

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: 2007-21165
Issue No: 2009; 4031
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 15, 2007
Bay 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, an in-person hearing was held on Thursday, November 15, 2007. The claimant personally appeared and testified his mother, [REDACTED] case manager, [REDACTED], and authorized representative, [REDACTED],

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 4, 2007, the claimant applied for MA-P and SDA without filing an application for retroactive MA-P.

(2) On June 22, 2007, the Medical Review Team (MRT) denied the claimant's application for MA-P based on substance abuse and for SDA that the claimant's physical and mental impairment does not prevent employment for 90 days or more.

(3) On June 27, 2007, the department caseworker sent the claimant a notice that his application was denied.

(4) On July 2, 2007, the department received a hearing request from the claimant, contesting the department's negative action.

(5) On October 3, 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 is 49 years old with 11 years of education and an unskilled work history. The claimant alleges disability due to mental illness. Substance abuse and alcohol affects the claimant's functioning. DA/A is applicable and P. L. 104-121 is cited due to the materiality of drug and alcohol abuse.

(6) During the hearing on November 15, 2007, 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 September 18, 2009 and forwarded to SHRT for review on September 21, 2009.

(7) On September 23, 2009, 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 is 51 years old and alleges disability due to mental illness, diabetes, high blood pressure, carpal tunnel syndrome, and degenerative disc disease. He has a limited education and a history of unskilled work.

The claimant has a history of alcohol abuse. He reported auditory hallucinations in [REDACTED] but his mental status was unremarkable except for being somewhat anxious and depressed. In [REDACTED], there were no hallucinations and his mental status was unremarkable. His physical examination showed some limitation of motion of the spine without any significant neurological abnormalities. Gait and dexterity were normal and the claimant would be capable of simple, unskilled, medium 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 simple, unskilled, medium work. In lieu of detailed work history, the claimant will be returned to other work. Therefore, based on the claimant's vocational profile (closely approaching advanced age at 51, limited education, and history of unskilled work), MA-P is denied using Vocational Rule 203.18 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 man whose date of birth is [REDACTED]. The claimant is 5' 7" tall and weighs 256 pounds. The claimant has lost 10-15 pounds in the past year because of not eating right, no appetite, and no bread and potatoes. The claimant completed the 10th grade of high school. He was Special Education in English and Math. The claimant stated that he can read and write, but cannot do basic math. The claimant was last employed in 2005 as a seasonal laborer, which is his past employment history.

(9) The claimant's alleged impairments are major depressive disorder, alcohol dependency in early remission, Type 2 diabetes, psychotic disorder, NOS, degenerative disc disease, and pinched nerve.

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 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 2005. 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 saw his treating psychiatrist for a medication review from [REDACTED]. The claimant was dressed appropriate with good hygiene and grooming. The claimant was pleasant and cooperative with good eye contact. His thoughts were goal directed.

Speech was normal in volume, rate, and rhythm. Mood was euthymic with congruent affect. There was no suicidal or homicidal ideation or hallucinations or delusions. The claimant had fair focus, concentration, and memory. Insight and judgment were adequate. The claimant was diagnosed with major depression, recurrent, stable, and alcohol dependence in full remission. (Department Exhibit C)

On [REDACTED], the claimant underwent a psychiatric examination from an independent medical consultant, [REDACTED]. The independent medical licensed psychologist diagnosed the claimant with schizoaffective disorder, depressed type, and alcohol dependence in sustained full remission where he was given a GAF of 41. The claimant would have a difficult time managing and coping with stress. He seemed to be relatively stable in his current psychiatric at this time. The claimant was not a very good candidate for return to the workforce. The claimant was unable to manage his own benefit funds due to impaired contact with reality. The claimant had full contact with reality as he endorsed auditory hallucinations being somewhat better under control with medication. His self esteem was poor. His motor activity was reduced over past levels. Motivation seemed to be good. He did not appear to exaggerate or minimize symptoms. The claimant's insight was limited. The claimant was spontaneous throughout the evaluation where he answered questions to be best of his ability. The claimant denied any suicidal ideation. He spoke in clear and understandable manner with an adequate rate and rhythm. The claimant did report trouble sleeping noting that he is up and down all night. The claimant's affect was somewhat anxious and depressed with a depressed mood. The claimant was oriented x3. (Department Exhibit B2-B7)

On [REDACTED], the claimant was given a physical examination by an independent medical consultant at [REDACTED]. The claimant was diagnosed with degenerative disc disease where his neurological examination was unremarkable. The claimant's muscle strength and tone were also unremarkable. Range of motion revealed impairment in the left hip suggesting a degenerative joint situation. The claimant did have impairments in the lumbar spine that appear to involve the cervical spine as well. With certain positions while doing the range of motion studies, there was numbness into the left arm and hand. The claimant's blood pressure on examination was respectable. The claimant has non-insulin diabetes where his sugars indicate fairly good control. The clinical evaluation revealed no evidence of any problem. The claimant had carpal tunnel syndrome where his Tinel's was positive and the tingling response extended proximad from the wrist. The claimant was also diagnosed with anxiety and depression where he was taking Prozac. (Department Exhibit A1-A4)

