

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2007-26253

Issue No: 2009; 4031

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 7, 2008

Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on Thursday, February 7, 2008. The claimant personally appeared and testified on her own behalf with her fiancée, [REDACTED] as a witness.

ISSUE

Did the department properly deny the claimant's application for Medical Assistance (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 May 3, 2007, the claimant applied for MA-P and SDA without filing a retroactive MA-P application.

(2) On July 19, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P and retroactive MA-P stating that the claimant was capable of performing other work under Medical-Vocational Grid Rule 202.17 and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On July 30, 2007, the department caseworker sent the claimant a notice that his application was denied.

(4) On August 3, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On November 16, 2007, the State Hearing Review Team (SHRT) considered the submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA eligibility for the claimant. The SHRT report reads in part:

The claimant's impairments can be medically managed. It is assessed that the claimant retains the capacity to perform work that does not require working around machinery.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform other work; light, unskilled. The claimant should avoid working around machinery. Therefore, MA-P is denied per the provisions of 20 CFR 416.920(c)(d). Retroactive MA-P is also denied. SDA is denied per the provisions of 20 CFR 416.920(c)(a) and PEM 261.

(6) During the hearing on February 7, 2008, the claimant requested permission to submit additional medical information that needed to be reviewed by SHRT. Additional medical information was received from the local office on February 7, 2008 and forwarded to SHRT for review on February 19, 2008.

(7) On February 22, 2008, the SHRT considered the newly submitted objective medical evidence in making its determination of MA-P, retroactive MA-P, and SDA. The SHRT report reads in part:

The claimant has a severe mental or physical impairment, but a review of the medical evidence of record shows that her alleged impairments do not meet or equal a Social Security listing. The objective medical evidence in the file demonstrates the physical residual capacity to perform a wide range of unskilled, light work.

The claimant's impairments do not meet/equal the intent or severity of a Social Security listing. The medical evidence of record indicates that the claimant retains the capacity to perform a wide range of unskilled, light work. Therefore, based on the claimant's vocational profile (closely approaching advanced age, high school graduate, and an unskilled work history), MA-P is denied using Vocational Rule 202.13 as a guide. Retroactive MA-P was considered in this case and is also denied. SDA is denied per PEM 261 because the nature and severity of the claimant's impairments would not preclude work activity at the above stated level for 90 days.

(8) The claimant is a 52 year-old woman whose date of birth is [REDACTED]. The claimant is 5' 4" tall and weighs 210 pounds. The claimant has gained 85 pounds in the past year because of multiple sclerosis and her medication. The claimant has a high school diploma. The claimant was last employed as a manager in March 2006. The claimant has also been employed as a presser, cashier clerk, and office clerk.

(9) The claimant's alleged impairments are depression, multiple sclerosis, arthritis, optic neuritis, and blind in the right eye.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program which provides financial 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).

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 Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

"Disability" is:

...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.

...We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity, your past work, and your age, education and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review your claim further.... 20 CFR 416.920.

...If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience. 20 CFR 416.920(b).

...[The impairment]...must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement. 20 CFR 416.909.

...If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. 20 CFR 416.920(c).

[In reviewing your impairment]...We need reports about your impairments from acceptable medical sources.... 20 CFR 416.913(a).

...Statements about your pain or other symptoms will not alone establish that you are disabled; there must be medical signs and laboratory findings which show that you have a medical impairment.... 20 CFR 416.929(a).

...You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. 20 CFR 416.912(c).

... [The record must show a severe impairment] which significantly limits your physical or mental ability to do basic work activities.... 20 CFR 416.920(c).

...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).

...The medical evidence...must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. 20 CFR 416.913(d).

Medical findings consist of symptoms, signs, and laboratory findings:

- (a) **Symptoms** are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.
- (b) **Signs** are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific psychological abnormalities e.g., abnormalities of behavior, mood, thought, memory, orientation, development, or perception. They must also be shown by observable facts that can be medically described and evaluated.

- (c) **Laboratory findings** are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests. 20 CFR 416.928.

It must allow us to determine --

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

Information from other sources may also help us to understand how your impairment(s) affects your ability to work. 20 CFR 416.913(e).

...You can only be found disabled if you are unable 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. See 20 CFR 416.905. Your impairment must result from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.... 20 CFR 416.927(a)(1).

...Evidence that you submit or that we obtain 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 your impairment(s), including your symptoms, diagnosis and prognosis, what you can still do despite impairment(s), and your physical or mental restrictions. 20 CFR 416.927(a)(2).

...In deciding whether you are disabled, we will always consider the medical opinions in your case record together with the rest of the relevant evidence we receive. 20 CFR 416.927(b).

After we review all of the evidence relevant to your claim, including medical opinions, we make findings about what the evidence shows. 20 CFR 416.927(c).

...If all of the evidence we receive, including all medical opinion(s), is consistent, and there is sufficient evidence for us to decide whether you are disabled, we will make our determination or decision based on that evidence. 20 CFR 416.927(c)(1).

...If any of the evidence in your case record, including any medical opinion(s), is inconsistent with other evidence or is internally inconsistent, we will weigh all of the evidence and see whether we can decide whether you are disabled based on the evidence we have. 20 CFR 416.927(c)(2).

[As Judge]...We are responsible for making the determination or decision about whether you meet the statutory definition of disability. In so doing, we review all of the medical findings and other evidence that support a medical source's statement that you are disabled.... 20 CFR 416.927(e).

...A statement by a medical source that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. 20 CFR 416.927(e).

...If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience. 20 CFR 416.920(d).

...If we cannot make a decision on your current work activities or medical facts alone and you have a severe impairment, we will then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled. 20 CFR 416.920(e).

If you cannot do any work you have done in the past because you have a severe impairment(s), we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. 20 CFR 416.920(f)(1).

...Your residual functional capacity is what you can still do despite limitations. If you have more than one impairment, we will consider all of your impairment(s) of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions, as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based on all of the relevant evidence.... 20 CFR 416.945(a).

...This assessment of your remaining capacity for work is not a decision on whether you are disabled, but is used as the basis for determining the particular types of work you may be able to do despite your impairment(s).... 20 CFR 416.945(a).

...In determining whether you are disabled, we will consider all of your symptoms, including pain, and the extent to which your symptoms can reasonably be accepted as consistent with objective medical evidence, and other evidence.... 20 CFR 416.929(a).

...In evaluating the intensity and persistence of your symptoms, including pain, we will consider all of the available evidence, including your medical history, the medical signs and laboratory findings and statements about how your symptoms affect you... We will then determine the extent to which your alleged functional limitations or restrictions due to pain or other symptoms can reasonably be accepted as consistent with the medical signs and laboratory findings and other evidence to decide how your symptoms affect your ability to work.... 20 CFR 416.929(a).

If you have more than one impairment, we will consider all of your impairments of which we are aware. We will consider your ability to meet certain demands of jobs, such as physical demands, mental demands, sensory requirements, and other functions as described in paragraphs (b), (c) and (d) of this section. Residual functional capacity is an assessment based upon all of the relevant evidence. This assessment of your capacity for work is not a decision on whether you are disabled but is used as a basis for determining the particular types of work you may be able to do despite your impairment. 20 CFR 416.945.

...When we assess your physical abilities, we first assess the nature and extent of your physical limitations and then determine your residual functional capacity for work activity on a regular and continuing basis. A limited ability to perform certain physical demands of work activity, such as sitting, standing, walking, lifting, carrying, pushing, pulling, or other physical functions

(including manipulative or postural functions, such as reaching, handling, stooping or crouching), may reduce your ability to do past work and other work. 20 CFR 416.945(b).

Federal regulations require that the department use the same operative definition for “disabled” as used for Supplemental Security Income (SSI) under Title XVI of the Social Security Act. 42 CFR 435.540(a).

“Disability” is:

...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

In determining whether an individual is disabled, 20 CFR 416.920 requires the trier of fact to follow a sequential evaluation process by which current work activity, the severity of the impairment(s), residual functional capacity, and vocational factors (i.e., age, education, and work experience) are assessed in that order. When a determination that an individual is or is not disabled can be made at any step in the sequential evaluation, evaluation under a subsequent step is not necessary.

First, the trier of fact must determine if the individual is working and if the work is substantial gainful activity. 20 CFR 416.920(b). At Step 1, the claimant is not engaged in substantial gainful activity and has not worked since March 2006. Therefore, the claimant is not disqualified from receiving disability at Step 1.

Secondly, in order to be considered disabled for purposes of MA, a person must have a severe impairment. 20 CFR 416.920(c). A severe impairment is an impairment which significantly limits an individual’s physical or mental ability to perform basic work activities.

Basic work activities means the abilities and aptitudes necessary to do most jobs. Examples of these include:

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine work setting. 20 CFR 416.921(b).

The purpose of the second step in the sequential evaluation process is to screen out claims lacking in medical merit. *Higgs v. Bowen* 880 F2d 860, 862 (6th Cir, 1988). As a result, the department may only screen out claims at this level which are “totally groundless” solely from a medical standpoint. The *Higgs* court used the severity requirement as a “*de minimus* hurdle” in the disability determination. The *de minimus* standard is a provision of a law that allows the court to disregard trifling matters.

The objective medical evidence on the record further substantiates the following:

On [REDACTED], the claimant was given a cervical spine MRI with and without Magnevist at [REDACTED]. The neuroradiologist’s impression was diffuse posterior disc bulge and borderline or mild left neuroforaminal stenosis at C6-C7, probably unchanged since [REDACTED]. There are also a possible slight posterior disc bulges at

C4-C5 and C5-C6. There was postural longitudinal ligament hypertrophy and/or posterior disc bulges or protrusions in the visualized upper thoracic spine most prominent at T1-T2.

(Department Exhibit 2-3)

On [REDACTED], the claimant was given a brain MRI with and without Magnevist at [REDACTED]. The neuroradiologist's impression was mini foci of high T2 and high T2 FLAIR regular signal intensity in the periventricular and subcortical white matter of both cerebral hemispheres are consistent with demyelinating plaques, which appear essentially unchanged since [REDACTED]. There was no appreciable pathological contrast enhancement to indicate active lesions. (Department Exhibit 4-7)

On [REDACTED], the claimant was given an electroencephalograph. The radiologist's impression was that the study was abnormal for right temporal paroxysmal disturbance. (Department Exhibit 8)

On [REDACTED], the claimant was given an independent mental status examination at [REDACTED]. The claimant was given a diagnosis of major depression, single episode, moderate, with a history of dysthymic disorder. The claimant was given a GAF of 50. Her prognosis was fair for the depression, if treated. The claimant would be able to manage her own benefit funds. The claimant was in contact with reality. The claimant was spontaneous, logical, and coherent. There was no form of thought disturbance in this area. The claimant denied hallucinations, delusions, or other psychotic symptoms. The claimant feels worthless, but denies any plans or intent to hurt herself. The claimant does have some death wishes at times. Her sleeping was poor and she stated that she kept gaining weight. The claimant's affect was constricted where she became tearful a few times during the interview. The claimant was oriented x3 with appropriate memory and information. The claimant apparently has had

dysthymic disorder for a long time due to her multiple sclerosis and the interferon. The depression has increased due to additional stress due to her physical disability. The claimant has signs and symptoms of major depression at this time. (Department Exhibit 3-5)

On [REDACTED], the claimant was seen by an independent medical consultant for a physical examination from [REDACTED]. The independent medical consultant stated that the diagnosis was multiple sclerosis and cervical spondylitis. The claimant was restricted from working around moving machinery or operating machines. The claimant should avoid heavy lifting, pushing, pulling, and reaching above her head. The claimant had a normal physical examination. The independent medical examination noted blurred vision, chronic bronchitis, loud snore, cough, and dyspnea. The claimant also had frequent urination and incontinence. She also had joint pains. Neurologically, the claimant had vertigo, dizziness, incoordination, and syncope five times a year ago for one to one and a half minutes with no seizures. The claimant was positive for depression and memory impairment. The claimant was obese and well built and nourished, but did not appear to be acutely ill or in any acute distress. The claimant was able to ambulate without an assistive device. There was no paraspinal muscle tenderness or spasms with the musculoskeletal exam. The claimant's gait was normal where she was able to walk on toes and heels. There was a tremor in the right hand and nystagmus with left lateral gaze, but no ataxia was noted. There was no localized muscle wasting, twitching, atrophy, paralysis, or involuntary movements. Pinprick, light touch, temperature, and vibration senses were diminished in the lower legs and feet. Deep tendon reflexes were normal. Knee jerks were increased on the left and ankle jerks were increased in the left. Babinski test was negative and Romberg test was positive. (Department Exhibit 6-10)

On [REDACTED], the claimant's treating physician submitted a Medical Examination Report, FIA-49, for the claimant. The claimant was first examined on [REDACTED] and last examined on [REDACTED]. The claimant had an impairment and chief complaint of multiple sclerosis, cervical radiculopathy, migraine headaches, neck pain, chronic headaches, depression, weakness, and fatigue. The claimant's current diagnosis was multiple sclerosis, cervical radiculopathy, and migraine headaches. The claimant had a normal physical examination with an elevated blood pressure of 140/92. Her treating physician also noted neurologically that the claimant had paravertebral muscle spasms where the range of motion was limited with pain. (Department Exhibit 25)

The treating physician's clinical impression was that the claimant was deteriorating with physical limitations that were expected to last more than 90 days. The claimant could frequently lift less than 10 pounds, occasionally lift 10 pounds, but never lift 20 pounds. The claimant could stand and/or walk with normal breaks for a total of less than two hours in an eight hour workday. Claimant can use both hands/arms for simple grasping and fine manipulation but neither for reaching and pushing/pulling. The claimant could use neither feet/legs for operating foot/leg controls. The medical findings that support the above physical limitations were MRI of the neck and neurologists reports. The claimant was limited in sustained concentration. However, she could meet her needs in the home. (Department Exhibit 26)

On [REDACTED], the claimant's treating neurologist submitted a Medical Examination Report, FIA-49, for the claimant. The claimant was first examined [REDACTED] and last examined [REDACTED]. The claimant had a history of impairment and chief complaint of left-sided weakness, vertigo, and diplopia. Her current diagnosis was multiple sclerosis. The claimant

had a normal physical examination except her blood pressure was 136/97. (Department Exhibit 22)

The treating neurologist's clinical impression was that the claimant was stable with limitations that were expected to last more than 90 days. The claimant could occasionally lift less than 10 pounds and stand and/or walk with normal breaks for a total of less than two hours of an eight hour workday. There were no assistive devices medically required or needed for ambulation. The claimant could only use her hands/arms for fine manipulation, not simple grasping, reaching, or pushing/pulling. The claimant could not use either feet/legs for operating foot/leg controls. The medical findings that support the above physical limitations were weakness related to multiple sclerosis. The claimant was limited in sustained concentration. The findings that support the above limitation was brain atrophy related to multiple sclerosis. However, the claimant could meet her needs in the home. (Department Exhibit 23)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that she has a severe impairment. The claimant was diagnosed with multiple sclerosis and depression. Mentally, the claimant was given a GAF of 50 which relates to serious symptoms or any serious impairment in social, occupational, or school functioning. The claimant did not have any psychosis or hallucinations or delusions, but the depression was due to the addition of more stress due to her physical disability. A MRI of the claimant's brain on [REDACTED] showed no active lesions. The MRI of her back showed disc bulging and mild left neuroforaminal stenosis and postural longitudinal ligament hypertrophy. Therefore, the claimant is not disqualified from receiving disability at Step 2. However, this Administrative Law Judge will proceed through the sequential evaluation process to determine disability because Step 2 is a *de minimus* standard.

In the third step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment (or combination of impairments) is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. This Administrative Law Judge finds that the claimant's medical record will not support a finding that claimant's impairment(s) is a "listed impairment" or equal to a listed impairment. See Appendix 1 of Subpart P of 20 CFR, Part 404, Part A. Accordingly, claimant cannot be found to be disabled based upon medical evidence alone. 20 CFR 416.920(d). This Administrative Law Judge finds that the claimant's impairments do not rise to the level necessary to be listed as disabling by law. Therefore, the claimant is disqualified from receiving disability at Step 3.

In the fourth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing past relevant work. 20 CFR 416.920(e). It is the finding of this Administrative Law Judge, based upon the medical evidence and objective, physical and psychological findings, that the claimant does have a driver's license, but does not drive because she doesn't feel comfortable with no depth perception. The claimant cooks once a day, but does have a problem lifting and opening cans. The claimant grocery shops once every two weeks with her fiancée. She has a problem remembering to buy what's needed and transportation. The claimant does clean her own home by loading the dishwasher and vacuuming and doing laundry. The claimant does not do any outside work or have any hobbies. The claimant felt her condition has worsened in the past year because her balance, vision, and muscle weakness have gotten worse. The claimant testified that she has depression, but is not taking medication or in therapy.

The claimant wakes up between 5:00 a.m. to 7:00 a.m. She goes to the bathroom. She has coffee. She watches the TV news and sits and talks to her fiancée. She does stuff around the house. She mostly just sits. She goes to bed between 10:00 p.m. to 11:00 p.m.

The claimant felt like she could walk 100 miles. The longest she felt she could stand was 10 to 15 minutes. The longest she felt she could sit was 20 to 30 minutes. The heaviest weight she felt she could carry and walk was 10 pounds. The claimant stated that her level of pain on a scale of 1 to 10 without medication was an 8 that decreases to a 4/5 with medication. The claimant smokes a pack to a pack and a half of cigarettes a day. She stopped drinking in [REDACTED] where before she drank occasionally. She is not currently taking or has ever taken any illegal or illicit drugs.

This Administrative Law Judge finds that the claimant has established that she cannot perform any of her prior work. The claimant was previously employed as a manager, which is a detailed job that might be difficult for the claimant with her depression. She was also employed as a presser, which with the multiple sclerosis she should not work around machinery. She was also employed as a cashier clerk and office clerk where she should not work around machinery and should avoid heavy lifting. The claimant does retain the capacity to perform a wide range of unskilled, light work. Therefore, the claimant is not disqualified from receiving disability at Step 4. However, the Administrative Law Judge will still proceed through the sequential evaluation process to determine whether or not the claimant has the residual functional capacity to perform some other less strenuous tasks than in her prior jobs.

In the fifth step of the sequential consideration of a disability claim, the trier of fact must determine if the claimant's impairment(s) prevents claimant from doing other work. 20 CFR 416.920(f). This determination is based upon the claimant's:

- (1) residual functional capacity defined simply as “what can you still do despite your limitations?” 20 CFR 416.945;
- (2) age, education, and work experience, 20 CFR 416.963-.965; and
- (3) the kinds of work which exist in significant numbers in the national economy which the claimant could perform despite his/her limitations. 20 CFR 416.966.

...To determine the physical exertion requirements of work in the national economy, we classify jobs as sedentary, light, medium, heavy, and very 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 CFR 416.967(b).

...To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that 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. 20 CFR 416.967(b).

Unskilled work. Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength.... 20 CFR 416.968(a).

The claimant has submitted insufficient evidence that she lacks the residual functional capacity to perform some other less strenuous tasks than in her previous employment or that she is physically unable to do any tasks demanded of her. The claimant's testimony as to her limitation indicates her limitations are exertional and non-exertional.

For mental disorders, severity is assessed in terms of the functional limitations imposed by the impairment. Functional limitations are assessed using the criteria in paragraph (B) of the listings for mental disorders (descriptions of restrictions of activities of daily living, social functioning; concentration, persistence, or pace; and ability to tolerate increased mental demands associated with competitive work).... 20 CFR, Part 404, Subpart P, App. 1, 12.00(C).

In the instant case, the claimant stated that she has depression. She is currently not taking medication or in therapy. The claimant's treating neurologist and physician stated that she was mentally limited in sustained concentration. The claimant was given a mental status examination where she was given a GAF of 50 and a diagnosis of major depression, single episode, moderate with a history of dysthymic disorder. Her prognosis was fair if the depression was treated. As a result, there is sufficient medical evidence of a mental impairment that is so severe that it would prevent the claimant from performing skilled, detailed work, but the claimant should be able to perform simple, unskilled work.

At Step 5, the claimant should be able to meet the physical requirements of light work, based upon the claimant's physical abilities. Under the Medical-Vocational guidelines, a closely approaching advance age individual, with a high school education, and a history of skilled and unskilled work, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.13. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as depression. 20 CFR 404, Subpart P, Appendix 2, Section 200.00.

Using the Medical-Vocational guidelines as a framework for making this decision and after giving full consideration to the claimant's physical and mental impairments, the Administrative Law Judge finds that the claimant can still perform a wide range of simple, unskilled, light activities and that the claimant does not meet the definition of disabled under the MA program.

The department's Program Eligibility Manual provides the following policy statements and instructions for caseworkers regarding the SDA program.

DISABILITY – SDA

DEPARTMENT POLICY

SDA

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

Note: There is no disability requirement for AMP. PEM 261, p. 1.

DISABILITY

A person is disabled for SDA purposes if he:

- . receives other specified disability-related benefits or services, or
- . resides in a qualified Special Living Arrangement facility, or
- . is certified as unable to work due to mental or physical disability for at least 90 days from the onset of the disability.
- . is diagnosed as having Acquired Immunodeficiency Syndrome (AIDS).

If the client's circumstances change so that the basis of his/her disability is no longer valid, determine if he/she meets any of the other disability criteria. Do NOT simply initiate case closure. PEM, Item 261, p. 1.

Other Benefits or Services

Persons receiving one of the following benefits or services meet the SDA disability criteria:

- . Retirement, Survivors and Disability Insurance (RSDI), due to disability or blindness.
- . Supplemental Security Income (SSI), due to disability or blindness.
- . Medicaid (including spend-down) as blind or disabled if the disability/blindness is based on:
 - .. a DE/MRT/SRT determination, or
 - .. a hearing decision, or
 - .. having SSI based on blindness or disability recently terminated (within the past 12 months) for financial reasons.

Medicaid received by former SSI recipients based on policies in PEM 150 under "**SSI TERMINATIONS, INCLUDING 'MA While Appealing Disability Termination,'**" does not qualify a person as disabled for SDA. Such persons must be certified as disabled or meet one of the other SDA qualifying criteria. See "**Medical Certification of Disability**" below.

- . Michigan Rehabilitation Services (MRS). A person is receiving services if he has been determined eligible for MRS and has an active MRS case. Do not refer or advise applicants to apply for MRS for the purpose of qualifying for SDA.
- . Special education services from the local intermediate school district. To qualify, the person may be:
 - .. attending school under a special education plan approved by the local Individual Educational Planning Committee (IEPC); **or**
 - .. not attending under an IEPC approved plan but has been certified as a special education student **and** is attending a school program leading to a high school diploma or its equivalent, **and** is under age 26. The program does not have to be designated as "special education" as long as the person has been certified as a special education student. Eligibility on this basis continues until the person completes the high school program or reaches age 26, whichever is earlier.

- . Refugee or asylee who lost eligibility for Social Security Income (SSI) due to exceeding the maximum time limit PEM, Item 261, pp. 1-2.

Because the claimant does not meet the definition of disabled under the MA program and because the evidence in the record does not establish that the claimant is unable to work for a period exceeding 90 days, the claimant does not meet the disability criteria for SDA.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department has appropriately established that it was acting in compliance with department policy when it denied the claimant's application for MA-P, retroactive MA-P, and SDA. The claimant should be able to perform any level of simple, unskilled, light work. The claimant should avoid heavy lifting and should not work around machinery. The department has established its case by a preponderance of the evidence.

Accordingly, the department's decision is **AFFIRMED**.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: April 7, 2009

Date Mailed: April 8, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

CGF/vmc

cc:

