medical Assistance program. Under SSI, 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

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 a recovery and/or medical assessment of ability to do work-related activities or ability to reason and to make appropriate mental adjustments, if a mental disability is being alleged, 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908 and 20 CFR 416.929. By the same token, a conclusory statement by a physician or mental health professional that an individual is disabled or blind is not sufficient without supporting medical evidence to establish disability. 20 CFR 416.929.

A set order is used to determine disability. Current work activity, severity of impairments, residual functional capacity, past work, age, or education and work experience is reviewed. If there is a finding that an individual is disabled or not disabled at any point in the review, there will be no further evaluation. 20 CFR 416.920.

If an individual is working and the work is substantial gainful activity, the individual is not disabled regardless of the medical condition, education and work experience. 20 CFR 416.920 (c).

If the impairment or combination of impairments does not significantly limit physical or mental ability to do basic work activities, it is not a severe impairment(s) and disability does not exist. Age, education and work experience will not be considered. 20 CFR 416.920.

Statements about pain or other symptoms do not alone establish disability. There must be medical signs and laboratory findings which demonstrate a medical impairment...20 CFR 416.929 (a).

...Medical reports should include –

- (1) Medical history.
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, X-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms)...20 CFR 416.913(b).

In determining disability under the law, the ability to work is measured. An individual's functional capacity for doing basic work activities is evaluated. If an individual has the ability to perform basic work activities without significant limitations, he or she is not considered disabled. 20 CFR 416.994(b) (1) (iv).

Basic work activities are the abilities and aptitude necessary to do most jobs. Examples of these include –

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, 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
- (6) Dealing with changes in a routine work setting. 20CFR 416.921 (b).

Medical evidence may contain medical opinions. Medical opinions are statements from physicians and psychologists or other acceptable medical sources that reflect judgments about the nature and severity of the impairment(s), including your symptoms, diagnosis and prognosis, what an individual can do despite impairment(s), and the physical or mental restrictions. 20 CFR 416.927 (a) (2).

All of the evidence relevant to the claim, including medical opinions, are reviewed and findings are made. 20 CFR 416.927 (c).

A statement by a medical source finding that an individual is “disabled” or “unable to work” does not mean that disability exists for the purposes of the program. 20 CFR 416.927 (e).

If an individual fails to follow prescribed treatment which would be expected to restore their ability to engage in substantial gainful activity without good cause, there will not be a finding of disability... 20 CFR 416.994 (b)(4)(iv).

The Administrative Law Judge is responsible for making the determination or decision about whether the statutory definition of disability is met. The administrative Law Judge reviews all medical findings and other evidence that support a medical source’s statement of disability... 20 CFR 416.927 (e).

When determining disability, the federal regulations require that several considerations be analyzed in sequential order. If disability can be ruled out at any step, analysis of the next step is not required. These steps are:

1. Does the client perform Substantial Gainful Activity (SGA)? If yes, the client is ineligible for MA. If no, the analysis continues to Step 2. 20 CFR 416.920 (b).
2. Does the client have a severe impairment that has lasted or is expected to last 12 months or more or result in death? If no, the client is ineligible for MA. If yes, the analysis continues to Step 3. 20 CFR 416.920 (c).
3. Does the impairment appear on a special listing of impairments or are the client’s symptoms, signs, and laboratory findings at least equivalent in severity to the set of medical findings specified for the listed impairment? If no, the analysis continues to Step 4. If yes, MA is approved. 20 CFR 416.290 (d).

4. Can the client do the former work that he/she performed within the last 15 years? If yes, the client is ineligible for MA. If no, the analysis continues to Step 5. 20 CFR 416.920 (e).
5. Does the client have the Residual Functional Capacity (RFC) to perform other work according to the guidelines set forth at 20 CFR 404, Subpart P, Appendix 2, §§ 200.00-204.00? If yes, the analysis ends and the client is ineligible for MA. If no, MA is approved. 20 CFR 416.920 (f).

Claimant was not disqualified from receiving disability at Step 1, because he was not substantially gainfully employed at any time relevant to this matter. Therefore, the analysis continues to Step 2.

Claimant established that he had a severe physical impairment at the time relevant to this matter. However, he failed to establish that it prevented or was expected to prevent his ability to perform basic work activities for a continuous period of at least 12 months or more. However, the finding of a severe impairment at Step 2 is a *diminimus* standard. Therefore, the analysis will continue to Step 3.

Claimant's representative requested that Claimant should be approved for MA-P benefits because he meets listing 1.04 A and 12.04 A (1) c, e f, g, & h found at 20 CFR, Part 404, Subpart P, Appendix 1:

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 equine) 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)

On September 18, 2004, an MRI of Claimant's cervical spine did reveal a large herniated disc at C5-C6 with marked narrowing of both lateral recesses; and arthropathic changes were seen throughout the cervical spine. However, on February 28, 2005, Claimant underwent an anterior cervical discectomy and fusion for his C5-C6 herniated disc. According to the objective medical evidence on the record, Claimant did well postoperatively, and the evidence on the record does establish that there was no evidence of any postoperative upper extremity weakness or neurological dysfunction. Claimant failed to provide any objective medical evidence to establish that he meets listing 1.04.

12.04-Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in C are satisfied.

- A. Medically documented persistence, either continuous or intermittent, of one of the following:
 - 1. Depressive syndrome characterized by at least four of the following:
 - a. Anhedonia or pervasive loss of interest in almost all activities; or
 - b. Appetite disturbance with change in weight; or
 - c. Sleep disturbance; or
 - d. Psychomotor agitation or retardation; or
 - e. Decreased energy; or
 - f. Feelings of guilt or worthlessness; or
 - g. Difficulty concentrating or thinking; or
 - h. Thoughts of suicide; or
 - i. Hallucinations, delusions, or paranoid thinking;...

AND

- B. Resulting in at least two of the following:
 - 1. Marked restriction of activities of daily living; or
 - 2. Marked difficulties in maintaining social functioning; or
 - 3. Marked difficulties in maintaining concentration, persistence, or pace; or

4. Repeated episodes of decompensation, each of extended duration;...

Claimant has a history of depression. However, he failed to provide the necessary objective medical evidence to establish that he meets listing 12.04 A & B. In August 2005, during a physical examination, Claimant stated that his depression was under good control, and he was not on medical therapy for depression. Claimant was admitted to the [REDACTED] in [REDACTED] on [REDACTED]. However, by the time of discharge on December 5, 2006: Claimant's thoughts were goal directed and spontaneous; there was no evidence of delusions, hallucinations, paranoia, or homicidal/suicidal ideations; his judgment of his situation was intact as well as his motivation for treatment; his insight into his illness was good; Claimant was oriented to person, time, and place; Claimant was given an Axis I diagnosis of a depressive disorder-not otherwise specified; and Claimant was given a Global Assessment of Functioning (GAF) score of 60. A GAF of 60 means that Claimant has only moderate symptoms OR moderate difficulty in social, occupational, or school functioning. (See Diagnostic Stytistical Manual of Mental Disorders) There is no objective medical evidence on the record to establish that Clamant was markedly limited in any of the four areas essential to work.

This ALJ agrees with the previous ALJ's determination that Claimant was unable to do his past relevant work, due to his physical limitations. Therefore, the analysis will continue to the last step of the sequential evaluation.

The Residual Functional Capacity (RFC) is what an individual can do despite limitations. All impairments will be considered in addition to ability to meet certain demands of jobs in the national economy. Physical demands, mental demands, sensory requirements and other functions will be evaluated...20 CFR 416.945 (a).

To determine the physical demands (exertional requirements) of work in the national economy, we classify jobs as sedentary, light, medium, and heavy. These terms have the same meaning as they have in the Dictionary of Occupational Titles, published by the Department of Labor...20 CFR 416.967.

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. 20 CFR 416.967 (a).

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...20 CCR 416.9677 (b).

Medical findings must allow a determination of (1) the nature and limiting effects of your impairment(s) for any period in question; (2) the probable duration of the impairment; and (3) the residual functional capacity to do work-related physical and mental activities. 20 CFR 416.913(d).

This ALJ agrees with the previous ALJ's finding that Claimant was able to perform light work based on the following:

First, according to a laboratory report dated January 11, 2005, Claimant has a history of an abnormal EKG, but his **myoview stress study revealed only mild apical hypokinesia**. Claimant's Echocardiographic Report dated January 21, 2005, revealed a **non-dilated congestive cardiomyopathy with moderate reduction in left ventricular function. There was no clinically significant valvular disorder identified, and Claimant's sinus rhythm was normal.**

Second, by August 8, 2005, after undergoing surgery of the cervical spine, Claimant was not complaining of any discomfort in the neck, head, shoulders or arms, and he did not report any weakness or tingling; and Claimant's **musculoskeletal exam revealed good muscle tone and strength in the upper extremities with good range of motion of the cervical neck as well as shoulders and arms, and good grip strength.**

Third, Claimant's physical examination in September 2005, revealed: Claimant was doing well postoperatively with pain nearly gone; the doctor noted that Claimant was still taking methadone-10mg-1 to ½ tablets as needed, and it was unclear if this medication at that dosage was necessary since **he had surgical correction of his problem**; Claimant was not complaining of any further problems, and **he did not have any problems with grip strength or chronic neck pain or headaches; Claimant did not have low back pain or radiculopathy down the lower extremities; and Claimant's musculoskeletal exam revealed good muscle tone and strength, good grip strength, good range of motion of the cervical neck and upper arms, and no muscle atrophy or wasting.**

Fourth, the physical examination done in October 2005 fails to establish that Claimant would be unable to do at least light work. According to a physical examination report dated October 19, 2005: Claimant's neck examination did not reveal any significant abnormal findings; the examination of claimant's chest reveal early COPD changes; Claimant's heart examination was normal; the examination of Claimant's extremities was normal; Claimant's back examination revealed tenderness over the SI joints, bilaterally, with evidence of stiffness in the lower back and paraspinous muscle spasms; Claimant's neurological

examination revealed reasonable grip strength and intact sensation in the upper extremities; and lower extremities failed to show evidence of lumbar radiculopathy. A client's statements about the intensity, persistence, or limiting effects of symptoms, such as pain, must be consistent with the objective medical evidence and other evidence. The medical signs or laboratory findings must show that the client has a medically determinable impairment that could reasonably be expected to produce symptoms, such as pain. 20 CFR 416.929. The frequency, degree, and level of pain described by Claimant is inconsistent with the objective medical evidence on the record.

In determining how a severe mental impairment affects the client's ability to work, four areas considered to be essential to work are looked at:

...Activities of daily living including adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for one's grooming and hygiene, using telephones and directories, using a post office, etc. 20 CFR, Part 404, Subpart P, App. 1., 12.00(C)(1).

...Social functioning refers to an individual's capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. You may demonstrate impaired social functioning by, for example, a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, or social isolation. You may exhibit strength in social functioning by such things as your ability to initiate social contacts with others, communicate clearly with others, or interact and actively participate in group activities. We also need to consider cooperative behaviors, consideration for others, awareness of others' feelings, and social maturity. Social functioning in work situations may involve interactions with the public, responding appropriately to persons in authority (e.g., supervisors), or cooperative behaviors involving coworkers. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

We do not define “marked” by a specific number of different behaviors in which social functioning is impaired, but by the nature and overall degree of interference with function. For example, if you are highly antagonistic, uncooperative or hostile but are tolerated by local storekeepers, we may nevertheless find that you have a marked limitation in social functioning because that behavior is not acceptable in other social contexts. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(2).

...Concentration, persistence or pace refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Limitations in concentration, persistence, or pace are best observed in work settings, but may also be reflected by limitations in other settings. In addition, major limitations in this area can often be assessed through clinical examination or psychological testing. Wherever possible, however, a mental status examination or psychological test data should be supplemented by other available evidence. 20 CFR, Part 404, Subpart P, App. 1, 12.00(C)(3).

Episodes of decompensation are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

Episodes of decompensation may be demonstrated by an exacerbation in symptoms or signs that would ordinarily require increased treatment or a less stressful situation (or a combination of the two). Episodes of decompensation may be inferred from medical records showing significant alteration in medication; or documentation of the need for a more structured psychological support system (e.g., hospitalizations, placement in a halfway house, or a highly structured and directing household); or other relevant information in the record about the existence,

severity, and duration of the episode. 20 CFR 404, Subpart P, App. 1, 12.00(C)(4).

The evaluation of disability on the basis of a mental disorder requires sufficient evidence to: (1) establish the presence of a medically determinable mental impairment(s); (2) assess the degree of functional limitation the impairment(s) imposes; and (3) project the probable duration of the impairment(s). Medical evidence must be sufficiently complete and detailed as to symptoms, signs, and laboratory findings to permit an independent determination. In addition, we will consider information from other sources when we determine how the established impairment(s) affects your ability to function. We will consider all relevant evidence in your case record. 20 CFR 404, Subpart P, App. 1, 12.00(D).

When we rate the degree of limitation in the first three functional areas (activities of daily living; social functioning; and concentration, persistence, or pace), we will use the following five-point scale: none, slight, moderate, marked, and extreme. When we rate the degree of limitation in the fourth functional area (episodes of decompensation), we will use the following four-point scale: none, one or two, three, four or more. The last is incompatible with the ability to do any gainful activity. 20 CFR 416.920a(c).

After we rate the degree of functional limitation resulting from the impairment(s), we will determine the severity of your mental impairment(s). 20 CFR 416.920a(d).

If we rate the degree of your limitation in the first three functional areas as “none” or “mild” and “none” in the fourth area, we will generally conclude that your impairment(s) is not severe, unless the evidence otherwise indicates that there is more than a minimal limitation in your ability to do any basic work activities. 20 CFR 416.920a(d)(1).

If your mental impairment(s) is severe, we will then determine if it meets or is equivalent in severity to a listed mental disorder. We do this by comparing the diagnostic medical findings about your impairment(s)

and the rating of the degree of functional limitation to the criteria of the appropriate listed mental disorder. 20 CFR 416.920a(d)(2).

If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity. 20 CFR 416.920a(d)(3).

There's no objective medical evidence from a qualified medical source to support a finding that Claimant is mentally incapable of doing basic work activities due to having severe limitations in any of the four areas essential to work.

Claimant did submit a Medical Examination Report, completed by his physician, which indicates that Claimant is unable to engage in substantial gainful activity. However, this ALJ did not give the treating physician's opinion of Claimant's residual functional capacity much weight because it is not supported by the objective medical evidence on the record.

Medical vocational guidelines have been developed and can be found in 20 CFR, Subpart P, Appendix 2, Section 200.00. When the facts coincide with a particular guideline, the guideline directs a conclusion as to disability. 20 CFR 416.969. At the time relevant to this matter, Claimant was considered a young individual with a GED and at least unskilled work experience. 20 CFR 416.963, 20 CFR 416.964, and 20 CFR 416.968. Using Medical Vocational Rule 202.20 as a guideline, Claimant would be considered not disabled. According to this Medical Vocational Rule, a young individual with a high school education and unskilled work experience, limited to light work, is not disabled. Even if Claimant had a limited educational background, he would be considered not disabled according to Medical Vocational Rule 202.17.

In conclusion, Claimant does not meet the standard for disability as set forth in the Social Security regulations. Accordingly, the MA-P and SDA decision of the previous ALJ is upheld.

DECISION AND ORDER

This Administrative Law Judge, based on the above findings of fact and conclusion of law, decides that the Department properly determined that Claimant did not meet the MA-P disability standard, and the previous ALJ properly determined that Claimant no longer met the SDA disability standard.

IT IS THEREFORE ORDERED that:

The Department's denial of MA-P and SDA is **AFFIRMED**.

/s/

Marya A. Nelson-Davis
Administrative Law Judge
for Michigan Department of Human Services

cc:



Date Signed: September 14, 2009
Date Mailed: September 15, 2009

*****Notice*****

The Claimant may appeal this Rehearing Decision to Circuit Court within 30 days of the mailing of this Rehearing Decision.