On [REDACTED], the claimant's treating physician completed a Mental Residual Functional Capacity Assessment, DHS-49E, on behalf of the claimant. The claimant was markedly limited in understanding and memory in the ability to understand and remember detailed instructions. The claimant was markedly limited in sustained concentration and persistence in the ability to carry out detailed instructions and the ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances, and the ability to complete a normal workday and worksheet without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. The claimant was markedly limited in social interaction in the ability to accept instructions and respond appropriately to criticism from supervisors and the

ability to get along with co-workers or peers without distracting them or exhibiting behavioral extremes. The claimant was diagnosed with psychotic disorder, NOS, major depressive disorder, and alcohol dependence currently in early remission. The claimant was given a GAF of 50 compared to a 30 last year when he was hospitalized at White Pines. (Department Exhibit C2-C3)

On [REDACTED], the claimant was treated at [REDACTED] (Department Exhibit 160-162):

- CT of the chest with contrast. The mediastinum appeared normal with no pulmonary embolus demonstrated. The lungs were clear and the chest wall was not invaded.
- CT of the chest. Normal CT with more particularly, no pulmonary embolus demonstrated.
- CH PA chest portable. The radiologist saw mild cardiomegaly with no acute intrathoracic abnormality.
- CH PA chest portable. The radiologist's impression was mild cardiomegaly with no consolidation, atelectasis, pleural effusion, or pneumothorax could be identified.

On [REDACTED], the claimant was given x-rays, 4 views, of the lumbar spine at [REDACTED]. Te radiologist's impression was degenerative disc disease at the level of L5-S1 where there was no acute lumbar spine fracture or spondylolisthesis. There was minimal degenerative disc disease at the level of L4-L5. The facet joints were within normal limits with no spondylolysis. The claimant's x-rays of the lumbosacral spine showed that degenerative disc disease was worse at L5-S1. The claimant was given x-rays, 5 views, of the cervical spine where the radiologist's impression was mild cervical spondylosis at the level of C6-C7. (Department Exhibit 173-175)

At Step 2, the objective medical evidence in the record indicates that the claimant has established that he has a severe impairment. 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 not have a driver's license and does not drive because he lost it as a result of a DUI. The claimant cooks 4 times a day. He grocery shops once a week, but doesn't like to be around people. The claimant cleans his own home, but he has to stop because of his back. The claimant does cut his own grass using a riding lawnmower and it takes about 2 hours. The claimant does not have any hobbies.

The claimant felt that his condition has worsened in the past year by his back, but his mind was okay. The claimant stated that he is taking medication and is in therapy for his mental impairment.

The claimant wakes up between 4:30 to 5:30 a.m. He stares out the window. He watches TV. He vacuums and takes the garbage out. He reads. He thinks about the past and the future. He gets scared. He eats. He watches TV. He goes outside. The claimant stated he goes to bed between 8:30 to 9:00 p.m.

The claimant felt that he could walk 10 yards. The longest he felt he could stand was 10-12 minutes. The longest he felt he could sit was 1 to 1 ½ hours. The heaviest weight he could carry and walk was 15 pounds. The claimant stated that his level of pain on a scale of 1 to 10 without medication was a 9 that decreases to a 3 with medication.

The claimant smokes 10 cigarettes a day. He stopped drinking alcohol in October 2006 where he would drink a fifth 2-3 times a week. The claimant stopped smoking marijuana at 20 years of age. The claimant stated that there was no work that he thought he could do.

This Administrative Law Judge finds that the claimant has established that he cannot perform any of his prior work. The claimant was previously employed as a seasonal laborer at the medium to heavy level. The claimant should be able to perform simple, unskilled, light work. If the claimant could find a laborer position at the light level, the claimant should be able to perform that type of 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 his 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 you 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 he lacks the residual functional capacity to perform some other less strenuous tasks than in his previous employment or that he is physically unable to do any tasks demanded of him. The claimant's testimony as to his limitation indicates his 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 for his major depressive disorder, alcohol dependency in remission, and psychiatric disorder, that the claimant is in therapy and taking medication. See analysis in Step 2. 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. In addition, the claimant only completed the 10th grade of high school. Therefore, the claimant would be limited to 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 advanced age individual with a limited or less education, and an unskilled work history, who is limited to light work, is not considered disabled. 20 CFR 404, Subpart P, Appendix 2, Rule 202.10. The Medical-Vocational guidelines are not strictly applied with non-exertional impairments such as major depressive disorder, alcohol dependency in remission, and

psychiatric disorder. 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 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: May 26, 2010

Date Mailed: May 26, 2010

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:

